

PENN STATE LAW

DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA) COMMUNITY WORKSHOP

Presented by the Center for Immigrants' Rights and the
Pennsylvania Immigration Resource Center (PIRC)

Thursday March 21, 2013

6:00 p.m. - 7:30 p.m.

Pasquerilla Spiritual Center, Room 107

- Learn how young people without legal status can avoid deportation and potentially receive work authorization.
- Understand the eligibility requirements, application process, and potential risks of DACA.
- DACA helps people study and work with dignity.

Food will be provided.

Directions can be found at: <http://studentaffairs.psu.edu/spiritual/directions.shtml>

Parking is available at the Nittany Lion Inn Parking Deck.
Closest CATA stop: Pavillion Theatre

Additional resources can be found at: <http://law.psu.edu/immigrants>,
www.pirclaw.org and www.uscis.gov

Co-Sponsored by: The Latino Caucus, The Chinese Students and Scholars Association,
The APA Caucus, and The Graduate Student Association

Deferred Action for Childhood Arrivals (DACA) Community Education Workshop

Presented on behalf of PIRC

March 21, 2013



The Pennsylvania Immigration Resource Center (PIRC)

- PIRC is a non-profit legal services organization in York, PA founded in the aftermath of the Golden Venture catastrophe.
- PIRC provides immigrants with legal and educational services which include a Legal Orientation Program, representation for immigrant victims of domestic violence, and more.



The Center for Immigrants' Rights

- The Center is an immigration clinic where students, supervised by Professor Shoba Sivaprasad Wadhia, produce legal policy work of national impact on behalf of its institutional clients like PIRC, the American Bar Association, and the Centre County Women's Resource Center.
- The Center trains students to understand immigration law, policy, politics, and the relationships between them.

Disclaimer:

- This is **not** a legal clinic.
- Even though Deferred Action for Childhood Arrivals (DACA) was established 9 months ago, USCIS guidance about DACA is continually evolving.

Purpose and Goals of the Workshop

- Demystify assumptions and myths surrounding Deferred Action for Childhood Arrivals (DACA).
- Educate students and community members about DACA, its benefits, and its limits.







Workshop Outline

- I. The History and Development of DACA
- II. DACA Requirements
- III. The Application Process

I. The History and Development of DACA

Government Administration of DACA

June 15, 2012, DHS Secretary Janet Napolitano issued a memo to USCIS, CBP, and ICE creating DACA



What is Deferred Action (DA)?

*A decision to **defer removal** of an individual is an act of prosecutorial discretion.*

- Prosecutorial discretion (PD) is a decision by an executive agency to enforce or not enforce the law against an individual.
- PD and DA do not confer permanent lawful status.
 - It is a period of authorized stay.
- DA can be terminated at any time at the discretion of DHS.
- Like deferred action, DACA is a form of PD.

A Brief History of Deferred Action and DACA

- Executive agencies have always exercised some discretion in choosing who to enforce the law against.
 - Reasons:
 - Economic
 - Humanitarian
- After the DREAM Act failed, key stakeholders channeled their advocacy towards an administrative solution for protecting Dreamers.



II. DACA Requirements

DACA Requirements

1. Must be **at least 15** years old to apply (in most cases);
2. Were **under** the age of **31** as of June 15, 2012;
3. Came to the U.S. **before your 16th birthday**;
4. Have **continuously resided** in the U.S. since June 15, 2007, until the present time;
5. Were **physically present** in the U.S. on June 15, 2012, and at the time of filing your request for DACA

Source: uscis.gov/childhoodarrivals

DACA Requirements (cont.)

6. Entered **without inspection** before June 15, 2012, or your lawful immigration **status expired** as of June 15, 2012;
7. Are **currently** in **school**, have graduated from high school, have obtained a general education development (GED) certificate, or are an honorably discharged veteran;
8. Have **not** been **convicted** of a felony offense, a significant misdemeanor offense, three or more other misdemeanor offenses, or do not otherwise pose a threat to national security or public safety

Source: uscis.gov/childhoodarrivals



Continuously resided in the U.S. since June 15, 2007, until now

Entered without inspection before June 15, 2012, or your lawful immigration status expired as of June 15, 2012



Came to the U.S. before your 16th Birthday

Physically present in the U.S. on June 15, 2012, and at the time of DACA filing



Currently enrolled in or graduated from school



Under the age of 31 as of June 15, 2012



Not been convicted of a felony offense or significant misdemeanor



What are the Benefits of DACA?

