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## Humanitarian

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## Frequently Asked Questions

**Please note:** The questions and answers on this page will take effect on February 18, 2015, when expanded DACA becomes available. On that date, these frequently asked questions will replace the FAQs that are currently in effect.

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## I. General Information for All Requestors

## A. What is Deferred Action for Childhood Arrivals?

Over the past several years, this Administration has undertaken an unprecedented effort to transform the immigration enforcement system into one that focuses on national security, public safety, border security and the integrity of the immigration system. As the Department of Homeland Security (DHS) continues to focus its enforcement resources on the removal of individuals who pose a danger to national security or a risk to public safety, DHS will exercise prosecutorial discretion as appropriate to ensure that enforcement resources are not expended on low priority cases, such as individuals who came to the United States as children and meet other key guidelines. Individuals who demonstrate that they meet the guidelines below may request consideration of deferred action for childhood arrivals (DACA) for a period of three years, subject to renewal for a period of three years, and may be eligible for employment authorization. Your request for DACA will be considered on a case-by-case basis and may be granted or denied at the agency's discretion.

DACA was initially announced on June 15, 2012 via a memorandum from then-Secretary of Homeland Security Janet Napolitano. On November 20, 2014, current-Secretary of Homeland Security Jeh Johnson issued a memorandum expanding guidelines for DACA in several key ways. **Note, however, that the expanded DACA guidelines do not become effective until February 18, 2015.**

Until the new guidelines go into effect on February 18, 2015, individuals may request DACA under the existing guidelines under the June 15, 2012 Napolitano memorandum.

Guidance on the expanded DACA guidelines under the November 20, 2014 memorandum is outlined below.

Beginning on February 18, 2015, you may request consideration for deferred action under DACA if you:

1. Came to the United States before reaching your 16th birthday;
2. Have continuously resided in the United States since January 1, 2010, up to the present time;
3. Were physically present in the United States on June 15, 2012, and at the time of making your request for consideration of deferred action with USCIS;
4. Had no lawful status on June 15, 2012, meaning that:
  - You never had a lawful immigration status on or before June 15, 2012, or
  - Any lawful immigration status or parole that you obtained prior to June 15, 2012, had expired as of June 15, 2012.
5. Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a General Educational Development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
6. Have not been convicted of a felony, a significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

**Individuals can call U.S. Citizenship and Immigration Services (USCIS) at 1-800-375-5283 with questions or to request more information on DACA.** Those with pending requests can also use a number of [online self-help tools](#) which include the ability to check case status and processing times, change your address, and send an inquiry about a case pending longer than posted processing times or non-delivery of a card or document.

**Q1: What is deferred action?**

A1: Deferred action is a discretionary determination to defer a removal action of an individual as an act of prosecutorial discretion. For purposes of future inadmissibility based upon **unlawful presence**, an individual whose case has been deferred is not considered to be unlawfully present during the period in which deferred action is in effect. An individual who has received deferred action is authorized by DHS to be present in the United States, and is therefore considered by DHS to be lawfully present during the period deferred action is in effect. However, deferred action does not confer **lawful status** upon an individual, nor does it excuse any previous or subsequent periods of unlawful presence.

Under existing regulations, an individual whose case has been deferred is eligible to receive employment authorization for the period of deferred action, provided he or she can demonstrate "an economic necessity for employment." DHS can terminate or renew deferred action at any time, at the agency's discretion.

**Q2: What is DACA?**

A2: On June 15, 2012, then-Secretary of Homeland Security Janet Napolitano issued a memorandum that provided that certain people who came to the United States as children and meet several key guidelines may request consideration of deferred action, subject to renewal, and would then be eligible for work authorization. On November 20, 2014, Secretary of Homeland Security Jeh Johnson supplemented and expanded that guidance. **This supplemented and expanded guidance on DACA becomes effective on February 18, 2015.**

Individuals who can demonstrate through verifiable documentation that they meet these guidelines will be considered for a discretionary grant of deferred action. Determinations will be made on a case-by-case basis under the DACA guidelines.

**Q3: Is there any difference between "deferred action" and DACA under this process?**

A3: DACA is one form of deferred action. The relief an individual receives under DACA is identical for immigration purposes to the relief obtained by any person who receives deferred action as an act of prosecutorial discretion.

