

Deferred Action for Childhood Arrivals

By Kirk A. Carter, Esq.

The Obama Administration announced on June 15, 2012 that certain undocumented aliens would be eligible for deferred action and receive work authorization for up to two years. Among those eligible are certain young people who were brought to the United States through no fault of their own as young children and meet several key criteria. Those who demonstrate that they meet the criteria will be eligible to receive deferred action and work authorization for a period two years, subject to renewal.

WHO IS ELIGIBLE TO RECEIVE DEFERRED ACTION?

In order to be eligible for deferred action, individuals must:

- Have come to the U.S. under the age of sixteen;
- Have continuously resided in the U.S. since June 15, 2007 and have been present in the U.S. on June 15, 2012;
- Currently be in school, have graduated from high school, have obtained a general education development (GED) certificate, or are honorably discharged veterans of the Coast Guard or Armed Forces of the U.S.;
- 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;
- Not be above the age of thirty.

WHAT IS DEFERRED ACTION?

Deferred action is a discretionary determination that the removal or deportation of an individual from the U.S. should be deferred or delayed as an act of prosecutorial discretion. Deferred action does not confer lawful status upon an individual, nor will it lead to a green card. However, an alien granted deferred action will not be considered to be accruing unlawful presence in the U.S. during the period deferred action is in effect. Under existing regulations, an individual who has been granted deferred action is eligible to receive employment authorization for the period of deferred action, provided he or she can demonstrate "an economic necessity for employment." Deferred action can be terminated at any time at the agency's discretion or renewed by the USCIS.

DOES THIS POLICY APPLY TO THOSE WHO ARE SUBJECT TO A FINAL ORDER OF REMOVAL?

Yes. An individual subject to a final order of removal who can demonstrate that he or she meets the above eligibility criteria can request a review of his or her case and receive deferred action for a period of two years, subject to renewal.

WILL INDIVIDUALS BE SUBJECT TO BACKGROUND CHECKS BEFORE THEY CAN RECEIVE AN EXERCISE OF PROSECUTORIAL DISCRETION?

Yes. All individuals will undergo biographic and biometric background checks prior to receiving an exercise of prosecutorial discretion. Background checks involve checking biographic and biometric information provided by the individuals against a variety of databases maintained by DHS and other federal government agencies. Individuals who have been convicted of any felony, a significant misdemeanor offense, three or more misdemeanor offenses not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct, or otherwise pose a threat to national security or public safety are not eligible to be considered for deferred action under the new process.

WILL DEPENDENTS AND OTHER IMMEDIATE RELATIVES OF INDIVIDUALS WHO RECEIVE DEFERRED ACTION PURSUANT TO THIS PROCESS ALSO BE ELIGIBLE TO RECEIVE DEFERRED ACTION?

No. The new process is available only to those who satisfy the eligibility criteria. As a result, the immediate relatives, including dependents, of individuals who receive deferred action pursuant to this process are not eligible to apply for deferred action as part of this process unless they independently satisfy the eligibility criteria.

WHY ISN'T DHS ALLOWING OTHER INDIVIDUALS TO REQUEST DEFERRED ACTION UNDER THIS PROCESS?

As a general matter, young people who, through no fault of their own, were brought to this country as children, lacked the intent to violate the law and our ongoing review of pending removal cases is already offering administrative closure to many of them. However, additional measures are necessary to ensure that our enforcement resources are not expended on these low priority cases but are instead appropriately focused on people who meet our enforcement priorities.

HOW WILL THE NEW DIRECTIVE BE IMPLEMENTED?

Individuals who are not in removal proceedings or who are subject to a final order of removal will need to submit a request for a review of their case and supporting evidence to U.S. Citizenship and Immigration Services (USCIS). Individuals may request deferred action if they meet the eligibility criteria.

CAN I APPLY NOW?

For individuals who are in removal proceedings before the Executive Office for Immigration Review, ICE will, in the coming weeks, announce the process by which qualified individuals may request a review of their case. All others must wait until USCIS announced the procedures to be followed while applying for this benefit. Further guidance is expected sometime in August of 2012. In the meantime individuals may call the USCIS hotline at 1-800-375-5283, from 8 a.m. to 8 p.m. Individuals seeking more information on the new process should visit USCIS's website (at www.uscis.gov) or consult a qualified immigration attorney.

BEWARE OF NOTARIOS AND THOSE NOT AUTHORIZED TO PRACTICE LAW.

Unfortunately, this policy may open the door for fraud and deception by so-called "notarios." In the U.S. notarios have no legal authority and cannot practice law or represent individuals. An immigrant's case can be delayed by notarios acting in bad faith, resulting in penalties and even deportation. There is nothing more dangerous than applying for a benefit that you are not eligible for. Unfortunately, many unscrupulous individuals prey on the immigrant communities desire to obtain a benefit and submit applications regardless of eligibility. Be careful. Do not endanger your chance to qualify for this or some other benefit. Make sure you consult with a qualified immigration attorney for more information before applying for deferred action.

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