

DACA Employment Authorization

On Aug. 30, 2022, the U.S. Department of Homeland Security (DHS) published a [final rule](#) to preserve the Deferred Action for Childhood Arrivals (DACA) policy. Specifically, the final rule defers the removal of qualifying noncitizens who came to the United States as children and **grants them the right to work**. Under the final rule, “deferred action” is defined as a temporary forbearance from removal procedures. Deferred action does not grant eligible individuals any rights or entitlement to stay within the United States. Under deferred action, DHS may initiate criminal or other enforcement action at any time.

The final rule codifies, rescinds and replaces the DACA policy and governs all current and future DACA grants and requests. In the final rule, DHS specifically states that “existing recipients need not request DACA anew under this new rule to retain their current DACA grants.”

The DACA final rule becomes effective on Oct. 31, 2022.

Background

In 2012, DHS adopted a new policy that authorized immigration and customs enforcement personnel to stay, at their discretion, the removal of young people who came to the United States as children. Under this policy, individuals who met the qualifying criteria and passed a background check were granted deferred action. DHS favored deferred action and considered it “a longstanding practice by which DHS has exercised its discretion to forbear from or assign lower priority to removal action in certain cases for humanitarian reasons, for reasons of administrative convenience or on the basis of other reasonable considerations involving the exercise of prosecutorial discretion.” Since 2012, more than 825,000 people have received deferred action under DACA.

On July 16, 2021, the U.S. District Court for the Southern District of Texas vacated the 2012 DACA policy, finding, among other things, that it violated the Immigration and Nationality Act of 1952. In response, on Sept. 28, 2021, DHS published a proposed rule to recommend regulations to preserve and fortify the DACA policy. This final rule implements the 2021 proposal with some amendments that take into consideration the public comments received on the proposal.

DACA Eligibility

To qualify for DACA, individuals must have:

- Come to the United States under the age of 16;
- Resided continuously in the United States from June 15, 2007, to the time of filing of the request;
- Been physically present in the United States on both June 15, 2012, and at the time of filing the DACA request;
- Not been in a lawful immigration status on June 15, 2012, as well as at the time of request;
- Graduated or obtained a certificate of completion from high school, obtained a GED certificate, currently be enrolled in school, or be an honorably discharged veteran of the Coast Guard or Armed Forces of the United States;
- Not been convicted of a felony, a misdemeanor described in the rule, or three or more other misdemeanors 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; and
- Been born on or after June 16, 1981, and be at least 15 years of age at the time of filing, unless the requestor is in removal proceedings or has a final order of removal or a voluntary departure order.

Deferred action under DACA will be granted only if DHS determines in its sole discretion that the requestor meets the threshold criteria and otherwise merits a favorable exercise of discretion.

Under the final rule, expunged convictions, juvenile delinquency adjudications, and immigration-related offenses characterized as felonies or misdemeanors under state laws are not automatic disqualifications.

Employment Authorization

DACA recipients are considered to be lawfully present in the United States. This designation does not grant “lawful status” or authorization to remain in the United States but does allow DACA recipients to remain in the United States without accruing “unlawful presence.”

The DACA final rule also creates a specific regulatory provision regarding eligibility for employment authorization for eligible individuals. Under this provision, DACA recipients must have been granted deferred action and must establish an economic need to be eligible for employment authorization.

DACA employment authorization automatically terminates when DACA expires.