



RESCISSION OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS (“DACA”)

On September 5, 2017, the U.S. Department of Homeland Security (“DHS”) United States Citizenship and Immigration Services (“USCIS”) initiated the orderly rescission of the program known as Deferred Action for Childhood Arrivals (DACA). This announcement will impact organizations with employees with DACA-based work authorizations.

Why is DHS phasing out the DACA Program?

Citing the result of recent litigation, DHS decided to wind the program down instead of having the judiciary shut the program down completely and immediately. On September 4, 2017, Attorney General Sessions sent a letter to Acting Homeland Security Secretary Duke informing DHS that DACA “was effectuated by the previous administration through executive action, without proper statutory authority and with no established end-date after Congress’ repeated rejection of proposed legislation that would have accomplished a similar result. Such an open-ended circumvention of immigration laws was an unconstitutional exercise of authority by the Executive Branch.”

What is going to happen to current DACA Holders?

Current DACA recipients will be permitted to retain both the period of deferred action and their employment authorization documents (“EADs”) until they expire, unless terminated or revoked. DACA benefits are generally valid for two years from the date of issuance.

According to a memo issued by the Acting Secretary of Homeland Security:

- USCIS will not accept new applications for DACA after September 5, 2017.
- Applications filed before September 5 that are pending will continue to be processed.
- Anyone who’s DACA expires between now and March 5, 2018 can apply for a final two-year renewal. Individuals must submit their applications by October 5, 2017.
- For others, the DACA period and Employment authorization can end as early as March 6, 2018.

This means no new applications will be accepted and only those individuals with current DACA that expires before March 5, 2018 may renew, a final time, for two years. Employers will not be able to employ any DACA employee with a DACA based EAD that is expired. There are some individuals who currently have DACA and will be returned to their undocumented status and susceptible to deportation as early as March 6, 2018.

Is there a grace period for DACA recipients with EADs that will soon expire to make appropriate plans to leave the country?

As noted above, once an individual's DACA and EAD expire - unless in the limited class of beneficiaries above - the individual is no longer considered lawfully present in the United States and is not authorized to work. No person should lose DACA benefits prior to March 5, 2018 if they properly file a renewal request and associated application for employment authorization.

Will DACA recipients still be able to travel outside the U.S. while their DACA is valid?

Effective September 5, 2017, USCIS will no longer approve any new Form I-131 application for advance parole under standards associated with the DACA program. Those with a current advance parole validity period from a previously-approved advance parole application will generally retain the benefit until it expires.

For additional information on how the recent Rescission of DACA may affect your organization or employees, please contact [Daniel W. Oldenburg](#), who specializes in Employment Immigration Law, or any other member of Cline Williams' Labor and Employment Section:

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