

Update on Deferred Action for Childhood Arrivals (DACA)

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The U.S. Department of Homeland Security, Citizenship and Immigration Services (USCIS) began accepting applications for Deferred Action for Childhood Arrivals, or "DACA," on August 15, 2012. The August 15th roll-out of the new deferred action program was celebrated across the country as a sign of progress and a step forward for immigrant youth. It also marked the culmination of two months of waiting and anticipation, ever since U.S. Department of Homeland Security (DHS) Secretary Janet Napolitano made the first public announcement about the program on June 15, 2012.

Is there a New Form to File?

New forms were published by USCIS on August 15, 2012. All applicants must use the new forms in order to apply for deferred action under the new policy. Applicants must concurrently file the following three USCIS forms:

- Form I-821D – Consideration of Deferred Action for Childhood Arrivals
- I-765 – Application for Employment Authorization
- I-765WS Form I-765 Worksheet

What is the Filing Fee?

There is no filing fee specific to the form I-821D. However, the I-765 Application requires a filing (\$380) and biometric fees (\$85), a total of \$465. USCIS emphasized that any form I-821 received without an accompanying I-765 Application, I-765WS, and/or the I-765 Application filing fees, will result in "your entire submission [being] rejected" by USCIS. Thus, in practice, the I-821D must be filed with a fee of \$465 and forms I-765 and I-765WS.

Have the Eligibility Criteria Changed?

No, the basic criteria for eligibility announced by DHS on June 15, 2012, have not changed. USCIS has provided clarifications regarding certain criteria and wording during teleconferences and in printed materials, but the basic standards have not changed. Remember that you will also need to carefully document your presence in the United States, your date of entry, and your educational history with verifiable evidence.

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DACA Eligibility Criteria

- You were under the age of 16 when you immigrated to the U.S.
- You were under the age of 31 on June 15, 2012 (i.e. your date of birth is on or after June 16, 1981)
- You were undocumented as of June 15, 2012 (either having entered without inspection or your lawful immigration status expired prior to that date)
- You were physically present in the United States on June 15, 2012
- You have "continuously resided in the United States" from June 15, 2007, through the date of filing your request for deferred action
- You have not been convicted of a felony, significant misdemeanor, or multiple misdemeanors
- You do not pose a threat to national security or to the public safety of the U.S.
- You are currently in school, enrolled in school, graduated from high school, have obtained a general education development (GED) certificate, are enrolled in another qualify program (per USCIS guidance), OR you are an honorably discharged veteran of the United States Armed Forces or Coast Guard

Will I Be Deported if My Request is Denied?

Information provided in a request for deferred action is protected against disclosure to Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (USCBP) for the purpose of immigration enforcement. However, this protection does not hold if the applicant or relatives listed on the request meet the general criteria for issuance of a Notice to Appear (NTA), a referral to ICE, or in other circumstances (law enforcement, national security, etc.).

Applicants should be aware of this dichotomy and the potential risk, though they should not necessarily be deterred from filing because of it.

For this reason, among others, it is in the applicant's best interest to consult with an immigration attorney regarding the viability of his or her case, and the risks involved in filing. This includes assessing the likelihood of being detained or receiving an NTA, in the unlikely event that the applicant's request for deferred action was denied.

Why Should I Hire an Attorney?

Deferred Action for Childhood Arrivals will indeed be a great relief to the estimated million plus young immigrants who will qualify. However, requests

for deferred action will ultimately be decided by USCIS on a case-by-case basis, and adjudicated as a matter of discretion. There is also no appeal or reconsideration process for denied requests.

Considering this, applicants should be cautious, not file so hurriedly that they are careless, and should consult with an immigration attorney before submitting any documents to USCIS.

Each case is unique, as no one's circumstances, immigration history or documents are identical. Therefore, it is always a good idea to have a professional review your situation individually. Though the potential benefit of DACA is significant, like any legal matter, if a case is not properly vetted or prepared, the risk of denial or unforeseen consequences can also be high.

We invite you to contact Attorney Lopez at Lopez Immigration Law at Murphy Desmond to learn more about Deferred Action for Childhood Arrivals and schedule a consultation with one of our bilingual immigration attorneys to find out if this process is right for you.

We are available by telephone at (608) 270-5550 or by e-mail at infoimmigration@murphydesmond.com.

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