

What's new with the Deferred Action for Childhood Arrivals (DACA)



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August 2012



Last month, US Citizenship and Immigration Services (USCIS) began accepting applications for Deferred Action for Childhood Arrivals (DACA). In doing so, it published applications and instructions, answering many of the major questions left unanswered by the June 15, 2012 announcement.

First, it published the application (form I-821D) and announced a filing fee of \$465. This amount includes the fee for employment authorization as well. The government cannot waive this fee, but will grant very limited exemptions to certain individuals, including homeless children and those who suffer from chronic disabilities.

USCIS also clarified the “economic necessity” requirement for work permit. Historically, individuals granted deferred action have needed to show a specific need for a work permit before USCIS would grant it. For DACA applicants USCIS streamlined this process. USCIS published a brand new worksheet (I-765WS) to accompany the application for work permits (form I-765). The worksheet requests the applicant’s income, expenses, and assets, and then leaves space to explain those answers in writing. The instructions clarify that no documents are necessary to prove “economic necessity” but invites applicants to submit documents if desired.

Next, the government announced that individuals granted deferred action will also be able to travel internationally. After their applications are approved, applicants will be able to request “advance parole” to travel abroad for educational, employment, or humanitarian reasons. Here it is important to

note that applicants cannot receive advance parole before their application is granted. And leaving the United States before deferred action is granted will cause USCIS to deny the application. In any event, foreign travel under DACA carries many risks. So before applying for advance parole or travelling, it would be wise to consult an experienced immigration attorney.

USCIS also took another step toward defining what “misdemeanors” and “significant misdemeanors” will disqualify an applicant from DACA. It has been clear from the start that anyone convicted of a felony would not qualify. And individuals who had committed significant misdemeanors or three or more non-significant misdemeanors would similarly be disqualified. First, it appears that “minor traffic offenses” will not be considered misdemeanors at all. This likely includes driving without a license—even if the state called this offense a misdemeanor.

Also, an offense is a misdemeanor only if jail time was a possible consequence. This excludes nearly all tickets. And in Wisconsin, this means that a first offense for drunk driving will likely not count as a misdemeanor, and will not disqualify an applicant from DACA. A drunk-driving offense in nearly any other state, though, would. And a second offense definitely would.

The government also explained that the following types of misdemeanors will qualify as significant misdemeanors, which would automatically disqualify an applicant: sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking. Notably absent from this list is drug possession and petty theft. However, anyone with misdemeanor convictions—especially ones related to drugs, should contact an attorney to thoroughly review his or her case.

Finally, it is not clear how long USCIS will take processing applications for deferred action. But it does seem that work permits will be granted only after USCIS grants a request for deferred action.

Many questions remain, but for information or updates about DACA, or for information about any other immigration matter, please contact Grzeca Law Group at (414) 342-3000 or visit our website at www.grzecalaw.com.

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