

The Ins and Outs of Winning a Deferred Action for Childhood Arrivals (DACA) Case

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Today's Agenda



What is DACA?
Who would want to obtain DACA?
Who is eligible?
How does someone apply?

What can you do to get involved?

- o DACA in your practice
- o Volunteering opportunities



Welcome to The Immigration Project Team!

- The Immigration Project secures access to justice alongside our immigrant neighbors.
- Serves 86 counties in downstate Illinois
- Headquarters in Normal, satellite in Champaign
- We defend against deportation, help people become citizens, and keep families together.
 - o Focused on immigration law matters as the gateway to success.
- New Welcoming Center helps foster deeper connections in McLean County



Agencies:

- U.S. Department of Homeland Security (DHS)
- United States Citizenship and Immigration Services (USCIS)
- Immigration and Customs Enforcement (ICE)

Sources of legal authority & interpretation:

- Immigration and Nationality Act (INA)
- Executive Memorandum issued by the Secretary of Homeland Security (found [here](#)) on June 15, 2012
- USCIS Website



Terminology:

- "undocumented" vs "illegal"
- "DACAmended"

TIMELINE OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS PROGRAM

Bills that Congress considered before DACA and congressional support toward and against DACA

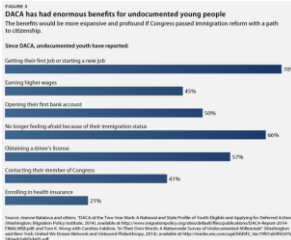


SOURCE: The New York Times, CNN, PBS, C-SPAN, Texas Tribune, US Law Center Online. Graphics reporting by Cade Mahler, Daily Brave contributor. Graphic by Maria Zeng, Daily Brave contributor.

- Sept 2017 - Trump attempts to completely halt DACA
- Sept. 2017 - Federal judge orders USCIS to accept DACA renewals
- Jan. 2018 - USCIS starts accepting DACA renewals
- June 2020 - SCOTUS orders USCIS to accept DACA initial applications
- Dec. 2020 - USCIS starts accepting DACA initials again



Why would a client want to obtain DACA status?



- **Two year work authorization** = better paying jobs with better benefits, like healthcare
- **Deferred action** = protection against deportation
- **Advance parole eligibility** = ability to travel
- Social security number
- Higher education enrollment eligibility and/or in-state tuition rates
- Driver's license
- Encourages civic engagement, which benefits the community as a whole



Can your client find something better?

- Always screen for other forms of relief!
 - Use a comprehensive checklist like [this tool](#) from the American Immigration Council
 - Victim of a crime -> U visa
 - Abused, abandoned, or neglected by a parent and under 21 -> Special Immigrant Juvenile Status
 - Survivor of any type of emotional or physical abuse -> U visa, VAWA, asylum
 - Persecution and fear of return to home country -> asylum
 - US citizen or lawful permanent resident family member -> Family petition leading to lawful permanent residency
 - U.S. citizen parent or grandparent -> Client could already be a U.S. citizen!



When in doubt,
refer to an immigration specialist!



Does your client qualify?

All requirements can be found at:
<https://www.uscis.gov/humanization/consideration-of-deferred-action-for-childhood-arrivals-daca>

- Under the age of 31 as of June 15, 2012 (Date of birth is on or after 6/15/1981)
- Came to the U.S. before reaching their 16th birthday
- Continuously resided in the U.S. since June 15, 2007, up to present time
- Physically present in the U.S. on June 15, 2012, and at the time of making request for consideration of deferred action with USCIS
- Had no lawful status on June 15, 2012
- Currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the U.S.
- Have not been convicted of a felony, significant misdemeanor, or three or more misdemeanors, and do not otherwise pose a threat to national security or public safety



DACA Age Requirements

- Age in general
 - DOB on or after 6/15/1981
- Age at time of application
 - In removal, have a final removal order, have a voluntary departure order, or in detention -> can be any age to file
 - None of the above -> have to be at least 15 years old to file
- Age at initial entry
 - First entry before age 16



DACA Requirements - Criminal Convictions



Discretion:

"The decision whether to defer action in a particular case is an individualized, discretionary one that is made taking into account the totality of the circumstances. Therefore, the absence of the criminal history ... or its presence, is not necessarily determinative, but is a factor to be considered in the unreviewable exercise of discretion."

