DACA: What happens next?

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DACA: Overview

Deferred Action for Childhood Arrivals

Purpose: Protect eligible immigrant youth who came to the US when they were children.

Gives young undocumented immigrants
  ◦ Protection from deportation
  ◦ Work permit
The End of DACA

DHS will recognize DACA authorizations until they expire at the end of their two-year life span, so the program runs out at different times for different people. The last authorization will end March 5, 2020.

President Trump has said that DACA recipients are not enforcement priorities unless they are criminals. (An ICE official in Indiana has confirmed this as well).

There are approximately 154,000 individuals with DACA expiration dates between now and March 5, 2018.

Last chance for renewal was Oct. 5, 2017.

Advanced Parole requests filed after Sept. 5, 2017, will be denied.

If you have been authorized to travel with Advanced Parole, make sure you travel with all of your documents, and return to the country before your DACA expires and within the parameters of the Advanced Parole. Travel is not advised, unless absolutely necessary.
Pending DACA Legislation (DREAM Act)

- Development, Relief, and Education for Alien Minors (DREAM) Act - Direct path to citizenship after eight years as a conditional permanent resident (CPR), which includes a work authorization, if the person entered the U.S. under the age of 18; entered four years prior to the enactment and has since been continuously present; has not been convicted of a crime where the term of imprisonment was more than a year, or convicted of three or more offenses for which the aggregate sentence was 90 days or more); and has been admitted to an institution of higher education, has graduated high school or obtained a GED, or is currently enrolled in secondary school or a program assisting students to obtain a diploma or GED. Anyone who has DACA would be immediately granted CPR status.

- Anyone who maintains CPR status can obtain lawful permanent residence (LPR or “green card”) by satisfying one of the following requirements: Complete two years of higher education; complete at least two years of military service with an honorable discharge; or demonstrate employment over a total period of three years. After maintaining LPR status for five years, an individual can apply to become a U.S. citizen.
BRIDGE and RAC Act

• Bar Removal of Individuals Who Dream and Grow Our Economy (BRIDGE) Act (Extends the present DACA program by three years. The BRIDGE Act would provide “provisional protected presence” and employment authorization to DACA-eligible individuals. A current DACA recipient would receive provisional protected status until the expiration date of his or her DACA status and could apply for provisional protected presence prior to that expiration. An individual who is not a DACA recipient but who is eligible for DACA could also apply for provisional protected status).

• Recognizing America’s Children (RAC) Act-Creates a five-year conditional permanent resident status for undocumented immigrants if they came to the U.S. before the age of 16 and have continuously lived in the U.S. since at least January 1, 2012; pass a government background check and demonstrate “good moral character” with no felony or multiple misdemeanor convictions; earn a high school diploma or an equivalent (if they are 18 years or older; and meet one of the following requirements (if they are 18 years or older)- demonstrate an intent to join the military, be admitted to an institution of higher education or have a valid work authorization permit.

• Under the bill, a recipient’s conditional permanent resident status would be revoked if he or she failed to continue to meet all the bill’s requirements.

• The CPR can be extended for an additional five years by meeting one of the following requirements: Have been enlisted in the military or an active duty reserve component of the military for at least three years during the preceding five-year period; have graduated from an institution of higher education or been employed for a total period of at least 48 months during the preceding five-year period. As soon as conditional permanent resident status is extended, recipients could apply to become lawful permanent residents (green-card holder) if they continue to meet the requirements set in the bill and apply for naturalization after being a LPR for five years. Recipients enlisted in the military could apply for naturalization immediately after obtaining lawful permanent resident status.
SUCCEED ACT

Solution for Undocumented Children through Careers, Employment, Education and Defending our Nation (SUCCEED) Act (15-year path to citizenship. Undocumented immigrants would have to meet the following requirements to qualify for an initial five-year conditional permanent resident status: Establish they came to the U.S. before the age of 16 and have continuously lived in the U.S. since at least June 15, 2012; demonstrate that on June 15, 2012, they were younger than 31 years old and had no lawful status in the U.S.; pass several government background checks; demonstrate “good moral character” with no felonies, significant misdemeanors or multiple convictions that resulted in imprisonment for at least one year; register for Selective Service (if applicable); and pay any applicable federal taxes; if 18 or older, meet one of the following requirements-a) Earned a high school diploma or an equivalent; b) been admitted to an institution of higher education or c) have served, be serving or have enlisted in the military.