What DACA does NOT Provide

- DHS will defer removal of a successful DACA applicant.
- After two years, successful applicants can reapply.
- Individuals granted DACA may qualify for employment authorization.

- Does not confer legal status.
- It is not a visa.
- Does not extend to family members of any kind.
- It does not provide a path to permanent residency.
- It is not a path to citizenship.

Miscellaneous Benefits of DACA

■ Driver's License

- Pennsylvania and 34 other states have issued driver's licenses to successful DACA applicants who have received work authorization.

■ In-State Tuition

- Pennsylvania does not offer in-state tuition to successful DACA applicants, but some states offer in-state tuition.

■ Health Care

- Successful DACA applicants do **NOT** qualify for any additional medical care such as Medicare or medical care provided by the Affordable Care Act.

Risks of Applying for DACA

- USCIS policy indicates that a Notice to Appear (NTA) will be issued in response to criminal conduct, fraud, or a threat to national security or public safety.
 - This is also a form of prosecutorial discretion.
- USCIS does **not** typically share any information provided by an applicant with ICE that will be used for enforcement purposes.
- However despite the memoranda, USCIS retains the ability to technically issue an NTA if the applicant is in violation of U.S. immigration law.
- When an NTA is filed with an immigration court, removal proceedings are commenced.



Continuously resided in the U.S. since June 15, 2007, until now

Entered without inspection before June 15, 2012, or your lawful immigration status expired as of June 15, 2012



Came to the U.S. before your 16th Birthday

Physically present in the U.S. on June 15, 2012, and at the time of DACA filing



Currently enrolled in or graduated from school



Under the age of 31 as of June 15, 2012



Not been convicted of a felony offense or significant misdemeanor



Examples of Types of Evidence

■ Primary Evidence:

- A high school transcript is primary evidence that an individual is “currently in school” because it directly shows that enrollment.

■ Circumstantial Evidence:

- A high school transcript is circumstantial evidence that an individual resided in the U.S. during the summer months because USCIS would have to infer that the individual remained in the country over the summer.

■ Affidavits:

- A voluntary, sworn, and written statement attesting that a high school student resided in the U.S. during the summer months is an example of an affidavit.

Applicants must be under the age of 31 as of June 15, 2012

- If a DACA applicant was not under the age of 31 as of June 15, 2012, he/she is not eligible for DACA.
- There are no exceptions.
- A DACA applicant must be at least **15 years** old to apply, **unless** in removal proceedings, subject to voluntary departure, or subject to a final order of removal.



Applicants must have come to the U.S. before turning 16



- DACA is only for individuals who entered the U.S. before the age of 16 years old.
- If a person entered the U.S. at age 16 or older, he/she is not eligible to apply for DACA.
- Individuals who entered at age 16 or older will need to find a different solution in existing law or wait until U.S. immigration laws change.

Applicants must have continuously resided in the U.S.

- An applicant must show that he/she "more likely than not" has continuously resided in the U.S. since June 15, 2007.
- Continuous residence requirement does **not** require uninterrupted physical presence for five years.
- Pay stubs, home electric and gas bills are helpful to show continuous residence.



The “physical presence” requirement

- An applicant must show that he/she was **physically present** in the U.S. on June 15, 2012.
- Rent, utility bills, credit card statements, and pay stubs are helpful to show “physical presence.”



Unlawful Status Requirement

- Applicants must show that they entered the U.S. without being inspected by border officials **or** that their lawful immigration status expired as of June 15, 2012.



The Education Requirement



- An applicant who has graduated from high school or obtained a GED meets this requirement.
- An applicant may be considered to be “in school” if enrolled in elementary, middle, or high school, GED classes, certain English as a second language classes, literacy classes, or job training.
- To be considered “currently in school”, an applicant must be enrolled in school on the date he/she submits a request for DACA.

Disqualifying Crimes



- An individual will **not** be eligible for DACA if he/she has been convicted of a felony, a significant misdemeanor, or three or more non-significant misdemeanors unless DHS determines there are “exceptional circumstances.”
- If a person has had any arrests, charges, or convictions, he/she will need to obtain a copy of any court dispositions.