**Q4: If my removal is deferred under the consideration of DACA, am I eligible for employment authorization?**

A4: Yes. Under existing regulations, if your case is deferred, you may obtain employment authorization from USCIS provided you can demonstrate an economic necessity for employment.

**Q5: If my case is deferred, am I in lawful status for the period of deferral?**

A5: No. Although action on your case has been deferred and you do not accrue unlawful presence (for admissibility purposes) during the period of deferred action, deferred action does not confer any lawful status.

The fact that you are not accruing unlawful presence does not change whether you are in lawful status while you remain in the United States. However, although deferred action does not confer a lawful immigration status, your period of stay is authorized by the Department of Homeland Security while your deferred action is in effect and, for admissibility purposes, you are considered to be lawfully present in the United States during that time. **Individuals granted deferred action are not precluded by federal law from establishing domicile in the U.S.**

Apart from the immigration laws, "lawful presence," "lawful status," and similar terms are used in various other federal and state laws. For information on how those laws affect individuals who receive a favorable exercise of prosecutorial discretion under DACA, please contact the appropriate federal, state or local authorities.

**Q6: Can I renew my initial period of deferred action and employment authorization under DACA?**

A6: Yes. You may request consideration for a renewal of your DACA. Your request for a renewal will be considered on a case-by-case basis. If USCIS renews its exercise of discretion under DACA for your case, you will receive deferred action for three years, and if you demonstrate an economic necessity for employment, you may receive employment authorization throughout that period.

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## B. DACA Process

**Q7: How do I request consideration of DACA?**

A7: To request consideration of DACA (either as an initial request or to request a renewal), you must submit [Form I-821D, Consideration of Deferred Action for Childhood Arrivals](#) to USCIS. Please visit [www.uscis.gov/i-821d](http://www.uscis.gov/i-821d) before you begin the process to make sure you are using the most current version of the form available. This form must be completed, properly signed and accompanied by a [Form I-765, Application for Employment Authorization](#), and a [Form I-765WS, Worksheet](#), establishing your economic need for employment. If you fail to submit a completed Form I-765 (along with the accompanying filing fees for that form, totaling \$465), USCIS will not consider your request for deferred action. Please read the form instructions to ensure that you answer the appropriate questions (determined by whether you are submitting an initial or renewal request) and that you submit all the required documentation to support your initial request.

You must file your request for consideration of DACA at the USCIS Lockbox. You can find the mailing address and instructions at [www.uscis.gov/i-821d](http://www.uscis.gov/i-821d).

**NOTE: On February 18, 2015, USCIS will begin accepting a new version of Form I-821D form. USCIS will accept the edition dated 6/04/14 until April 20, 2015. After April 20, 2015, USCIS will accept only the new Form I-821D. The new version is very similar to the previous version of Form I-821D. It is revised to reflect the expanded guidelines. While USCIS will not accept requests for DACA under the new guidelines until February 18, 2015, individuals can begin to prepare their requests by**

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**gathering relevant evidence as described on the current form at [www.uscis.gov/i-821d](http://www.uscis.gov/i-821d).**

After your Form I-821D, Form I-765, and Form I-765 Worksheet have been received, USCIS will review them for completeness, including submission of the required fee, initial evidence and supporting documents (for initial filings).

If it is determined that the request is complete, USCIS will send you a receipt notice. USCIS will then send you an appointment notice to visit an Application Support Center (ASC) for biometric services, if an appointment is required. Please make sure you read and follow the directions in the notice. Failure to attend your biometrics appointment may delay processing of your request for consideration of deferred action, or may result in a denial of your request. You may also choose to receive an email and/or text message notifying you that your form has been accepted by completing a [Form G-1145, E-Notification of Application/Petition Acceptance](#).

Each request for consideration of DACA will be reviewed on an individual, case-by-case basis. USCIS may request more information or evidence from you, or request that you appear at a USCIS office for an in-person interview. USCIS will notify you of its determination in writing.