Conditional permanent resident status can be extended for a second period of five years by meeting one of the following requirements in the initial five-year period: a) Have graduated from an institution of higher education or completed at least eight semesters in such an institution; b) have served in the military or a reserve component of military for at least three years; or c) have attended an institution of higher education, served in the military or a reserve component of the military, or been employed for a cumulative period of at least 48 months (combination track).

Under the bill, recipients with conditional or lawful permanent resident status would not be eligible to sponsor family members, including spouses and children, to obtain legal status in the U.S. Current law allows all LPRs, or green card holders, to sponsor their children and spouses. This bill would take that away.

Individuals are required to sign a conditional departure order notifying them that they relinquish nearly all forms of immigration relief if they violate the terms of their status for those 18 years old or older. This could also lead to expedited removal for minor offenses as well.
Unlawful Presence and Bans

Immigration code defines “unlawful presence” as presence in the United States after expiration of a authorized period of stay or any presence without being admitted or paroled (i.e. unauthorized border crossing).

If an individual is unlawfully present for between 180 to 365 days, a 3 year ban from reentering the country will attach next time they depart the United States. If an individual is unlawfully present for more than 365 days, then a 10 year ban will attach instead.

Time spent unlawfully present while under 18 years of age does not count towards the ban.

Time spent in DACA or other lawful immigration status does not count towards calculating the ban.

It is important if you leave the country after the expiration of DACA you are aware that a ban can attach. Generally, leaving and returning under DACA status does not trigger the ban.
Now what?

All DACA grants and Employment Authorization (EAD) cards will continue to be valid through the expiration date.

If you have a valid, unexpired EAD card, you can continue to work.

To do:
- Apply for a SSN and driver’s license while your DACA and work permit are valid.
- Know your constitutional rights:
  - Do not open the door for an immigration agent.
  - Do not answer questions.
  - Do not sign anything.
  - See Know Your Rights at DACA @IU webpage for documents explaining your rights.
Now what?

Consider options outside of DACA
Check eligibility for work authorization as an H-1B

- H-1B visas and D3 Waiver
- H-1B status is generally open to those in “specialty occupations,” often thought of as those requiring a college degree.
- Requires a sponsoring employer, who must pay all associated filing and attorney fees ($2,500 to $7,500).
- Most H-1Bs are subject to the H-1B “Lottery” held every first week of April. Each year 65,000 H-1Bs are selected in a lottery (and additional 20,000 slots are held for those with Master’s Degrees or higher). Each year between 150,000 to 325,000 apply.
- Must be paid a prevailing wage and employer must prove they have the ability to pay.
- Some employers (universities and affiliated nonprofits) have the ability to avoid the H-1B lottery and file petitions at any time.
- DACA recipients are not eligible for Change of Status in the United States if selected in the H-1B lottery.
- Since DACA recipients are not Change of Status eligible, if they leave the country an unlawful status ban could apply so a careful review of prior status should be conducted subsequent to leaving the country.
- In many instances, an employer may petition for a Permanent Resident Status (“Green Card”) for a H-1B employee, if no unlawful presence ban applies.
- If an unlawful presence ban does apply, the H-1B employee may be able to return to the United States if they receive a “D-3” waiver (or Hranka Waiver) which overcomes their prior status violation.
- A D-3 waiver is highly discretionary (harm to the United States, seriousness of violation, etc.) and are examined. No formal appeals process and you can be stuck outside of the United States.
If you have graduate school or continuing education plans, you can apply for an F-1

