

President Trump Rescinds the DACA (“Dreamer”) Program

September 5, 2017

On September 5, Attorney General Jeff Sessions announced the Trump Administration’s decision to rescind the Deferred Action for Childhood Arrivals (DACA) program that had been in place since June 15, 2012. The Trump Administration states it will delay enforcement of this decision for six months, allowing Congress a window of opportunity to pass legislation to protect undocumented immigrants who are currently covered by the program. As the Administration is not immediately rescinding the program, those currently covered will NOT be affected today, but may be as of March 5, 2018.

Background

The Obama Administration, through an Executive Order entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,” created the DACA program. The program was established to address a category of undocumented immigrants brought to the United States as children, often referred to as the “Dreamers.” In order to qualify for the program, an individual had to have entered the country before the age of 16 and be under the age of 31 as of June 15, 2012. In addition to the requirements to be physically present in the United States on June 15, 2012 and to have continuously resided in the country since June 15, 2007, a beneficiary had to demonstrate they were enrolled in high school or college, graduated from high school or had a GED, or were honorably discharged from the US Coast Guard or Armed Forces. Finally, DACA recipients had to demonstrate that they had no felony convictions, no significant misdemeanor convictions, did not have three or more other misdemeanor convictions, or otherwise pose a threat to national security or public safety.

Under the DACA program, qualified individuals could request consideration of deferred action from removal, which, if granted, were valid for two years and subject to renewal. If granted deferred action, DACA recipients could apply for work authorization and separately receive an Employment Authorization Document card (EAD), valid through the period of deferred action. DACA did not create a path to permanent residency or citizenship.

What You Need to Know

Those employing individuals granted EADs through DACA may continue to do so. It is reported that over 800,000 individuals have been granted deferred action EADs since the inception of the program. The Trump Administration will keep the program in place through March 5, 2018. Initial applications and renewal requests previously filed and currently pending will be considered. Anyone who has not filed under DACA and is eligible will NOT be able to file as of today. If one has an EAD expiring in the next six months, they can file for an extension under DACA in the next 30 days. After October 5, 2017, no renewal requests or applications for EADs will be accepted. Once granted, the EAD will be valid for two years and will not be terminated.

Under the announcement today, the DACA policy will officially end on March 5, 2018. Once the program ends, individuals who had previously been protected by the program will fall within the Trump Administration’s enforcement priorities outlined in the Department of Homeland Security’s February 20, 2017 memo, “Enforcement of the Immigration Laws to Serve the National Interest.” Under the memo, no class or category of removable alien is exempt from enforcement. It is likely many previous DACA recipients will fall under the new priorities for removal. Although the Administration today stated they will not be specifically targeting individuals previously covered by the program, these priorities give ICE, CBP, and USCIS broad discretion in determining an immigrant is a priority for removal.

What's Next?

At the moment, there are a few bi-partisan bills currently under consideration that could extend some form of the DACA program.

Senators Lindsey Graham and Dick Durbin recently introduced an updated version of the DREAM Act in the Senate and there is a companion bill in the house. Similar bills have been introduced in the House and there are reports additional versions will be introduced in the Senate this week.

We will continue to monitor this situation and send alerts as events warrant.

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