**Note:** All individuals who believe they meet the guidelines, including those in removal proceedings, with a final removal order, or with a voluntary departure order (and not in immigration detention), may affirmatively request consideration of DACA from USCIS through this process. Individuals who are currently in immigration detention and believe they meet the guidelines may not request consideration of deferred action from USCIS but may identify themselves to their case officer. If the case officer is unavailable, such individuals may contact the ICE Detention Reporting and Information Line at 1-888-351-4024 (staffed 8 a.m. – 8 p.m., Monday – Friday) or submit an email to [ERO.INFO@ice.dhs.gov](mailto:ERO.INFO@ice.dhs.gov) and the appropriate action will be taken in a timely manner. For more information visit ICE's website at [www.ice.gov/daca](http://www.ice.gov/daca).

**Q8: Can I obtain a fee waiver or fee exemption for this process?**

A8: There are no fee waivers available for employment authorization applications connected to DACA. There are very limited fee exemptions available. Requests for fee exemptions must be filed and favorably adjudicated before an individual files his/her request for consideration of DACA without a fee. In order to be considered for a fee exemption, you must submit a letter and supporting documentation to USCIS demonstrating that you meet one of the following conditions:

- You are under 18 years of age, have an income that is less than 150 percent of the U.S. poverty level, and are in foster care or otherwise lacking any parental or other familial support; or
- You are under 18 years of age and homeless; or
- You cannot care for yourself because you suffer from a serious, chronic disability and your income is less than 150 percent of the U.S. poverty level; or
- You have, at the time of the request, accumulated **\$10,000** or more in debt in the past 12 months as a result of unreimbursed medical expenses for yourself or an immediate family member, and your income is less than 150 percent of the U.S. poverty level.

You can find additional information on our [Fee Exemption Guidance](#) Web page. Your request must be submitted and decided before you submit a request for consideration of DACA without a fee. In order to be considered for a fee exemption, you must provide documentary evidence to demonstrate that you meet any of the above conditions at the time that you make the request. For evidence, USCIS will:

- Accept affidavits from community-based or religious organizations to establish a requestor's homelessness or lack of parental or other familial financial support.
- Accept copies of tax returns, bank statement, pay stubs, or other reliable evidence of income level. Evidence can also include an affidavit from the applicant or a responsible third party attesting that the applicant does not file tax returns, has no bank accounts, and/or has no income to prove income level.
- Accept copies of medical records, insurance records, bank statements, or other reliable evidence of unreimbursed medical expenses of at least **\$10,000**.
- Address factual questions through Requests for Evidence (RFEs).

**Q9: If individuals meet the guidelines for consideration of DACA and are encountered by U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE), will they be placed into removal proceedings?**

A9: DACA is intended, in part, to allow CBP and ICE to focus on priority cases. Under the direction of the Secretary of Homeland Security, if an individual meets the guidelines for DACA, CBP or ICE may exercise their discretion on a case-by-case basis to prevent qualifying individuals from being apprehended, placed into removal proceedings, or removed. If individuals believe that, in light of this policy, they should not have been apprehended or placed into removal proceedings, contact the ICE Enforcement and Removal Operations Detention Reporting and Information Line, toll free, at 1-888-351-4024. **Q10: Does this process apply to me if I am currently in removal proceedings, have a final removal order, or have a voluntary departure order?**

A10: This process is open to any individual who can demonstrate he or she meets the guidelines for consideration, including those who have never been in removal proceedings as well as those in removal proceedings, with a final order, or with a voluntary departure order (as long as they are not in immigration detention).

**Q11: If I am not in removal proceedings but believe I meet the guidelines for consideration of DACA, should I seek to place myself into removal proceedings through encounters with CBP or ICE?**

A11: No. If you are not in removal proceedings but believe that you meet the guidelines, you should submit your DACA request to USCIS under the process outlined below.

**Q12: Can I request consideration of DACA from USCIS if I am in immigration detention under the custody of ICE?**

A12: No. If you are currently in immigration detention, you may not request consideration of DACA from USCIS. If you think you may meet the guidelines of this process, you should identify yourself to your case officer. If the case officer is unavailable, such individuals

may contact the ICE Detention Reporting and Information Line at 1-888-351-4024 (staffed 8 a.m. – 8 p.m., Monday – Friday) or submit an email to [ERO.INFO@ice.dhs.gov](mailto:ERO.INFO@ice.dhs.gov) and the appropriate action will be taken in a timely manner. For more information visit ICE's website at [www.ice.gov/daca](http://www.ice.gov/daca). You may also contact the ICE Field Office Director. For more information, visit ICE's website at [www.ice.gov/daca](http://www.ice.gov/daca).