- Must be admitted into the school and show proof of funding for your studies and living expenses.
- May require a D-3 waiver if otherwise inadmissible.
- Does not allow for work authorization during studies.
- Consular processing outside the U.S. is required.
- After graduation you may be eligible for Optional Practical Training ("OPT") for one year or 3 years if you have a STEM major.
Marriage to a US Citizen

- If you are considering marriage to a US citizen then that marriage can be a basis for lawful permanent resident status.
- You must have a valid entry into the United States, this includes DACA-based parole, to “Adjust Status” to Permanent Resident without leaving the country.
- If you entered without inspection (also referred to as EWI) and never used your DACA parole, you will have to leave the country to complete the Permanent Resident process. This exit can trigger an unlawful presence ban.
- USCIS will test the validity of the marriage and the process can take 5 months to a year or more.
- Marriage must be “bona fide” meaning entered into for a purpose other than to receive immigration benefits.
- A falsified marriage or a fraudulent application is a felony for both the US Citizen and spouse.
I-601(a) Waiver

I-601/I-601A Waiver

- If you have an unlawful presence ban, you must receive a waiver of inadmissibility prior to obtaining permanent resident status.
- If you entered without inspection (also referred to as EWI) you will have to leave the country to complete the Permanent Resident process. This exit can trigger an unlawful presence ban.
- An I-601 Waiver is based on extreme hardship to a qualifying US Citizen (or Permanent Resident) relative, i.e. US citizen spouse or parent. Children and siblings do not qualify.
- Extreme hardship is a vague standard, but more than just mere separation. For example, providing day-to-day care for a disabled spouse or parent or a spouse or parent with strong connections to the US and none to your country of origin.
- Traditionally an I-601 waiver must be completed abroad, but an Obama-era initiative referred to as the I-601A, allows adjudication in the United States. An I-601a can only “waive” inadmissibility based on unlawful presence.
Long Term Sibling/Parent Strategies

If you have a US Citizen sibling, they can file a petition on your behalf.

- Not likely to obtain a benefit in a reasonable time period.
  - Country wait times vary between 13 to 23 years.
  - During the period waiting for a priority date to become current, you have no lawful status and even when current a 10/3 year ban may apply.
- Sibling relationship does not qualify for hardship.
- If you have a US Citizen Parent (often as a result of a petition from a US Sibling), they can petition for you.
  - 6 to 22 year wait period depending upon country and marital status.
  - Can qualify for waiver.
  - Current administration and legislative policy is looking to target these categories.
Asylum

You may be eligible for asylum status if you are unwilling to return to your country of origin because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

◦ If you have been in the United States for more than one year, you must show a recent change in circumstances in your country of origin or other condition that made it impossible to apply for asylum earlier.
  ◦ Affirmative cases take between 2 to 4 years, but work authorization is granted during this time.
  ◦ Approval rates vary widely by country and circumstances.
  ◦ The finding of a frivolous asylum is a permanent lifetime immigration ban without possibility of waiver for any reason.
  ◦ Asylum can be filed both defensively and affirmatively.
Temporary Protected Status

Allows citizens of certain countries who are temporarily unable to return to their country of origin because of ongoing armed conflict, an environmental disaster, or other extraordinary and temporary conditions.

- Can obtain work status during this temporary period.
- Status and country designations constantly change and it provides no long term status.
- Current countries:
  - Honduras (ending), Haiti (ending), Nicaragua (Ending), El Salvador, Nepal, South Sudan, Somalia, Sudan, Syria, Yemen
Other “fringe” options

Of limited applicability, but may be relevant to some:

- MAVNI- allowed quick citizenship for DACA and other nonimmigrant applicants by joining the US military.
  - Program was suspended by the current administration, but may reopen depending upon need.
- Parole in Place (PIP)- Allows children, spouses and parents of active duty military personnel or certain veterans to parole without leaving the country and eventually adjust status to that of permanent resident.
- U-Visa- allows victims of certain violent crimes who cooperate with law enforcement obtain permanent resident status.
- O-1/EB-1/P-1- For extremely skilled and renown foreign applicants or performers. Often open to well-known researchers or athletes, or musicians.
Removal Proceedings/ Detention