Rule: Must have not been convicted of a felony, significant misdemeanor or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

Be careful!

"Felony," "misdemeanor" and "conviction" all have their own definitions for immigration law!

- See criminal bars handout from ILIC
- Distinction between bars and discretionary factors
 - Must be convictions
 - Juvenile adjudications do not trigger bar
 - A juvenile tried as an adult will trigger bar
 - Expunged convictions do not trigger bar
- Immigration-related offenses do not count

(1) **Felony** = a federal, state, or local criminal offense punishable by imprisonment for a term exceeding one year



DACA Requirements - Criminal Convictions Cont.

(2) **Significant misdemeanor** = a federal, state or local criminal offense punishable by imprisonment for a term exceeding 5 days but less than 1 year AND

- Regardless of the sentence imposed, is an offense of **domestic violence**; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or, **driving under the influence**

OR

- If not an offense listed above, is one for which the individual was **sentenced** to time in custody of more than 90 days. The sentence must involve time to be **served** in custody, and therefore does not include a suspended sentence.



DACA Requirements - Criminal Convictions Cont.

(3) **Non-significant misdemeanor** = any misdemeanor for which the maximum term of imprisonment authorized is one year or less but greater than five days AND that meets the following criteria:

- Is not an offense of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or, driving under the influence;

AND

- Is one for which the individual was sentenced to time in custody of 90 days or less. The time in custody does not include any time served beyond the sentence for the criminal offense based on a state or local law enforcement agency honoring a detainer issued by ICE.
- Does not include "minor traffic violations" such as driving without a license

(4) **Public safety**

- Gang membership or participation in criminal activities
- Does NOT require a conviction



How does your client get approved?

- Full filing instructions are at <https://www.uscis.gov/i-821d>
- Required forms:
 - I-821D, I-765, I-765WS
- Additional suggested forms:
 - G-28 - required for attorneys
 - G-1145 - for electronic notifications
- Fee: \$495
- Documentation demonstrating eligibility:



Identity & age	Education requirement
Entry before age 16	Entry before 6/15/2007
Presence on 6/15/2012	Continuous residence in US from 6/15/2007 - present
Criminal records (if applicable)	



Can your DACA case affect other forms of relief?

- Information that could affect your client's future claims:
 - Entering without authorization (EWI) versus being waived in or entering with inspection



- Information that could affect others:
 - Using false social security number or other false documents in order to work
 - False claims to U.S. citizenship
 - Status or location of parents
 - Smuggling by parents of their children



Next steps



Over 1.3 million individuals are eligible for DACA nationwide.

An estimated 63,000 Illinois residents are eligible for DACA.

- DACA is just the beginning!
 - Deferred Enforced Departure
 - Temporary Protected Status
 - Deferred Action for Parents of Americans
 - Path to citizenship for DACAmented = DREAM Act
 - Comprehensive Immigration Reform
- What to consider when accepting immigration cases as part of your legal practice
 - Complex
 - Changing
 - Rewarding



Opportunities to get involved:



- Volunteer at a Virtual DACA workshop!
- Workshop dates
 - Screenings - February 27th 10:00 AM - 2:00 PM
 - Screenings - March 13th 10:00 AM - 2:00 PM
 - Application Processing - March 27th 10:00 AM - 2:00 PM
 - More to come!
 - Contact Nicole Mannen, legal.interns@immigrationproject.org. Include Nicole's name in the subject line.

- Engage in other pro bono opportunities
- Contact Dani DeWinter, Pro Bono Coordinator ddewinter@immigrationproject.org

- Support our work
- <https://www.immigrationproject.org/>



Questions? Contact us!

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Thank you so much for your time!
