



# THE DREAM LAW GUIDE TO DEFERRED ACTION FOR CHILDOOD ARRIVALS (DACA) \*

An overview of the policy changes to Deferred Action Announced by the  
Obama Administration on June 15, 2012\*

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## INTRODUCTION

### Who are “Dreamers” and where does the term come from?

“Dreamers” is a term used to refer to children of undocumented immigrants who were brought to the United States as minors. The term “Dreamers” is taken from the DREAM Act, which was a bill proposed in Congress that provides a path for legal residency for children of undocumented immigrants. Although the DREAM Act failed to pass into law, beneficiaries of this bill are referred to as *Dreamers* because of the belief they will one-day achieve legal residency in the U.S through comprehensive immigration reform.

Dream Law, APC is an immigration law firm that proudly embraces the spirit of the DREAM Act and works with Dreamers from all backgrounds to present their best case when applying for Deferred Action. The benefits of applying for Deferred Action include gaining temporary protection from deportation in the U.S. in 2 year increments, obtaining a renewable work permit, state driver’s license and social security card. These rights granted through Deferred Action help Dreamers improve their lives and pursue their goals until comprehensive immigration reform is passed.

## DEFERRED ACTION BASICS

### What is Deferred Action?

Deferred Action is a form of administrative relief that allows Dreamers to remain in the United States for 2 years at a time and obtain a renewable work permit. The Deferred Action process and work permit are both renewable every 2 years.

Applicants do not have to be in deportation proceedings to apply for Deferred Action. Even if ICE is not aware of your presence in the U.S., you should affirmatively apply for Deferred Action starting August 2012 in an attempt to put a temporary halt to your accumulating unlawful presence that puts you at risk of deportation from the US. In order to apply for Deferred Action, applicants have to satisfy and prove a list of requirements. Deferred Action is not a pathway to permanent legal residency or U.S. Citizenship.

### What are the qualifications to apply for Deferred Action?

There are 6 qualifications generally speaking to apply for Deferred Action:

1. The applicant must have come to the United States before the age of sixteen (16).
2. Have continuously resided in the United States for a least five years preceding June 15, 2012 and are present in the United States on June 15, 2012;
3. Must be at least 15 years old to apply for Deferred Action.
4. Applicant must be in school (high school, GED program, trade/vocational school), or graduated from high school, obtained a GED, or a certificate of completion. Applicant may also be an honorably discharged veteran of the Coast Guard or Armed Forces of the United States.
5. Have not been convicted of a felony offense, a significant misdemeanor offense, three or more misdemeanor offenses, or otherwise pose a threat to national security or public safety.
6. Applicant must not be older than 31 years old as of June 15, 2012. (Cannot have turned 31 prior to June 15, 2012)

*\*Applicants must be able to prove all of the above qualifications with documentation. Please consult an immigration lawyer about the facts of your specific case.*

## DEFERRED ACTION BENEFITS

An applicant that has been granted Deferred Action can enjoy several benefits, outlined below:

**Renewable Deferred Status.** Deferred Action enables an applicant to remain in the U.S. with deferred immigration status in two-year increments. When the two-year period expires, the applicant can apply for a renewal of Deferred Action.

**Renewable Work Permits:** Once an applicant has been granted Deferred Action, they can also apply for a 2-year renewable work permit for employment. In a tough job market, applicants that provide a work permit to employers can gain a significant advantage over those unable to present a valid work permit. Obtaining a work permit can also result in several additional benefits which are detailed below.

**\*Driver's License:** Applicants granted a work permit can also apply for a state Driver's License.

*\*Please note that the ability to gain a state driver's license will likely vary on a state by state basis. California currently grants Driver's Licenses to applicants that provide a work permit as identification.*

**Social Security Card:** Another benefit of being granted a work permit is the ability to obtain a valid Social Security Card. Dreamers who can provide a Social Security card are more likely to attract employers seeking documented workers and gain higher education opportunities.

**\*Enable Higher Education:** The benefits of obtaining a work permit also extend into the education arena. Some colleges and universities require a student to provide a valid social security card in order to register with the school and obtain in-state tuition. In addition, obtaining a student loan can also be challenging without having access to a valid social security card. With a valid social security card therefore, Dreamers can pursue their educational goals without waiting for immigration reform to pass first.

