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Deferred Action for Childhood Arrivals (DACA): Frequently Asked Questions

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Summary

On June 15, 2012, the Department of Homeland Security (DHS) announced that certain individuals who were brought to the United States as children and meet other criteria would be considered for relief from removal for two years, subject to renewal, under an initiative known as Deferred Action for Childhood Arrivals, or DACA. Among the eligibility requirements, an individual must have been under age 16 at the time of his or her entry into the United States; must have been continuously resident in the United States since June 15, 2007; and must not have been in lawful immigration status on June 15, 2012. To request consideration of DACA, an individual must file specified forms with DHS's U.S. Citizenship and Immigration Services (USCIS) and pay associated fees.

USCIS's decision on a DACA request is discretionary. The agency makes determinations on a case-by-case basis. Individuals granted DACA may receive employment authorization. DACA recipients are not granted a lawful immigration status and are not put on a pathway to a lawful immigration status.

USCIS began accepting DACA requests on August 15, 2012, and issued its first approvals in September 2012. Prior to that, from June 15, 2012, to August 15, 2012, DHS's Immigration and Customs Enforcement (ICE) granted deferred action under the DACA process in some cases. Cumulatively, through June 2014, more than 580,000 DACA requests have been approved. The period of deferred action under the DACA program expires after two years unless it is renewed.

Individuals granted deferred action under the DACA initiative may request renewal of their deferral for another two years, in accordance with USCIS procedures. To be considered for a renewal, a DACA recipient must satisfy certain requirements concerning continuous U.S. residence, departures from the country, and criminal history. To request a renewal, an individual must file specified forms with USCIS and pay associated fees. The agency advises individuals to request a DACA renewal 120 days before the expiration date of their current period of deferred action. USCIS's decision on a DACA renewal request, like on an initial DACA request, is discretionary.

For a discussion of related legislation, commonly referred to as the DREAM Act, that seeks to enable certain unauthorized aliens who entered the United States as children to obtain legal immigration status, see CRS Report RL33863, *Unauthorized Alien Students: Issues and "DREAM Act" Legislation*.

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Background

On June 15, 2012, the Department of Homeland Security (DHS) announced that certain individuals without a lawful immigration status who were brought to the United States as children and meet other criteria would be considered for relief from removal from the country for two years, subject to renewal. This initiative is known as Deferred Action for Childhood Arrivals, or DACA.¹ DHS's U.S. Citizenship and Immigration Services (USCIS) began accepting requests for consideration of DACA on August 15, 2012, and issued its first approvals in September 2012. Prior to that, from June 15, 2012, to August 15, 2012, DHS's Immigration and Customs Enforcement (ICE) granted deferred action under the DACA process in some cases.² More than 580,000 requests for consideration of DACA have been approved through June 2014. Individuals granted deferred action under the DACA process may request renewal of their deferral for another two years, in accordance with USCIS procedures. Answers to frequently asked questions about DACA and the renewal process are provided below.

DACA Initiative

How was DACA established?

The DACA initiative was announced by former Secretary of Homeland Security Janet Napolitano in a June 15, 2012, DHS memorandum entitled, "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children."³ The DACA initiative was *not* established by executive order.

¹ DACA is one form of deferred action. Deferred action is "a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion." U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Consideration of Deferred Action for Childhood Arrivals Process, Frequently Asked Questions, <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions> (hereafter cited as USCIS, DACA FAQs). For additional information on prosecutorial discretion and deferred action, see CRS Congressional Distribution Memorandum, *Analysis of June 15, 2012 DHS Memorandum, "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,"* by (name redacted), (name redacted), Kate Manuel, and (name redacted) (available to congressional staff from the authors); and CRS Report R42924, *Prosecutorial Discretion in Immigration Enforcement: Legal Issues*, by (name redacted) and (name redacted).

² During this period before USCIS began accepting DACA requests, prospective DACA beneficiaries with a case pending before the Executive Office for Immigration Review or a federal court were instructed to submit requests to ICE.

³ U.S. Department of Homeland Security, Memorandum to David V. Aguilar, Acting Commissioner, U.S. Customs and Border Protection, Alejandro Mayorkas, Director, U.S. Citizenship and Immigration Services, John Morton, Director, U.S. Immigration and Customs Enforcement, from Janet Napolitano, Secretary of Homeland Security, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children*, June 15, 2012, <http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

What are the eligibility requirements for consideration of DACA?

