



September 5, 2017

**Special Immigration Alert:**

**Trump Administration Rescinds DACA Program**

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On September 5, 2017, the U.S. Department of Homeland Security (“DHS”) announced that it was rescinding the Deferred Action for Childhood Arrivals (“DACA”) program.

The DACA program was established by an executive order issued by President Barack Obama on June 15, 2012, after repeated efforts to secure legislation preserving the rights of “Dreamers” to remain in this country had failed. The Dreamers covered by DACA are those foreign nationals who were brought to this country as children by their undocumented parents. Under DACA, these Dreamers were permitted to remain in this country and secure employment authorization indefinitely.

Following DACA, on November 20, 2014, the Obama administration issued a second executive order entitled “Deferred Action for Parents of Americans and Lawful Permanent Residents (“DAPA”), which expanded the categories of foreign nationals who were in this country illegally but who would be allowed to remain and work. Prior to the implementation of DAPA, however, 26 states—led by Texas—sued to enjoin its enforcement and a federal district court in Texas issued a preliminary injunction preventing enforcement of the DAPA program on the grounds that, among other things, the president had exceeded his constitutional authority. Subsequently, the U.S. Court of Appeals for the Fifth Circuit affirmed the lower court’s order and the U.S. Supreme Court split evenly, effectively leaving the Fifth Circuit’s decision in place.

In its announcement terminating the DACA program, DHS indicated that Texas planned to revive its suit against DAPA by adding, and seeking to enjoin, DACA, and the government did not feel that it would prevail, given the litigation history. Under these circumstances, the Trump administration elected for an “orderly” wind-down of DACA that would allow Congress to act.

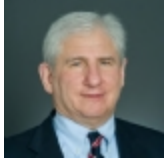
Under its September 5, 2017, announcement, DHS outlined how the termination of DACA would be handled:

1. DHS will continue to adjudicate, on a case-by-case basis, all properly filed and pending initial DACA applications and associated applications for employment authorization documents (“EADs”).
2. DHS will reject any new DACA applications and associated applications for EADs filed after September 5, 2017.
3. DHS will adjudicate, on a case-by-case basis, all properly filed and pending DACA renewal requests and associated applications for EADs from current beneficiaries that have been accepted for processing by DHS on or before September 5, 2017, as well as such requests and applications from current beneficiaries whose benefits will expire between September 5, 2017 and March 5, 2018, that are filed and accepted by DHS on or before October 5, 2017.
4. DHS will reject any DACA renewal requests and associated applications for EADs filed outside of the dates in paragraph 3 above.
5. DHS will not terminate the grants of previously issued deferred action or revoke EADs based solely on the termination of the DACA program.
6. DHS will not approve any new Form I-131 applications for advance parole under the DACA program but generally will honor previously approved applications for advance parole, subject to the discretion that U.S. Customs and Border Protection has always had regarding the admission of foreign nationals seeking to enter the United States under advance parole.
7. DHS will administratively close all pending Form I-131 applications for advance parole under the DACA program and refund all fees.
8. DHS will continue to exercise discretionary authority to terminate or deny deferred action if immigration officials determine that action is appropriate.

In effect, the Trump administration’s announcement leaves DACA in effect until March 5, 2018, giving Congress time to pass legislation. In the meantime, DACA recipients need to adhere strictly to the timelines and other limitations contained in the DHS announcement, as well as follow developments closely. A copy of the DHS announcement and related materials regarding termination of the DACA program are available on the U.S. Citizenship and Immigration Services website at <https://www.uscis.gov/daca2017>.

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