*\*Whether applicants granted Deferred Action can attain in-state tuition is likely going to vary state by state. Thirteen states, including California already allow students to pay in-state tuition, regardless of their immigration status.*

**\*Enable Professional Licenses & Certifications:** Another advantage of being granted a work permit is the ability to acquire and complete professional licensing and certifications. In California for example, a Dreamer that is unable to provide a valid social security number can be barred from a profession as a Dental Technician, Nurse, Physical Therapist, Pharmacist, Physician, Contractor and many more.

*\*The ability to acquire a license or certification with a work permit will depend on the licensing agency.*

As outlined above, Deferred Action can enable Dreamers to drastically improve their lives by providing greater access to legitimate employment, the ability to pursue higher education and the opportunity to build a better life. Deferred Action and work permits are also renewable benefits that can extend until comprehensive immigration reform is passed. Get started today and take advantage of your rights!

## ABOUT DREAM LAW, APC

Dream Law, APC is an attorney owned immigration law with offices in Los Angeles and Fresno that proudly represents Dreamers. Our aim is to guide you in the Deferred Action process to ensure your application meets the latest guidelines and standards. We are well versed in the nuances of Deferred Action and study the latest developments to ensure you are represented by the best. We are an attorney owned and operated firm.

Dream Law was founded by Sanjay A. Paul, a California lawyer with a background of working on behalf of immigrant and underserved populations. Mr. Paul has volunteered his time at the renowned Immigration Justice Project (IJP) in San Diego, representing immigrants that were being deported by the Government. In addition, Mr. Paul also represents clients in Asylum cases who were persecuted by foreign governments on religious and political grounds. Mr. Paul also has a background of community service and leadership. He has mentored at-risk high school students for two-years in the nationally renowned Street Law San Diego program, and has worked at the Housing Rights Center in Los Angeles, working to ensure that minorities and families have access to equal housing in Los Angeles.



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## FREQUENTLY ASKED QUESTIONS (FAQ'S)

### **Is Deferred Action a form of *permanent* Legal Residency?**

No, Deferred Action is not a pathway to permanent legal residency. Deferred Action will grant an applicant residency in the United States for 2 years at a time, but at present it is not a pathway to permanent legal residency. After the expiration of the two-year period, an individual can apply to renew deferred action and renew their work permit.

President Obama ordered the DHS to enact Deferred Action in order to stop the deportations of Dreamers until Congress enacts a comprehensive immigration reform bill that provides Dreamers a pathway to legal residency. Essentially what Deferred Action does is buy the applicant more time, so that Congress may enact immigration reform. By obtaining Deferred Action however, Dreamers can obtain several benefits like a work permit, driver's license, social security card and purchase auto insurance, pursue their higher education goals and improve their lives dramatically.

### **If Deferred Action does not lead to permanent residency or citizenship, how can this be helpful to me?**

Deferred Action provides several important immediate benefits, which are:

- Safety from deportation
- The ability to work legally in the U.S.
- Stops the clock on unlawful presence accruing in the U.S., which otherwise could result in a 3 or 10 year ban when applying for permanent legal residency.
- Ability to obtain valid Driver's License & Social Security Card
- Ability to obtain auto insurance and prevent your car from being towed.

For many individuals, these are important benefits that can drastically improve their lives until comprehensive immigration reform is passed.

### **Is Deferred Action primarily for candidates of Hispanic origin or does it apply to any nationality who satisfy the criteria?**

Deferred Action is applicable to applicants from any nationality or background who satisfy the criteria. The Obama administration estimates that over 1.2 million young immigrants will be affected by this Deferred Action policy from various backgrounds. According to the Asian Pacific American Legal Center, Asian Americans and Pacific Islanders compose about 12 percent or approximately 96,000 Dreamers who may qualify for Deferred Action. Therefore Deferred Action will be available to applicants from all backgrounds and nationalities that satisfy the stated criteria.

### **Do I have to undergo a background check when applying for Deferred Action?**

Yes. All Deferred Action applicants will have to undergo a name and biometric (fingerprint) background check to ensure they will not be a threat to society. This check is also conducted to inquire into an applicant's criminal history.

### **I have a criminal record; will I still qualify for Deferred Action?**

The answer depends on what type of criminal record you have. If you have a felony or a "serious misdemeanor" you will not be granted Deferred Action. However, if you have a "less serious" misdemeanor, you may still qualify for Deferred Action.

In addition, Dreamers with 3 or more "non-serious misdemeanors" (not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct) may also be ineligible to apply. At this juncture, convictions vacated on legal grounds and juvenile criminal convictions for less serious crimes do not make an applicant ineligible.