**Q13: If I am about to be removed by ICE and believe that I meet the guidelines for consideration of DACA, what steps should I take to seek review of my case before removal?**

A13: If you believe you can demonstrate that you meet the guidelines and are about to be removed, you should immediately contact the ICE Enforcement and Removal Operations Detention Reporting and Information Line, toll free, at 1-888-351-4024.

**Q14: What should I do if I meet the guidelines of this process and have been issued an ICE detainer following an arrest by a state or local law enforcement officer?**

A14: If you meet the guidelines and have been served a detainer, you should immediately contact the Law Enforcement Support Center's hotline at 1-855-448-6903 (staffed 24 hours a day, 7 days a week).

**Q15: If I accepted an offer of administrative closure or my case was terminated as part of the case-by-case review process, can I be considered for deferred action under this process?**

A15: Yes. If you can demonstrate that you meet the guidelines, you will be able to request consideration of DACA even if you have accepted an offer of administrative closure or termination.

**Q16: If I declined an offer of administrative closure, can I be considered for deferred action under this process?**

A16: Yes. If you can demonstrate that you meet the guidelines, you will be able to request consideration of DACA even if you declined an offer of administrative closure offered by ICE's Office of the Principal Legal Advisor (OPLA).

**Q17: If my case was reviewed by OPLA but I was not offered administrative closure, can I be considered for deferred action under this process?**

A17: Yes. If you can demonstrate that you meet the guidelines, you will be able to request consideration of DACA even if you were not offered administrative closure following review of your case.

**Q18: Can I request consideration of DACA under this process if I am currently in a nonimmigrant status (e.g. F-1, E-2, H-4) or have Temporary Protected Status (TPS)?**

A18: No. You can only request consideration of DACA under this process if you currently have no immigration status and were not in any lawful status on June 15, 2012. Note: For purposes of DACA, Temporary Protected Status is considered a lawful status.

**Q19: Will the information I share in my request for consideration of DACA be used for immigration enforcement purposes?**

A19: Information provided in this request is protected from disclosure to ICE and CBP for the purpose of immigration enforcement proceedings unless the requestor meets the criteria for the issuance of a Notice To Appear or a referral to ICE under the criteria set forth in USCIS' Notice to Appear guidance ([www.uscis.gov/NTA](http://www.uscis.gov/NTA)). Individuals whose cases are deferred pursuant to DACA will not be referred to ICE. The information may be shared with national security and law enforcement agencies, including ICE and CBP, for purposes other than removal, including for assistance in the consideration of DACA, to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense. The above information sharing policy covers family members and guardians, in addition to the requestor. This policy, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable by law by any party in any administrative, civil, or criminal matter.

**Q20: If my case is referred to ICE for immigration enforcement purposes or if I receive an NTA, will information related to my family members and guardians also be referred to ICE for immigration enforcement purposes?**

A20: If your case is referred to ICE for purposes of immigration enforcement or you receive a Notice to Appear (NTA), information related to your family members or guardians that is contained in your request will not be referred to ICE for purposes of immigration enforcement against family members or guardians. However, that information may be shared with national security and law enforcement agencies, including ICE and CBP, for purposes other than removal, including for assistance in the consideration of DACA, to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense.

This policy, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

**Q21: Will USCIS verify documents or statements that I provide in support of a request for DACA?**

A21: USCIS has the authority to verify documents, facts, and statements that are provided in support of requests for DACA. USCIS may contact educational institutions, other government agencies, employers, or other entities in order to verify information.

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## C. Background Checks

**Q22: Will USCIS conduct a background check when reviewing my request for consideration of DACA?**

A22: Yes. You must undergo biographic and biometric background checks before USCIS will consider your DACA request.

**Q23: What do background checks involve?**

A23: Background checks involve checking biographic and biometric information provided by the individuals against a variety of databases maintained by DHS and other federal government agencies.

