

On June 15, 2012, the Obama administration announced that certain young immigrants who were brought to the United States as children and educated here should be granted a temporary reprieve from deportation and given work authorization. For legal advice concerning eligibility for this program, please consult with an attorney or an organization recognized by the Board of Immigration Appeals.

### Do I qualify for Deferred Action?

Below is a list of basic requirements for this initiative:

- Came to the United States before you turned 16 years old
- Were under the age of 31 as of June 15, 2012
- Continuously lived in the United States from June 15, 2007 to present
- Are at least 15 years old (those in removal proceedings may apply before turning 15)
- Currently enrolled in elementary school, junior high/middle school, high school or in a federal/state funded GED program, graduated from high school or obtained a GED, or were honorably discharged from the U.S. Coast Guard or Armed Forces
- Have not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise pose a threat to national security or public safety
- Did not have lawful immigration status on June 15, 2012, and do not currently have lawful status
- Were physically present in the United States on June 15, 2012, and remain physically present

### If I apply, what benefits could I receive?

Those who qualify will receive deferred action for two years. Deferred action is a discretionary decision by the government to refrain from removing an individual from the United States. Deferred action does **not** mean you have permanent lawful status. Deferred action would qualify you for work authorization and a social security number. Most states, including Illinois, will permit anyone with a social security number to obtain a driver's license.

### How can I prove I have been living here since June 15, 2007?

Include documents such as financial, medical, school, employment, and military records that show you have been living in the United States. Any gap in evidence of more than six months may be problematic. Affidavits (sworn statements by people you know) may be used **only** to explain a gap in your documentation (i.e. that you cannot show 5 *continuous* years) or if you need to document departures from the U.S. For these purposes, you must submit two or more affidavits signed by people *other than yourself* who have direct knowledge of the circumstances in question.

### I may not qualify because of a criminal background, but I'm not sure. What constitutes a felony, serious misdemeanor, and multiple misdemeanors?

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

A significant misdemeanor includes a conviction for domestic violence, sexual abuse or exploitation, burglary, unlawful possession or use of a firearm, drug distribution or trafficking, or driving under the influence. Also, if you were sentenced to time in custody for more than 90 days for any offense, this is a significant misdemeanor. Time in custody does **not** include a suspended sentence.

You may not qualify if you were convicted of three or more misdemeanors. Multiple convictions that resulted from criminal activity occurring on same day will generally count as one conviction. The Department of Homeland Security ("DHS") has stated that minor traffic offenses, including driving without a license, will **not** be considered a misdemeanor in counting whether you have three misdemeanors. However, you should obtain and include certified dispositions (official court documents explaining what you were convicted of and sentenced with) related to ALL of your arrests, as DHS will likely request it if you do not include it.

DHS also says that immigration-related offenses that are considered to be felonies or misdemeanors under state laws will **not** be treated as disqualifying felonies or misdemeanors in this process.

*Despite these guidelines, DHS may deny deferred action on the basis of a single criminal offense where the individual served less than 90 days in custody if they believe it is in the interest of national security to do so. Therefore, we highly recommend consulting with an immigration attorney before filing for deferred action if you have any criminal history.*

#### **What about expunged convictions or juvenile adjudications?**

Expunged convictions and juvenile adjudications will not automatically disqualify you; however, DHS will take them into consideration when determining whether to grant you deferred action. Although an expunged conviction does not automatically disqualify you, it is considered a conviction for deportation purposes.

As for juvenile arrests and/or juvenile adjudications, DHS will likely find out about these when they fingerprint you after you submit your application, and they will likely request documentation for these arrests, regardless of whether they affect your eligibility for Deferred Action. Please note that if you were arrested as a minor, but tried and convicted as an adult, the government will consider that a conviction.

#### **What if I have claimed to be a U.S. citizen on a government or employment form?**

This will not make you ineligible for deferred action, but it will likely have consequences if you try to apply for any other type of immigration benefit.

#### **How do I know if I'm a threat to national security or public safety?**

DHS will uncover information during a background check. If you are or have been a member of a gang, or the government has reason to believe you may be in a gang (such as being friends with gang members or having visible tattoos) or participated in criminal activities that threaten the United States, you may be considered a threat.

#### **What if I have another immigration application pending?**

You can still apply for deferred action, as long as you did not have lawful status as of June 15, 2012, but DHS may choose not to process your DACA application until a decision is made on the pending application.

#### **What if I am already in removal proceedings?**

You can still apply for DACA with U.S. Citizenship and Immigration Services ("USCIS") if you meet the criteria above, even if you were previously offered administrative closure and declined such an offer. If you are detained and in removal proceedings, you can apply for DACA with Immigration and Customs Enforcement ("ICE").

#### **What about my family?**

Unfortunately, unless your family members and dependents qualify for DACA in their own right, they will not receive any immigration benefit through you. It is important for your family members and dependents to seek legal advice concerning their eligibility for this program or any other immigration benefit. They should consult with an attorney or an organization recognized by the Board of Immigration Appeals.

#### **What if I am in a GED class, but I don't have my GED yet?**

You can apply so long as you are enrolled in a GED program is either: 1) a federal/state funded program or 2) one that USCIS will consider, in their words, to be "of demonstrated effectiveness." It is the applicant's responsibility to prove to the GED program is legitimate. Programs that are funded by federal or state grants – such as programs at the city colleges – will generally be accepted. If your program is not funded by government grants, you should include information showing that the program has a track record of helping students pass the GED.

#### **What if my application is denied? Can I be placed in removal proceedings?**

Yes. USCIS will apply its existing Notice to Appear guidance. If you have a criminal conviction or you are found to have knowingly misrepresented part of your application or failed to disclose facts to USCIS or ICE, you may be subject to both criminal prosecution and removal.

#### **What if I've left the country for a brief period of time before I filed my application?**

This absence will not affect your application if ALL of the following apply:

- You left and returned before August 15, 2012
- The absence was short and reasonable to accomplish your purpose abroad
- The absence was not because of an order of exclusion, deportation, removal, or voluntary departure
- You did not violate any laws while out of the country

#### **How much will it cost me to apply?**

There is a total cost of \$465.00 for the deferred action and work authorization applications. You may be eligible for a fee waiver if your income is less than 150% of the U.S. poverty level *and*:

- You are under 18 years old and homeless, in foster care, or otherwise lacking any familial support
- You cannot care for yourself because of a serious, chronic disability
- You have, at the time of your application, accumulated within the past 12 months \$25,000 or more in personal debt as a result of unreimbursed medical expenses for you or an immediate family member.

#### **For more information or to find an attorney:**

National Immigrant Justice Center: [www.immigrantjustice.org/DREAMers](http://www.immigrantjustice.org/DREAMers)

NIJC's Deferred Action Self-Assessment Tool: [www.DREAMErjustice.org](http://www.DREAMErjustice.org)

To find an immigration attorney, American Immigration Lawyers Association: [www.aialawyer.com](http://www.aialawyer.com)