



Weekly Wright Report (9/18/17)

IMMIGRATION LAW

Deferred Action for Childhood Arrivals: What this Means for Individuals and Employers

On September 5, 2017, the Department of Homeland Security announced the orderly wind down of Deferred Action for Childhood Arrivals (“DACA”). DACA defers deportation proceedings against individuals that illegally entered the United States prior to age 16, generally with their parents. DACA was established by a Homeland Security memo on June 15, 2012 during Barak Obama’s presidency. Its benefits are generally valid for two (2) years from the date of issuance of a deferred status. Many DACA beneficiaries are students; others are employees with green cards or other work authorizations. Those currently benefitting from DACA should concern themselves with their continued eligibility for deferred status, authorization to work, and ability to leave and return to the United States.

Individuals eligible for DACA must have been under the age of thirty-one as of June 15, 2012. They must have entered the United States before their sixteenth birthday and resided in the United States continuously since June 15, 2007. They must be either in school, have graduated or obtained a GED certificate or honorably discharged from the armed forces or the Coast Guard. Individuals are not eligible if they are convicted of a felony, a significant misdemeanor, three or more misdemeanors, or pose a threat to national security or public safety.

DACA benefits are generally valid for a period of two years from the date of issuance. Under the announced wind down plan, current DACA recipients will be permitted to retain deferral for both the unexpired term of their DACA protection and their Employment Authorization Documents (EADs) until they expire or are terminated for the justifiable reasons mentioned above. Any initial DACA requests or application for EAD that has been accepted for process prior to September 5, 2017 will be considered on an individual case-by-case basis. Pending applications for renewal of DACA authorizations or an EAD that will expire between September 5, 2017 and March 5, 2018 will be processed so long as the applications are filed and accepted for processing as of October 5, 2017. All requests to renew DACA or associated applications for EADs after October 5, 2017 are expected to be rejected.

If an individual’s current DACA or associated EAD expires without application within the time limits above, his or her removal will no longer be deferred, nor will he or she be eligible for lawful employment. Once an individual’s DACA expires, his or her case will be referred to

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Immigration and Custom Enforcement (ICE) for processing. DACA requests are processed by the United States Citizenship and Immigration Services (USCIS). However, according to current literature, USCIS will not share personal information proactively with ICE for enforcement purposes.

Travel outside of the United States can be a trap. As of September 5, 2017, USCIS will not approve any Form 1-131 - Applications for Advanced Parole - under the DACA program. Advance Parole permits an individual protected by DACA to leave the United States and return. Individuals with current Advanced Parole permission from a previously approved Advanced Parole application will retain travel and re-entry benefits until that permission expires. All pending Form 1-131 Applications for Advanced Parole will be administratively closed. Students protected by DACA should be aware of these restrictions before they leave the United States for a semester abroad or for any other reason. Employees legal under a green card or other type of visa have the same worry if the job requires international travel. It is important to note that it is uncertain whether individuals with Advanced Parole based on DACA outside of the country will be able to return if the DACA program ends as anticipated. If an individual has been granted Advanced Parole but has not yet left the United States or is interested in applying for Advanced Parole, he or she should speak to an attorney to determine the potential risks.

For employees, the termination of DACA protection does not automatically end eligibility to work if the employee has a valid green card or other work permit. The employee has the right to work legally until the work permit expires. An employee does not have an obligation to inform the employer that DACA protection has ended. Nor does the employer have the right to ask the employee whether the employee is deferred under DACA or how the employee received a work permit. The employer does not have the right to terminate the employee or put the employee on leave or change his or her work status until the work permit has expired. Although the employer can inquire about the status of efforts to update a work permit if expiration is nearing, the employer cannot take any action against the employee until it has expired.

Any employee and students should consider applying for and obtaining a social security number as it will continue to be valid and can be used for education, banking, housing and other purposes. He or she should also apply for a driver's license if permitted in the resident state while the DACA protection is still valid.

These deadlines may be extended and other terms are subject to change based on recent discussions between the President and lead members of the Democratic party. Ask Jimmy jconstable@wcsllaw.com