Disqualifying Crimes (cont.)

- An individual has committed a **felony** if he/she was convicted of a crime that is punishable by a maximum term of imprisonment (TI) of **one year or more**.

Significant Misdemeanors

Non-significant Misdemeanors

- Any of the following are a categorical bar to DACA regardless of sentence imposed:
 - Burglary
 - Domestic violence
 - Sexual abuse or exploitation
 - Unlawful possession of a firearm
 - Drug trafficking or distribution
 - Driving under the influence (DUI)
- Furthermore, other crimes can be significant misdemeanors if they have a maximum term of imprisonment of one year or less but more than five days, and
- The sentence must include time served in custody of **more than 90 days**.

- An individual with **three or more** non-significant misdemeanors is ineligible for DACA.
- Non-significant misdemeanors also have a maximum term of imprisonment of one year or less but more than five days, and
- The must sentence include time served in custody of **90 days or less**.

Threats to Public Safety or National Security

- An individual will not be eligible for DACA if determined to be a threat to public safety or national security unless DHS determines that there are “exceptional circumstances.”
- Individuals could be deemed a public safety or national security threat if they participate in gang activities, criminal activities, or activities that threaten the U.S.

Will an applicant be permitted to travel?



- While an application is **pending**, an applicant may not travel.
- **After** an applicant has been approved for DACA, he/she may apply for a travel document.
- An applicant may travel outside the U.S. **only after** he/she has received his/her travel document.
- A successful applicant **may** be able to travel outside of the country, even if he/she accrued 6 months of unlawful presence or more at the time his/her DACA application is approved. Applicants should consult an attorney before doing so.

Documents to Prove Eligibility:

- Birth certificate
- Passport – passport entries, I-94/I-95/I-94W
- School records (i.e. report cards, transcripts)
- GED certificate or High school diploma
- Employment records
- Rent receipts, utility bills
- Financial records, taxes, bank transactions, mortgage
- Medical records
- Court disposition, if needed
- Official records from a religious entity
- *See I-821D Instructions for more suggestions*

Is Rebecca eligible for DACA?

- Rebecca is 19 years old and came to the U.S. in 1997 with her mother without documentation or inspection.
- She first lived in Texas until 2005, but has lived in Harrisburg since 2005.
- She visited Mexico on two occasions in 2008 to visit her ailing father, and each trip lasted one week.
- Since 2011 she has been working at a local dog grooming spa, but dreams of going to veterinary school.
- After graduating high school, Rebecca started taking classes at a local community college.
- She has two speeding tickets.



Is Rebecca still eligible for DACA?

- All the same facts as the previous slide.
- Instead of traveling to Mexico on two occasions for one week each, Rebecca visited her grandfather in Mexico on one occasion for 6 months in 2009 and then returned to the U.S.



Is Hong eligible for DACA?

- Hong is 22 years old, came to the U.S. in 2005 on a visitor's visa, fell in love with American hip-hop culture, decided to overstay his visa and become the next big hip-hop artist.
- He has lived in Los Angeles since coming to the U.S.
- Hong is a DJ and works at several night clubs.
- He is not a high school graduate, but after hearing about DACA, he enrolled in a qualifying GED program.
- After having a few drinks after work with MC Hammer, he was driving home and was pulled over by the police which lead to a DUI conviction.
- Hong has had no other contacts with the law.



III. The Application Process

DACA Application Process

- *First* - determine applicant eligibility for DACA.
- *Second – To apply –*
 - Complete the I-821D Consideration of Deferred Action for Childhood Arrivals **and** I-765/I-765WS application for Work Authorization (translated documents are also available);
 - Attach all necessary documents including the fee;
 - Attach a check or money order to the applications;
 - Mail the applications to the correct USCIS Service Center.
- These applications can be downloaded for free from the USCIS web site: www.uscis.gov. (Do not pay anyone for the application forms!)

Can someone apply if they are in detention, are in removal proceedings, have a voluntary departure order, or have a final order of removal?