**Q24: What steps will USCIS and ICE take if I engage in fraud through the new process?**

A24: If you knowingly make a misrepresentation or knowingly fail to disclose facts in an effort to obtain DACA or work authorization

through this process, you will be treated as an immigration enforcement priority to the fullest extent permitted by law, and be subject to criminal prosecution and/or removal from the United States.

#### D. After USCIS Makes a Decision

##### **Q25: Can I appeal USCIS' determination?**

A25: No. You cannot file a motion to reopen or reconsider, and cannot appeal the decision if USCIS denies your request for consideration of DACA.

You may request a review of your Form I-821D denial by contacting USCIS' Call Centers at 1-800-375-5283 to have a service request created if you believe that you actually did meet all of the DACA guidelines and you believe that your request was denied due to one of the following errors:

- Denied the request based on abandonment, when you actually responded to an RFE or NOID within the prescribed time;
- Mailed the RFE or NOID to the wrong address although you had submitted a Form AR-11, Change of Address, or changed your address online at [www.uscis.gov](http://www.uscis.gov) before USCIS issued the RFE or NOID;
- Denied the request on the grounds that you did not come to the United States prior to your 16th birthday, but the evidence submitted **at the time of filing** shows that you did arrive before reaching that age;
- Denied the request on the grounds that you were under age 15 **at the time of filing** but not in removal proceedings, while the evidence submitted **at the time of filing** show that you indeed were in removal proceedings when the request was filed;
- Denied the request (under the pre-February 18, 2015 guidelines) on the grounds that you were 31 or older as of June 15, 2012, but the evidence submitted **at the time of filing** shows that you were **under the age of 31** as of June 15, 2012;
- Denied the request on the grounds that you had lawful status on June 15, 2012, but the evidence submitted **at the time of filing** shows that you did **not** have lawful immigration status on that date;
- Denied the request on the grounds that you were not physically present in the United States on June 15, 2012, and up through the date of filing, but the evidence submitted **at the time of filing** shows that you were, in fact, present;
- Denied the request due to your failure to appear at a USCIS ASC to have your biometrics collected, when you in fact either did appear at a USCIS ASC to have this done or requested prior to the scheduled date of your biometrics appointment to have the appointment rescheduled; or
- Denied the request because you did not pay the filing fees for Form I-765, Application for Employment Authorization, when you actually did pay these fees.

If you believe your request was denied due to any of these administrative errors, you may contact our National Customer Service Center at 1-800-375-5283 or 1-800-767-1833 (TDD for the hearing impaired). Customer service officers are available Monday – Friday from 8 a.m. – 6 p.m. in each U.S. time zone.

##### **Q26: If USCIS does not exercise deferred action in my case, will I be placed in removal proceedings?**

A26: If you have submitted a request for consideration of DACA and USCIS decides not to defer action in your case, USCIS will apply its policy guidance governing the referral of cases to ICE and the issuance of Notices to Appear (NTA). If your case does not involve a criminal offense, fraud, or a threat to national security or public safety, your case will not be referred to ICE for purposes of removal proceedings except where DHS determines there are exceptional circumstances. For more detailed information on the applicable NTA policy, visit [www.uscis.gov/NTA](http://www.uscis.gov/NTA). If, after a review of the totality of circumstances, USCIS determines to defer action in your case, USCIS will likewise exercise its discretion and will not issue you an NTA.

##### **Q27: Can my deferred action under the DACA process be terminated before it expires?**

A27: Yes.

DACA is an exercise of prosecutorial discretion and deferred action may be terminated at any time, with or without a Notice of Intent to Terminate, at DHS's discretion. Your deferred action can be terminated under circumstances including, but not limited to, the following:

- Your DACA and employment authorization will be terminated if it comes to the attention of DHS that:
  - Your DACA request was approved in error (e.g., you did not satisfy the guidelines for approval of DACA);
  - You committed fraud in seeking deferral of removal under DACA; or
  - Since your most recent DACA request was approved, you committed a disqualifying criminal offense, or otherwise pose a threat to national security or public safety.
- In most of the situations noted above, USCIS will issue a Notice of Intent to Terminate to the DACA recipient before issuing a Final Termination Notice.
- If an NTA is issued by ICE or CBP, your deferred action under DACA terminates automatically as of the date the NTA was issued.
- If you travel outside the United States after receiving DACA without first receiving advance parole, your departure automatically terminates deferred action under DACA.
- DHS may determine that other factors or circumstances warrant termination of deferred action.

