

ELIGIBILITY FOR DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

Disclaimer: This advisory has been created by The Legal Aid Society, Immigration Law Unit. This advisory is not intended as legal advice and is not a substitute for the advice of an immigration expert. This information is current as of June 30, 2020, but may change based on policy changes from the U.S. Department of Homeland Security and/or based on litigation.

On June 19, 2020, the U.S. Supreme Court held in *Department of Homeland Security vs. Regents of the University of California* that the Trump administration's attempt to end the Deferred Action for Childhood Arrivals (DACA) program was unlawful. The Court restored DACA completely. Since January 2018, because of nationwide injunctions against the ending of DACA, people who already had DACA could renew it, but it had no longer been possible to file a first-time application, or to file for permission to travel abroad, called advance parole. With this Supreme Court decision, initial applications and advance parole applications should both be possible again. As of June 30, 2020, when this factsheet is being written, U.S. Citizenship and Immigration Services (USCIS) has not yet issued any guidance about applying for an initial period of DACA or for advance parole. It is unclear whether USCIS will accept any such applications for filing at this time, even though we believe they should.

What is DACA?

Deferred Action means that the government will not deport you, and you can get employment authorization (work permit) and a Social Security number, but it does not give you lawful status. A grant of DACA is valid for two years, subject to renewal for additional two-year periods. Currently USCIS charges a filing fee of \$495.

Who is Eligible for DACA?

The eligibility requirements are as follows:

- You are now at least 15 years old, and were born on or after June 16, 1981.
- Entered the U.S. before age 16 and were under 31 as of June 15, 2012.
- Have continuously lived in the U.S. since at least June 15, 2007, and were physically present in the US as of June 15, 2012.
- Entered the U.S. without inspection before June 15, 2012, or your lawful immigration status expired as of June 15, 2012.
- Have not been convicted of a felony, a “significant” misdemeanor*, or three or more misdemeanors of any kind, and do not pose a threat to public safety or national security.
- Are currently enrolled in school, graduated from high school or have a GED (called the Test Assessing Secondary Completion, or TASC in New York), or have been honorably discharged from the U.S. Armed Forces or Coast Guard.

- * A “significant” misdemeanor includes: a) any offense for which the authorized maximum term of imprisonment is one (1) year or less but greater than five (5) days and is also an offense of domestic violence, sexual abuse or exploitation, burglary; driving under the influence, unlawful possession or use of a firearm, or drug distribution or trafficking; or b) an offense not listed above, for which the individual was sentenced to more than 90 days in jail, as long as the sentence was actually served and not “suspended.”

IMPORTANT NOTICE: If you have ever been arrested or convicted of an offense, or if you received a summons or a ticket, you should get a copy of the Certificate of Disposition. The Certificate will tell you which offense(s) you were charged with, which offense(s) if any you were convicted of, the date you were convicted, and the sentence imposed. If you have been arrested more than once, you must get a separate Certificate for each arrest. You should speak with a reputable immigration attorney familiar with the areas of immigration and criminal law before you apply for DACA.

What documents will you need to demonstrate that you qualify for DACA?

(1) Proof of Nationality

- Passport, or
- Birth certificate accompanied by photo identification, or
- Any national identity document from your home country with your photo and/or fingerprint.

(2) Evidence of entry to the U.S. before age 16, continuous residence in U.S. since at least June 15, 2007 to the present, and physical presence in U.S. on June 15, 2012:

- Employment records (pay stubs, W-2 Forms, IRS tax transcripts, state verification of filing state taxes, letters from your employer, letters from banks with whom you have done business).
- Rent receipts, utility bills (gas, electric, phone, etc.), receipts, or letters from companies showing dates you received service.
- School records (report cards, letters, etc.) from schools you or your children attended in the U.S., showing names of the schools and dates of attendance.
- Hospital or medical records relating to you or your children’s treatment, showing name of the medical facility or physician and the dates of treatment or hospitalization.
- Signed letters from churches, unions or other organizations, concerning your residence and identifying you by name.
- Other miscellaneous documents, such as birth certificates of children born in this country, dated bank transactions and wire transfers, letters, U.S. Social Security card, driver’s license, Selective Service card, contracts, leases, mortgages, insurance policies, etc.

(3) Proof of ONE of these:

- currently enrolled in school,
- have a high school diploma or GED (TASC) certificate, or
- honorable discharge from the U.S. Armed Forces or Coast Guard

If you qualify for DACA but ...

- **Have a final Order of Removal/Deportation and DHS is about to remove you from the U.S.**

You should contact a reputable immigration attorney or legal services provider immediately. You can

also contact the Law Enforcement Support Center's hotline at 1-855-448-6903 or the ICE Office of the Public Advocate through the Office's hotline 1-888-351-4024 for more information.

- **Have a final Order of Removal/Deportation or You Are Currently in Removal Proceedings or Have an Order of Voluntary Departure, and You Are Not in Immigration Detention**

You can apply, assuming USCIS is accepting initial applications. You can submit your application even if you are under the age of 15.

- **Are currently in Immigration Detention**

DHS instructs that you should inform your deportation officer that you are eligible for Deferred Action or contact the ICE Office of the Public Advocate through the Office's hotline at 1-888-351-4024 or by email at EROPublicAdvocate@ice.dhs.gov.

- **Your Immigration Court case was Administratively Closed or Terminated under the Government's Prosecutorial Discretion Initiative**

You can apply, assuming USCIS is accepting initial applications.

What is Advance Parole?

Advance Parole is permission from the U.S. government for certain noncitizens to leave the U.S. and to return. (Traveling abroad without Advance Parole could cause you to be barred from re-entering for 3 or 10 years, if you have accrued periods of unlawful presence.) If you had originally entered the U.S. without being inspected and admitted (like by just crossing the border without permission), traveling abroad and returning on a grant of Advance Parole can open up the possibility of adjusting your status (meaning getting your green card) through certain family members.

Who is Eligible for Advance Parole?

Anyone whose DACA registration is current should be able to apply for Advance Parole, although USCIS has not yet issued guidance for new Advance Parole applications. Even if you apply for Advance Parole and are approved, it may be risky to travel abroad: if the Administration again ends DACA while you are abroad, you would likely be unable to return.

Where Can I Get Help?

For assistance with applying for DACA and Advance Parole, or if you just have questions about these benefits, please email us at dream@legal-aid.org.