- If someone is in **detention** and thinks they are eligible for DACA, they should identify themselves to their detention officer or contact the ICE Office of the Public Advocate so that ICE may review their case.
- If someone is in **removal proceedings, has a voluntary departure order, or has a final order of removal** and thinks they are eligible for DACA, they should submit their application to USCIS.

The Fees:



- There is no fee for the DACA application.
- The application fee for a work card is **\$380** plus a biometrics fee of **\$85**.
- The total fee is **\$465**.
- *These applications must be filed together or both applications will be rejected!*
- There is no fee waiver, but there is a fee exemption in very limited cases.

After the DACA application is filed

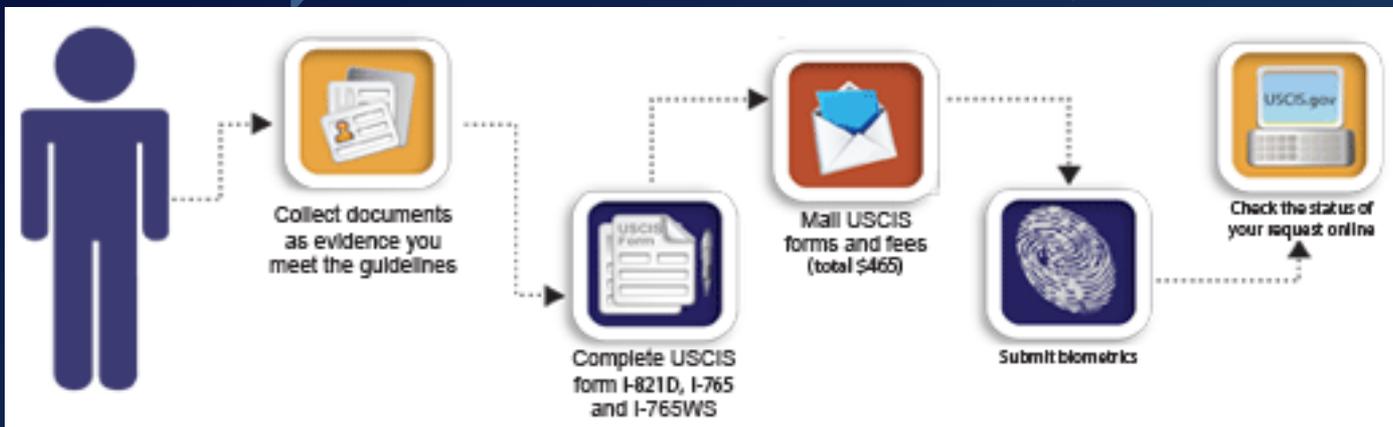
File the application

Receive receipt notice from USCIS

Schedule biometrics appointment

Review Application

Decision made on Request



After the DACA application is filed:

■ USCIS will:

- 1) Send a receipt notice for each application.
- 2) Schedule a biometrics appointment at the York Application Support Center.
- 3) Review the application to determine if additional documents are needed. If more documents are needed, the applicant will be sent a letter.
- 4) Make a decision on the request.

DACA Current Statistics

245,493 DACA Applications Approved

INTAKE Numbers	
Accepted	453,589
Rejected	15,941

Average Intakes Per Day	
Monthly average	3,261 per day
March	1,678 per day

DACA Current Statistics Cont..

Top 10 Countries of Origin	Received to Date
Mexico	338,334
El Salvador	18,449
Honduras	12,183
Guatemala	11,395
Peru	6,495
South Korea	5,599
Brazil	5,487
Colombia	4,875
Ecuador	4,733
Philippines	3,241

Top 10 States of Residence	Received to Date
California	128,412
Texas	73,258
New York	25,735
Illinois	23,602
Florida	20,245
North Carolina	16,554
Arizona	16,009
Georgia	14,861
New Jersey	14,050
Colorado	9,658

If an Application is Approved:

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-797, Notice of Action

THE UNITED STATES OF AMERICA

RECEIPT NUMBER [REDACTED]	CASE TYPE I821 /I-821D	
RECEIPT DATE August 29, 2012	PRIORITY DATE [REDACTED]	APPLICANT [REDACTED]
NOTICE DATE October 12, 2012	PAGE 1 of 1	
[REDACTED]		Notice Type: Approval Notice Valid from 10/12/2012 to 10/11/2014

Notice of Deferred Action:

This notice is to inform you regarding U.S. Citizenship and Immigration Services's (USCIS) decision on your Form I-821D, Consideration of Deferred Action for Childhood Arrivals.