The eligibility criteria are

- under age 16 at time of entry into the United States;
- under age 31 on June 15, 2012;
- continuously resident in the United States for at least five years before June 15, 2012 (that is, since June 15, 2007);
- physically present in the United States on June 15, 2012, and at the time of making the request for consideration of deferred action;
- not in lawful immigration status on June 15, 2012;
- not convicted of a felony, a significant misdemeanor, or three or more misdemeanors, and not otherwise a threat to national security or public safety; and
- in school, graduated from high school or obtained general education development certificate, or honorably discharged from the U.S. Armed Forces or the Coast Guard.

If an individual satisfies the eligibility requirements, is DACA automatically granted?

No. USCIS's decision on a DACA request is discretionary. The agency makes determinations on a case-by-case basis. According to USCIS: "Even if you satisfy the threshold criteria for consideration of DACA, USCIS may deny your request if it determines, in its unreviewable discretion, that an exercise of prosecutorial discretion is not warranted in your case."⁴

What are the DACA approval and denial rates?

Of all the requests for consideration of DACA made to USCIS and decided by June 30, 2014, about 96% were approved and about 4% were denied, terminated, or withdrawn.⁵

Are DACA recipients granted lawful immigration status?

No. DACA recipients are not granted a lawful immigration status and are not put on a pathway to a lawful immigration status. During the period of deferred action, however, the DACA recipient is in a period of stay authorized by DHS and is considered to be lawfully present for admissibility purposes (and thus, does not accrue unlawful presence for admissibility purposes).⁶

⁴ U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Instructions for Consideration of Deferred Action for Childhood Arrivals (Form I-821D), p. 11, <http://www.uscis.gov/sites/default/files/files/form/i-821dinstr.pdf>.

⁵ DACA statistics are available from USCIS at <http://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-deferred-action-childhood-arrivals>.

⁶ See CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*, by Ruth Ellen (continued...)

Are DACA recipients legally allowed to work?

Individuals granted deferred action may receive work authorization. According to USCIS: “[I]f your case is deferred, you may obtain employment authorization from USCIS provided you can demonstrate an economic necessity for employment.”⁷

Can an individual who has never requested consideration of DACA still do so, or has the period for filing initial DACA requests closed?

There is no deadline for making initial requests for consideration of DACA. To be eligible, however, an individual must meet the threshold criteria enumerated above, including continuous residence in the United States since June 15, 2007 (see “What are the eligibility requirements for consideration of DACA?”).

What forms and other materials must an individual file to request consideration of DACA?

An individual must file the following three forms with DHS/USCIS:

- Form I-821D, Consideration of Deferred Action for Childhood Arrivals
- Form I-765, Application for Employment Authorization
- Form I-765WS, Worksheet

The forms are available on the USCIS website, <http://www.uscis.gov>.

The individual also should submit evidence that he or she meets the DACA eligibility requirements (see “What are the eligibility requirements for consideration of DACA?”).

Is there a fee to request consideration of DACA?

Yes. The fees total \$465 and consist of a Form I-765 filing fee of \$380 and biometric services fee of \$85.

What is the relationship between DACA and the DREAM Act?

Both DACA and legislation known as the DREAM Act are targeted at the same general population—unauthorized individuals who entered the United States as children. The DACA eligibility requirements are similar to the eligibility requirements in some DREAM Act bills.

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⁷ USCIS, DACA FAQs.

The DACA initiative and the DREAM Act, however, are different instruments and offer eligible individuals different forms of immigration relief. The DACA initiative is an exercise of prosecutorial discretion by the executive branch. Individuals granted DACA receive temporary protection from removal. They are not given a lawful immigration status. By contrast, DREAM Act bills are pieces of legislation and would establish a process for eligible individuals to obtain lawful permanent resident (LPR) status.

What is the status of the DREAM Act? Has Congress taken action on it?

DREAM Act provisions have been regularly introduced in Congress, both as stand-alone bills and as parts of larger immigration reform bills. Although DREAM Act legislation has never been enacted, some DREAM Act bills have seen legislative action. For example, in the 111th Congress, the House approved DREAM Act language as part of an unrelated bill, the Removal Clarification Act of 2010 (H.R. 5281).⁸ In the 113th Congress, the Senate-passed Border Security, Economic Opportunity, and Immigration Modernization Act (H.R. 744) incorporates DREAM Act language in its legalization provisions.⁹

Has Congress enacted any legislation on DACA?

