

Deferred Action for Qualifying Young Immigrants

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On June 15, 2012, President Obama made an historic announcement regarding a new process by which young immigrants (who are “low enforcement priorities”) will be able to obtain Deferred Action status in the United States, including applying for employment authorization.

The U.S. Department of Homeland Security (DHS) put out both English and Spanish press releases that same day listing the general requisites for applicants. DHS also explained that, although the announcement was “effective immediately,” they would require around 60 days to create and implement the procedure and infrastructure needed before beginning to receive applications after August 15, 2012.

What is Deferred Action?

It is important to understand what Deferred Action constitutes, as well as what it is not. It is not Permanent Residence and does not confer non-immigrant immigration status, nor does it provide a “path to citizenship.”

Rather, Deferred Action provides temporary relief from deportation/removal. It also prevents an applicant from being placed in removal proceedings in the first place. Deferred Action will be granted in two-year increments, subject to renewals, assuming the next administration continues to follow this policy.

Who is Eligible to Apply?

Deferred Action is available to:

- Individuals who are currently in removal proceedings
- Individuals who are subject to a final order of removal
- Individuals who are **not** in removal proceedings or subject to a final order

In most cases where a final order is not in place, however, the applicant must be at least 15 years of age to qualify. In addition, all applicants must meet the

eligibility requirements listed in the checklist below.

What Documents Do I Need?

Although the requirements appear few in number, there are documentary requirements for each one.

According to USCIS, suggested documentation to submit with a Deferred Action application includes financial, medical, school, employment, and/or military records.

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Deferred Action Eligibility Guidelines

- An applicant must be under 31 years of age as of 6/15/2012
- An applicant must have arrived in the United States prior to the age of sixteen (16)
- An applicant must have “resided continuously” in the United States for a minimum of five years prior to 6/15/2012 (i.e. from 6/15/2007 onward, with no gaps in residence), AND must have been present in the United States on the date the DHS Memorandum was published on 6/15/2012
- An applicant must fall into at least one of the following categories:
 - currently be enrolled in school
 - have graduated from high school
 - have obtained a general education development certificate (GED)
 - or have been honorably discharged as a veteran of the United States Armed Forces or Coast Guard
- An applicant must “[n]ot have been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise pose a threat to national security or public safety”

Whether an applicant has satisfied those requirements and meets the preliminary eligibility guidelines will be determined on a case-by-case basis, and whether that applicant thus merits a grant of Deferred Action, is discretionary.

Apart from the application for Deferred Action, applicants will be eligible to apply for employment authorization as long as they can demonstrate that said employment is of economic necessity.

This application will be filed separately, with Form I-765 Application for Employment Authorization and documentation of the Applicant's economic need.

Why Should I Contact an Attorney?

It is important for every applicant to obtain a professional legal analysis of his or her situation prior to submitting his or her application to:

- Ensure that he or she qualifies for Deferred Action
- Verify this is the best and only immigration option available to him or her
- Assess whether there are any negative effects to filing the application, depending on the applicant and his or her family's immigration status, histories, and other factors
- Avoid the potential negative consequences of applying when one is ineligible

(i.e. applying with a “seemingly” minor criminal background that, if determined by USCIS to constitute multiple misdemeanor offenses, could result in the applicant being placed in removal proceedings, rather than obtaining the desired benefit)

These issues need to be vetted with the guidance of a licensed, experienced immigration attorney to ensure to best outcome for an applicant's case.

We invite you to schedule an initial consultation regarding your eligibility for Deferred Action. Please call Attorney Glorily A. Lopez at Lopez Immigration Law at Murphy Desmond (608) 270-5550.

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