USCIS, in the exercise of its prosecutorial discretion, has decided to defer action in your case. Deferred action is an exercise of prosecutorial discretion by USCIS not to pursue the removal of an individual from the United States for a specific period. Deferred action does not confer or alter any immigration status.

Unless terminated, this decision to defer removal action will remain in effect for 2 years from the date of this notice.

This form does not constitute employment authorization, nor may it be used in place of an Employment Authorization Document. If granted, you will receive your Employment Authorization Document separately by mail. Subsequent criminal activity after your case has been deferred is likely to result in termination of your deferred action. This notice does not provide permission to travel outside of the United States.

You are required to notify USCIS if you change your address. You may use the Alien's Change of Address Card, form AR-11, to report a new address. That form may be found at www.uscis.gov. There is no fee for this change of address form.

NOTICE: USCIS and the U.S. Department of Homeland Security (DHS) reserve the right to verify the information submitted in this request and/or supporting documentation to ensure conformity with applicable laws, rules, regulations, and other authorities. Methods used for verifying information may include, but are not limited to, the review of public information and records, contact by correspondence, the internet, or telephone, and site inspections of businesses and residences. Information obtained during the course of the verification will be used to determine whether termination of deferred action and/or removal proceedings are appropriate if, for example, the requestor committed fraud or misrepresentation in his or her request for consideration of deferred action for childhood arrivals, or engaged in subsequent criminal activity following the submission of his or her request. Individuals for whom removal action is deferred under Deferred Action for Childhood Arrivals may, in the sole discretion of USCIS and DHS, be provided an opportunity to address derogatory information before deferred action is terminated and/or removal proceedings are initiated.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

IMMIGRATION & NATURALIZATION SERVICE
TEXAS SERVICE CENTER
P O BOX 851488 - DEPT A
MESQUITE TX 75185-1488
Customer Service Telephone: (800) 375-5283

Form I-797 (Rev. 01/31/05) N

U.S. DEPARTMENT OF HOMELAND SECURITY, U. S. Citizenship and Immigration Services

EMPLOYMENT AUTHORIZATION CARD

The person identified is authorized to work in the U.S. for the validity of this card.

NAME LAST, FIRST

Signature _____

Photo here

A# 123-456-789
CARD # ABC1234567890
Birthdate [REDACTED] Category AG3 Sex M
Country of Birth Burma
Terms and Conditions None

NOT VALID FOR REENTRY TO U.S.
CARD VALID FROM 07/09/08 EXPIRES 07/09/10

Source: dreamact.info and cwsrdu.files.wordpress.com

Denied Applications:

- There is **no** appeals process.
- Existing policy on whether or not to issue a Notice to Appear (before an Immigration Judge) will determine whether any action is taken against a denied applicant.
- Applicants who make any misrepresentations in their applications will be treated as an immigration enforcement priority.



Additional Resources

- U.S. Citizenship and Immigration Services (USCIS) Consideration of Deferred Action for Childhood Arrivals Process:
www.uscis.gov/childhoodarrivals
- American Immigration Lawyers Association: www.aila.org
- United We Dream: <http://unitedwedream.org/>
- Pennsylvania Immigration Resource Center (PIRC):
<http://www.pirclaw.org>
- Penn State Law's Center for Immigrants' Rights:
www.law.psu.edu/immigrants

Questions?

Thank you to all of our co-sponsors!



Thank you for attending the DACA community workshop!



Deferred Action for Childhood Arrivals (DACA)

Community Education Workshop

Presented by: Penn State Law's Center for Immigrants' Rights (CIR) and Pennsylvania Immigration Resource Center (PIRC)

What is DACA?

- On June 15, 2012, the Department of Homeland Security announced the Deferred Action for Childhood Arrival (DACA) program, which allows people who came to the U.S. as children to request Deferred Action (DA) and work authorization for a period of two years, if they meet specific eligibility requirements.