No legislation on DACA has been enacted. However, in August 2014, the House of Representatives passed a DACA-related bill (H.R. 5272) that states, in part:

No agency or instrumentality of the Federal Government may use Federal funding or resources after July 30, 2014—

(1) to consider or adjudicate any new or previously denied application of any alien requesting consideration of deferred action for childhood arrivals, as authorized by Executive memorandum dated June 15, 2012 and effective on August 15, 2012 (or by any other succeeding Executive memorandum or policy authorizing a similar program)

DACA Renewal

What requirements must a DACA recipient meet to be considered for renewal of DACA?

The DACA recipient must satisfy the following criteria:

⁸ The Senate, however, failed to invoke cloture on a motion to agree to the House-passed DREAM Act amendment, and the bill died at the end of the Congress. See CRS Report RL33863, *Unauthorized Alien Students: Issues and “DREAM Act” Legislation*, by (name redacted)

⁹ S. 744 proposes to establish a general legalization program for unauthorized aliens in the United States, with a special “DREAM Act” pathway to LPR status for certain aliens who entered the country as children. See CRS Report R43097, *Comprehensive Immigration Reform in the 113th Congress: Major Provisions in Senate-Passed S. 744*, by (name redacted).

- the individual did not depart from the United States on or after August 15, 2012, without first obtaining advance parole¹⁰;
- the individual has continuously resided in the United States since submitting his or her latest approved DACA request; and
- the individual has not been convicted of a felony, a significant misdemeanor, or three or more misdemeanors, and is not a threat to national security or public safety.

What forms and other materials does an applicant for DACA renewal have to file?

To request a renewal of deferred action under DACA, an individual must file the following three forms with DHS/USCIS (the same forms as required for an initial DACA request):

- Form I-821D, Consideration of Deferred Action for Childhood Arrivals
- Form I-765, Application for Employment Authorization
- Form I-765WS, Worksheet

The forms are available on the USCIS website, <http://www.uscis.gov>.

An individual requesting a DACA renewal does not have to submit any documents that he or she previously provided to USCIS in connection with an approved DACA request. The individual does have to submit any new documents related to removal proceedings or criminal history. USCIS will request additional documentation from the individual, if needed.

If ICE initially deferred action under DACA in an individual’s case, is the renewal process different than if USCIS initially deferred action?

An individual who was granted deferred action under DACA by ICE should file the same three forms to request a renewal as an individual who was initially granted deferred action under DACA by USCIS (see “What forms and other materials does an applicant for DACA renewal have to file?”). Unlike those initially granted deferred action by USCIS, however, individuals who were initially granted deferred action by ICE and are requesting a renewal should submit documentation evidencing that they satisfy the threshold criteria for DACA (see “What are the eligibility requirements for consideration of DACA?”).

¹⁰ Advance parole is permission for a foreign national to re-enter the United States after temporarily traveling abroad. If a DACA recipient travels outside the country without first obtaining an advance parole document from USCIS, the individual’s period of deferred action will be automatically terminated. Advance parole does not guarantee re-entry into the United States; foreign nationals are subject to inspection at U.S. ports of entry and may be denied entry.

Is there a fee for DACA renewal requests?

There is a total fee of \$465, consisting of a Form I-765 filing fee of \$380 and biometric services fee of \$85 (the same as for initial DACA requests).

When should a DACA recipient submit a renewal request?

USCIS advises DACA recipients to request a renewal 120 days before the expiration date of their current period of deferred action. Requests submitted more than 150 days before the expiration date may be returned by USCIS for later resubmission.

Is DACA renewal automatic?

No. The decision on a request to renew DACA, like on an initial DACA request, is discretionary. USCIS makes determinations about renewals on a case-by-case basis.

If a DACA recipient's request for renewal is approved, is the individual granted legal immigration status?

No. An individual granted deferred action (an initial grant or a renewal) is not given a lawful immigration status and is not put on a pathway to a lawful immigration status.

What happens if a DACA recipient's period of deferred action expires before his or her renewal request is approved?

Unless the individual was under age 18 at the time of submitting the renewal request, he or she would be considered to be unlawfully present during the intervening period (see "Are DACA recipients granted lawful immigration status?"). However, if the individual filed the renewal request 120 days before the expiration of the period of deferred action and employment authorization, and USCIS was delayed in processing the request, USCIS may provide the individual with deferred action and employment authorization on a short-term basis while it completes processing.

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