

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 July 29, 2021, but may change based on policy changes from the U.S. Department of Homeland Security and/or based on litigation.

What is DACA?

Receiving Deferred Action for Childhood Arrivals (DACA) from USCIS (an immigration government agency) means that the government will not deport you. It also allows you to get employment authorization (a work permit), a Social Security number, and permission to travel outside of the U.S. A grant of DACA is valid for two years, and can be renewed for more two-year periods. Currently USCIS charges a filing fee of \$ 495 for DACA.

The state of DACA in the Courts

In 2017, the Trump administration tried to rescind (cancel) DACA. Dreamers and others such as states and universities fought hard for years to challenge this. On June 19, 2020, the U.S. Supreme Court ruled in a case called the *Department of Homeland Security vs. Regents of the University of California* that the administration's manner of ending DACA was unlawful. The Supreme Court restored DACA completely. (Before that, 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).

The Trump administration refused to fully implement the restoration of DACA. A federal judge in New York ordered USCIS to accept and rule on initial applications, as well as fix other issues related to how it was administering the program, on November 14, 2020.

On July 16, 2021, a federal judge in Texas ruled that the DACA program was created unlawfully. Although he ended the program for everyone, he put a hold on his ruling for renewal applications.

So this means:

- If you have DACA now, it is still valid.
- If you have a DACA renewal application pending, you can keep renewing until further notice.
- If you have a pending initial DACA application, there is an indefinite freeze on that application.
- If you are eligible for DACA but haven't applied yet, USCIS can accept your application but can't process it. It will be frozen indefinitely.
- If you have advance parole through DACA, it is still valid.
- If you have DACA and a pending advance parole application, USCIS will still process it, and it seems that you should be able to travel and return on it.

Are you eligible for initial DACA? You may be, if you meet the below requirements.

Note: Given the July 16, 2021 federal court decision, any initial DACA application that you file now will NOT be approved anytime soon. It may be more than a year or more before we know what will happen to the future of DACA.

The \$495.00 application fee for this kind of application may not be refunded to you in the future. Also, by submitting a DACA application to USCIS, you are providing your personal information to immigration authorities.

Initial DACA Requirements:

- 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 or corresponding document from the state in which the case took place. The document should state which offense(s) you were charged with, which offense(s), if any, you were convicted of including by a guilty plea; 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 an attorney familiar with the areas of immigration and criminal law before you apply for DACA. This is true even if the charges were dismissed, or sealed, or you were a minor at the time.

What documents must I gather to demonstrate that I 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, but your application will be on hold until there is a final decision about the legality of the DACA program. 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, but your application will be on hold until there is a final decision about the legality of the DACA program.

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.