Eligibility Requirements

- Must be **at least 15** year old to apply (in most cases);
- Were **under** the age of **31** as of June 15, 2012;
- Came to the United States **before your 16th birthday**;
- Have **continuously resided** in the United States since June 15, 2007 until the present time;
- Were **physically present** in the United States on June 15, 2012 and at the time of filing your request for Deferred Action;
- Entered **without inspection before June 15, 2012** or your lawful immigration **status expired as of June 15, 2012**;
- Are **currently in school**, have **graduated** from high school, have obtained a **general education development (GED) certificate**, or are an honorably discharged veteran;
- Have **not been convicted** of a felony offense, a significant misdemeanor offense, three or more other misdemeanor offenses, or otherwise pose a threat to national security or public safety.

Source: uscis.gov/childhoodarrivals

Benefits

- DHS will defer removal against a successful DACA applicant;
- After two years, successful applicants can renew;
- Individuals granted DACA may qualify for employment authorization.

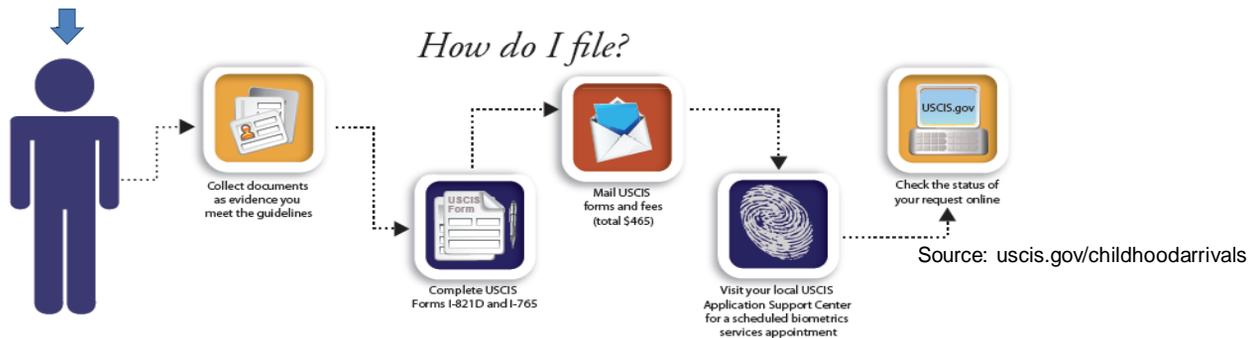
Limitations

- DACA does not confer legal status and it is not a visa;
- It does not extend to family members of any kind;
- It will not help you receive a green card and it is not a path to citizenship.

Documents to Complete to Apply

- Complete the I-821D Consideration of Deferred Action for Childhood Arrivals **and** I-765/I-765WS Application for Work Authorization (translated documents are also available);
- These applications can be downloaded for free from the USCIS website: www.uscis.gov.

DACA Application Process



Confidentiality Clause/ Risks of Applying

- USCIS will **not** share any information provided by an applicant with ICE that will be used for enforcement purposes, unless an applicant is an immigrant enforcement priority due to criminal conduct, fraud, or a threat to national security or public safety.

Fees to Apply for DACA

- There is no fee for the Consideration of Deferred Action for Childhood Arrival application.
- The application fee for a work card is **\$380** plus a biometrics fee of **\$85**.
- The total fee is **\$465**.
- These applications must be filed together or both applications will be rejected!*
- There is **no** fee waiver, but there is a fee exemption in very limited cases.

Additional Resources

- U.S. Citizenship and Immigration Services (USCIS) Consideration of Deferred Action for Childhood Arrivals Process: www.uscis.gov/childhoodarrivals
- American Immigration Lawyers Association: www.aila.org
- Pennsylvania Immigration Resource Center (PIRC): <http://www.pirclaw.org>
- Penn State Law's Center for Immigrants' Rights: www.law.psu.edu/immigrants

What is PIRC?

- PIRC is a non-profit legal services organization founded in the aftermath of the Golden Venture catastrophe.
- PIRC provides immigrants with legal and educational services.



What is the Center for Immigrants' Rights?

- The Center is an immigration clinic where students produce legal policy work of national impact on behalf of its institutional clients like PIRC, the American Bar Association and the Centre County Women's Resource Center.
- The Center trains students to understand immigration law, policy, politics, and the relationships between them.

PENN STATE LAW