### **What constitutes a felony?**

A felony is a federal, state, or local criminal offense punishable by imprisonment for a term exceeding one year.

### **What constitutes a “significant misdemeanor” that would make me ineligible for Deferred Action?**

Although DHS is the process of defining what constitutes a “significant misdemeanor,” it has suggested the following are likely serious misdemeanors: assault crime convictions, drug possession or trafficking, domestic violence, burglary, larceny or fraud, unlawful possession or use of a firearm and driving under the influence (DUI). Having one the aforementioned convictions on your record would likely constitute a significant misdemeanor and make you ineligible for Deferred Action. In addition, any sort of criminal conviction not listed above, but that results in more than 90 days of custody will also be considered a significant misdemeanor.

### **Will possessing a misdemeanor make me ineligible for Deferred Action?**

Depends. Dreamers with 3 or more “non-serious misdemeanors” (not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct) may also be ineligible to apply. However, DHS has also indicated that the time served on a non-serious misdemeanor cannot be more than 90 days; otherwise it will likely be considered a significant misdemeanor. Consult an attorney regarding the specifics of your situation.

### **Are there factors that can mitigate criminal history when applying for Deferred Action?**

Having a felony or “significant misdemeanor” will bar you from applying for Deferred Action and there is likely nothing that can be done about this.

However, if you have a *non-serious* misdemeanor or group of non-serious misdemeanors, you may still qualify for Deferred Action. Although the specific criteria and standards are still yet to be fully determined by DHS, generally speaking, if an applicant has a *non-serious* misdemeanor, the following supporting evidence may help your Deferred Action application:

- letters of support from family members, teachers, employers, co-workers, community organizations, religious organizations.
- ask your recommender to write a letter saying how long they have known you and detailing your positive qualities.
- records of community service, evidence of rehabilitation etc.

### **Do I have to have completed school or can I go back and obtain my GED in order to apply for Deferred Action?**

The education requirement need not have been completed as of June 15, 2012. Dreamers who do not currently meet those requirements may enroll in school or in a general educational development (GED) course. They need not wait until they have graduated in order to apply. If still in high school or in the process of obtaining a GED or certificate of completion, considerable progress must be made and demonstrated when renewing Deferred Status at the end of 2 years.

### **What kind of evidence can help me present evidence of my military service?**

You should request an Official Military Personnel File DD 214. This is the file that details military service. You can request this for yourself or for a next-of-kin for free by visiting [www.archives.gov/veterans/military-service-records](http://www.archives.gov/veterans/military-service-records).

### **How can I prove that I came to the U.S. before I was 16 and that I've been here for at least 5 years?**

The following records should be gathered as soon as possible to establish evidence of your presence in the United States:

1. Financial Records: Bank statements, lease agreements, mortgage agreements, bills.
2. Medical Records: Immunization records, medical history report from your doctor.
3. Employment Records: Pay stubs, employment contracts, direct deposit slips.
4. School Records: Diplomas, transcripts, GED certificates, certificate of completion, report cards, progress reports, honor's certificates etc.
5. Military Records: You should request an Official Military Personnel File DD 214. This is the file that details military service. You can request this for yourself or for a next-of-kin for free by visiting [www.archives.gov/veterans/military-service-records](http://www.archives.gov/veterans/military-service-records).

### **If my Deferred Action application is denied, can I appeal it?**

No. The Deferred Action decision is final and cannot be appealed. However, DHS has indicated that there will be supervisory review of cases to ensure quality assurance. There is no formal appeal process if the application is denied. Re-applying is a possibility, but that requires having to start the application over again, including having to pay USCIS' filing fees a second time. Therefore, it is highly recommended that applicants consult a licensed attorney about the specific facts of their situation in order to ensure that they submit a complete and thorough application.

### **Should I use a Notario or Immigration Consultant or non-lawyers for legal advice?**

Beware of immigration consultants and notarios who are not licensed to give you legal advice and often times take advantage of immigrants in their communities. Only a licensed lawyer can advise you of your legal rights, including the correct procedures and guidelines and apply the appropriate law to your specific situation.

Several immigrant rights groups and immigration lawyer associations have also issued warnings not to take advice from Notary Publics (Notario) or immigration consultants including the Asian Pacific American Legal Center (APALC), American Immigration Lawyers Association, The ACLU, Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA), and National Immigration Law Center.