##### **Q28: If my request for deferred action under DACA was previously denied or rejected and I can now be considered under the expanded DACA guidelines, do I have to file a new request for deferred action?**

A28: Yes. If your case was properly denied or rejected before February 18, 2015 under previous DACA guidelines in effect at that time, you will need to file a new request (with filing fees) to be considered for DACA.

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## II. Initial Requests for DACA

### **Q29: What guidelines must I meet to be considered for deferred action for childhood arrivals (DACA)?**

A29: In order to be considered for DACA on or after February 18, 2015, you must submit evidence, including supporting documents, showing that you:

1. Came to the United States before reaching your 16th birthday;
2. Have continuously resided in the United States since January 1, 2010 up to the present time;
3. Were physically present in the United States on June 15, 2012, and at the time of making your request for consideration of deferred action with USCIS;
4. Had no lawful status on June 15, 2012;
5. Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a General Educational Development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
6. Have not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

Requests that are pending on or after February 18, 2015, will be considered, on a case-by-case basis, under the expanded February 18 guidelines. These guidelines must be met for consideration of DACA. U.S. Citizenship and Immigration Services (USCIS) retains the ultimate discretion to determine whether deferred action is appropriate in any given case even if the guidelines are met.

### **Q30: How old must I be in order to be considered for deferred action under this process?**

A30:

- If you have never been in removal proceedings, or your proceedings have been terminated before your request for consideration of DACA, you must be at least 15 years of age or older at the time of filing and meet the other guidelines.
- If you are in removal proceedings, have a final removal order, or have a voluntary departure order, and are not in immigration detention, you can request consideration of DACA even if you are under the age of 15 at the time of filing and meet the other guidelines.
- Note that, effective February 18, 2015, the previous guideline that requestors must have been under the age of 31 as of June 15, 2012 no longer applies.

### **Q31: I first came to the United States before I turned 16 years old and have been continuously residing in the United States since at least January 1, 2010. Before I turned 16 years old, however, I left the United States for some period of time before returning and beginning my current period of continuous residence. May I be considered for deferred action under this process?**

A31: Yes, but only if you established residence in the United States during the period before you turned 16 years old. In addition to establishing that you initially resided in the United States before you turned 16 years old, you must also have maintained continuous residence in the United States from January 1, 2010, until the present time to be considered for deferred action under this process. Periods of absence from the United States after you turned 16 years old and before January 1, 2010, will be considered based on the totality of the circumstances, including but not limited to the length of residence in the United States, the length and frequency of absences, and the reasons for being outside the United States, in deciding whether deferred action is warranted on a case-by-case basis in the exercise of discretion.

### **Q32: To prove my continuous residence in the United States since January 1, 2010, must I provide evidence documenting my presence for every day, or every month, of that period?**

A32: To meet the continuous residence guideline, you must submit documentation that shows you have been living in the United States from January 1, 2010, up until the time of your request. You should provide documentation to account for as much of the period as reasonably possible, but there is no requirement that every day or month of that period be specifically accounted for through direct evidence.

It is helpful to USCIS if you can submit evidence of your residence during at least each year of the period. USCIS will review the documentation in its totality to determine whether you were continuously residing in the United States for the period since January 1, 2010. Gaps in the documentation as to certain periods may raise doubts as to your continued residence if, for example, the gaps are lengthy or the record otherwise indicates that you may have been outside the United States for a period of time that was not brief, casual or innocent.

If gaps in your documentation raise questions, USCIS may issue a Request for Evidence to allow you to submit additional documentation that supports your claimed continuous residence.

Affidavits may be submitted to explain a gap in the documentation demonstrating that you meet the continuous residence guideline. If you submit affidavits related to the continuous residence guideline, you must submit two or more affidavits, sworn to or affirmed by people other than yourself who have direct personal knowledge of the events and circumstances during the period as to which there is a gap in the documentation. Affidavits may only be used to explain gaps in your continuous residence; they cannot be used as evidence that you meet the entire continuous residence guideline.