What to do if detained by ICE or provided with a notice to appear (“NTA”)

◦ **SPEAK WITH A LAWYER**
  ◦ One will **NOT** be provided to you free of charge, but you do have the right to consult with one at your own cost.
  ◦ Contact the Office of the Vice President and General Counsel and/or the DACA contact at your campus. OVPGC can assist you in contacting and retaining an attorney and providing a letter of support from a faculty member that knows you well.
  ◦ Do not sign any voluntary departure agreement or stipulated orders without first speaking to an immigration attorney.
  ◦ You have the right to remain silent, and in most instances this is advantageous.
  ◦ You will likely be given the opportunity to arrange bond that will allow your release while the case is pending.
  ◦ Ask for the name of your detaining officer
  ◦ You have the right to a phone call, and you should prepare a friend or family member with a valid US status to know who to call and what to do in the event of your detention. ICE has been known to arrest friends and relatives without status who are visiting detained immigrants. They will need your identifiers (DOB, A#), the number of a bail bondsman, and the number of an immigration attorney. They can locate you through calling ICE, but they should try to provide the minimum amount of evidence required to locate you.
  ◦ Always show up for court dates.
Worst Case Scenario: Removal Proceedings

If you are in removal proceedings, you may discuss some of these options with your attorney:

**Prosecutorial Discretion:** an option in which the ICE attorney decides not to pursue your case because it is not an efficient use of agency resources. Requires no criminal record and preferably evidence of contributions to US society. In certain circumstances may allow work authorization. Many DACA recipients will be eligible for this option.

**Withholding of Removal:** Allows the judge to close your removal case if there is a substantial chance you will be harmed by your government if you return to your country of origin. One year rule does not apply. Generally more difficult to obtain than asylum.

**Defensive Asylum:** Similar to asylum discussed above, but decided by Immigration Judge.

**Convention Against Torture (“CAT”):** Very difficult to obtain. Must show high chance of torture if you return to your country of origin.
Life After College

Graduate School

- Research "safe" communities that are receptive to undocumented students
- Private v. Public: Private universities may offer better financial aid packets
- The Personal Statement
  - My undocumented status was always a centerpiece of my personal statements, and I always figured that if a school was not willing to accept me because of my status then it wasn’t a school I would be comfortable at anyway.
Life After College: Earning A Living

Internships, if unpaid and part of your educational plan likely permissible.

Employees v. Independent Contractors- without a valid work authorization, any employment (or service) for remuneration violates immigration law.

Risks and benefits of disclosing your status

- Legal obligations of employers,
- Dangers of lying on an application – Congress has enacted special laws to punish undocumented immigrants who falsify documents to obtain work.
- Claiming US Citizenship on an I-9 form is considered a false claim to US citizenship which can make you inadmissible for life to obtain citizenship or any valid US immigration status. Increasingly USCIS is requesting prior I-9 documentation from past employers.
- Always tell the truth.
Immigration Myths v. Facts

Myth: If I lie, ICE/USCIS will never find out.

Fact: Increasingly ICE/USCIS have been increasing their factfinding and investigative techniques. Being caught in a lie is substantially worse than telling an unappealing truth.

Myth: My friend/relative/neighbor had this happen, so it will happen to me.

Fact: Immigration law is complex and nuanced, few cases are straightforward or exactly the same.

Myth: My friend/relative/neighbor can handle my application since they did their own.

Fact: Immigration law requires practitioners to be licensed, and most are fully licensed attorneys. Notario fraud is common in many communities and often a non-licensed preparer will take “shortcuts” or provide false documents that will complicate an otherwise approvable case.
Contact Information

American Immigration Lawyers Association Attorney Search—where to find a qualified immigration attorney in your area
  ◦ Also see a list of attorneys at DACA @ IU web page that provide immigration services to DACA students.

Immigration Bail Bondsmen: Action Immigration Bonds: 800-940-8889 or Gonzalez and Gonzalez 800-628-8888

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IU OIS/ General Counsel: 812-855-9086

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