### **Once Deferred Action is granted, can it be taken away?**

It can be, but it is very unlikely to be taken away. Although Deferred Action is subject to changes in the future depending on who is elected to office, with the rising population of Hispanic voters in the United States, there is clear pressure on elected representatives to enact immigration reform and cease deportations of Dreamers. Therefore it is very unlikely that Congress or the Executive Branch will resume deportations of Dreamers. In addition, we know from practice and history that it is difficult to terminate relief once it has been granted. Each applicant should weigh the pros and cons of applying for Deferred Action to their specific situation and make a decision they are comfortable with.

**If my Deferred Action case is denied, will I be placed in removal proceedings?**

If you are denied deferred action under this process, USCIS has indicated that it will only refer your case to ICE if there is a serious criminal conviction, the applicant possess a threat to national security or if there is a finding of fraud in your request. It is against USCIS policy to refer cases to ICE where there is no evidence of fraud or a criminal conviction.

Before you apply, however, it is really important to consult an immigration attorney, especially if you have ever been arrested or convicted of any kind of crime.

**If I file a Deferred Action application with USCIS, will it be shared with ICE or CBP?**

DHS has stated that information you provide on your Deferred Action application will not be provided to ICE or CBP unless it meets the NTA (Notice to Appear) guidance, which can be accessed at [www.uscis.gov/nta](http://www.uscis.gov/nta).

**If I qualify for Deferred Action, can I include my parents, dependents, older siblings and other family members who do not qualify?**

No. Deferred Action is only granted to those individuals who qualify in their own right. It cannot be applied to family members who do not qualify themselves.

**Can I travel internationally once Deferred Action is granted?**

Depends. First off, keep in mind that if you travel outside of the U.S. after August 15, 2012 before being granted Deferred Action, you will not be eligible for Deferred Action.

Travel Exception: If you receive a grant of Deferred Action, you can request permission to travel outside the U.S. only for “humanitarian, educational or employment” purposes. In order to do so, you will have to apply for advance parole by filing an I-131 application for travel document and pay a fee of \$385. You may not apply for advance parole before your Deferred Action application is approved.

**Did Congress pass the DREAM Act into law?**

No. Despite what advertisements or commercials you might hear about the DREAM Act being passed, this is not true. Although the DREAM Act was passed by the House of Representatives in 2010, it failed to garner support in the Senate and was therefore not enacted into law. It is possible that the DREAM act or a similar immigration reform bill could pass in the near future because of growing support for such a measure.

**Did President Obama issue an executive order?**

No. The announcement President Obama made on June 15, 2012 was a policy change and not an executive order. Executive Orders have the full force of law. This policy change is described in a memo from DHS secretary Janet Napolitano and a memo from ICE director John Morton. These memos give guidance only on how DHS should apply this change in policy. The executive branch does not have the power to create a path to permanent lawful status and citizenship. Only Congress, through its legislative authority outlined in the Constitution can grant such a pathway.

### **Wasn't Deferred Action already in place before Obama announced policy changes on June 15, 2012?**

It is true that Deferred Action is not a new policy. The Obama administration had instructed Immigration and Customs Enforcement (ICE) in June 2011 to enact Deferred Action so that low priority Dreamers would not get deported immediately. In June of 2011, Immigration and Customs Enforcement (ICE) said it would review 300,000 pending deportation cases and give deferred action to immigrants who have community and family ties if they don't have criminal records. The results of the policy were poor: only 1.5% of people in deportation proceedings were given deferred action. According to the New York Times, only 500 immigrant youths had their deportations stopped as a result.

As a result of the failures of the previous policy, President Obama issued a new policy direction with very specific directives. The new guidelines announced by President Obama on June 15, 2012 are likely to be far more effective than previous guidelines for several reasons. First, the criteria for qualifying for Deferred Action are much clearer. Second, unlike past efforts, the new policy does not require you to be in deportation proceedings. Applicants not currently under deportation or removal proceedings can proactively submit Deferred Action applications. Lastly the new policy has been given tremendous publicity by the White House and is therefore likely to be applied with vigor.

### **Why did President Obama enact policy changes to Deferred Action instead of passing comprehensive immigration reform?**

President Obama has repeatedly expressed his support for a comprehensive immigration reform bill. However a highly partisan and divided Congress has not been willing to pass comprehensive immigration reform. The closest attempt to an immigration reform bill was the DREAM Act in 2010 which was passed by the House of Representatives but failed to garner support in the Senate. The executive branch does not have the power to create a path to permanent lawful status and citizenship. Only Congress, through its legislative authority outlined in the Constitution can grant such a pathway.

President Obama announced a change in policy on June 15, 2012 because of the high number of low priority Dreamers being deported in the U.S. The purpose of this policy change was to stop the mass deportations of Dreamers until Congress passes a landmark immigration reform bill. Although this policy change falls grossly short of comprehensive immigration reform, it is a much needed drastic step that puts pressure on Congress to enact comprehensive immigration reform.

### **Do I need to hire a lawyer to file for Deferred Action?**

We strongly recommend that you hire an attorney to file your Deferred Action petition. Simply stated, a lawyer with experience filing various applications with the DHS & USCIS knows what information to include and understands the guidelines better. Once the petition is submitted, the applicant is presenting his/herself as an undocumented person living in the United States. Having legal representation would help the applicant build the strongest case possible in their favor, especially if there is any evidence of criminal history. In addition, once a Deferred Application is denied, there is no appeal process. The decision is final. Therefore it is highly recommended applicants utilize a lawyer to file a thorough application.

**How do I go about choosing the right attorney?**

Picking the right lawyer is very important to your case as it could determine whether you submit a complete application that addresses all the weakness of your case. Our advice would be to not simply pick a lawyer because he speaks your language or is from your community. You should pick a lawyer who is genuinely passionate about the DREAM Act and about representing Dreamers. Pick a lawyer that stresses the importance of obtaining the right documentation and filing your application only when the right documentation is ready, and not a lawyer that is trying to file your case as quickly as possible to move onto the next client.

**What if I have a Voluntary Departure order against me?**

If you satisfy the other criteria, you may still be eligible for DACA.

**What if I have a Removal order that I have overstayed?**

If you satisfy the other criteria, you may still be eligible for DACA.

**What if I have some period of absences from the country over the last 5 years?**

The USCIS has stated that “brief, casual and innocent” departures will not jeopardize an application for Deferred Action. Please consult an attorney about the specifics of your case.

**What if I run into any trouble with the law between now and filing for Deferred Action?**

It is imperative that you seek assistance of criminal defense counsel if you get into any legal trouble between now and filing a Deferred Action application. Do not take a plea bargain or put yourself in jeopardy of accepting a higher conviction that could bar you from applying from Deferred Action.

**How much will it cost to apply for Deferred Action?**

The total costs which include the work permit and biometrics is \$465.

**How long will it take to process the application?**

DHS has indicated that the process will likely take 2-3 months.

**Can I enlist in the military if I am granted Deferred Action?**

No, at this time you may not enlist in the military even if you are granted Deferred Action.

**What should I do if I am interested in beginning the Deferred Action application process?**

We would strongly advise you do the following in the meantime:

1. Gather documents that will help your case. You will want to present evidence documenting how you satisfy the criteria outlined. Collect any documents that prove the date you entered the U.S. and remained here for five years, between June 15, 2007 and June 15, 2012. These include:
  - Financial Records: Bank statements, lease agreements, mortgage agreements, bills.
  - Medical Records: Immunization records, medical history report from your doctor.
  - Employment Records: Pay stubs, employment contracts, direct deposit slips.

- School Records: Diplomas, transcripts, GED certificates, report cards, progress reports, honor's certificates etc.
  - Military Records: You should request an Official Military Personnel File DD 214. This is the file that details military service. You can request this for yourself or for a next-of-kin for free by visiting [www.archives.gov/veterans/military-service-records](http://www.archives.gov/veterans/military-service-records).
  - Obtain a Current Passport: You should go to your consulate and obtain a current passport for yourself. This will likely be the safest way to prove your identity. The only exception to this rule would be if you have a fear of being returned to your country by your consulate.
  - Evidence of Good Moral Character (if any sort of criminal history): Evidence of community service, references from community leaders, etc.
2. Try to obtain a GED if you are not currently in school: If you did not graduate high school or obtain your GED, it would be wise to enroll into a GED program in the interim.
  3. Save your money:
    - a. Deferred Action & Work Authorization Application Fee: \$465
    - b. Attorney Fees for Filing Deferred Action & Work Permit: Will vary.
  4. Run a background check on your criminal history: If you have any history of criminal convictions, no matter how far back or how minor, make sure to gather all evidence regarding this. You can likely gather such information on your county website or state government website. Make sure to get them from all states where you believe you may have been arrested or convicted.

If you have any other questions, please contact our offices for a free consultation.

Thank you for downloading “The Dream Law Guide to Deferred Action.”

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