### **Q33: Does "currently in school" refer to the date on which the request for consideration of deferred action is filed?**

A33: To be considered "currently in school" under the guidelines, you must be enrolled in school on the date you submit a request for consideration of deferred action under this process.

### **Q34: Who is considered to be "currently in school" under the guidelines?**

A34: To be considered "currently in school" under the guidelines, you must be enrolled in:

- A public, private, or charter elementary school, junior high or middle school, high school, secondary school, alternative program, or homeschool program that meets state requirements;
- An education, literacy, or career training program (including vocational training) that has a purpose of improving literacy, mathematics, or English, or is designed to lead to placement in postsecondary education, job training, or employment and where you are working toward such placement; or
- An education program assisting students either in obtaining a regular high school diploma or its recognized equivalent under state law (including a certificate of completion, certificate of attendance, or alternate award), or in passing a GED exam or other state-authorized exam (e.g., HiSet or TASC) in the United States.

Such education, literacy, career training programs (including vocational training), or education programs assisting students in obtaining a regular high school diploma or its recognized equivalent under state law, or in passing a GED exam or other state-authorized exam in the United States, include, but are not limited to, programs funded, in whole or in part, by federal, state, county or municipal grants or administered by non-profit organizations. Programs funded by other sources may qualify if they are programs of demonstrated effectiveness.

In assessing whether such programs not funded in whole or in part by federal, state, county or municipal grants or administered by non-profit organizations are of demonstrated effectiveness, USCIS will consider the duration of the program's existence; the program's track record in assisting students in obtaining a regular high school diploma or its recognized equivalent, in passing a GED or other state-authorized exam (e.g., HiSet or TASC), or in placing students in postsecondary education, job training, or employment; and other indicators of the program's overall quality. For individuals seeking to demonstrate that they are "currently in school" through enrollment in such a program, the burden is on the requestor to show the program's demonstrated effectiveness.

**Q35: How do I establish that I am currently in school?**

A35: Documentation sufficient for you to demonstrate that you are currently in school may include, but is not limited to:

- Evidence that you are enrolled in a public, private, or charter elementary school, junior high or middle school, high school or secondary school; alternative program, or homeschool program that meets state requirements; or
- Evidence that you are enrolled in an education, literacy, or career training program (including vocational training) that:
  - has a purpose of improving literacy, mathematics, or English, or is designed to lead to placement in postsecondary education, job training, or employment and where you are working toward such placement; and
  - is funded, in whole or in part, by federal, state, county or municipal grants or is administered by non-profit organizations, or if funded by other sources, is a program of demonstrated effectiveness; or
- Evidence that you are enrolled in an education program assisting students in obtaining a high school equivalency diploma or certificate recognized under state law (such as by passing a GED exam or other such state-authorized exam [for example, HiSet or TASC]), and that the program is funded in whole or in part by federal, state, county or municipal grants or is administered by non-profit organizations or if funded by other sources, is of demonstrated effectiveness.

Such evidence of enrollment may include: acceptance letters, school registration cards, letters from a school or program, transcripts, report cards, or progress reports which may show the name of the school or program, date of enrollment, and current educational or grade level, if relevant.

**Q36: What documentation may be sufficient to demonstrate that I have graduated from high school?**

A36: Documentation sufficient for you to demonstrate that you have graduated from high school may include, but is not limited to, a high school diploma from a public or private high school or secondary school, a certificate of completion, a certificate of attendance, or an alternate award from a public or private high school or secondary school, or a recognized equivalent of a high school diploma under state law, or a GED certificate or certificate from passing another such state authorized exam (e.g., HiSet or TASC) in the United States.

**Q37: What documentation may be sufficient to demonstrate that I have obtained a GED certificate or certificate from passing another such state authorized exam (e.g., HiSet or TASC)?**

A37: Documentation may include, but is not limited to, evidence that you have passed a GED exam or other state-authorized exam (e.g., HiSet or TASC) and, as a result, have received the recognized equivalent of a regular high school diploma under state law.

**Q38: If I am enrolled in a literacy or career training program, can I meet the guidelines?**

A38: Yes, in certain circumstances. You may meet the guidelines if you are enrolled in an education, literacy, or career training program that has a purpose of improving literacy, mathematics, or English, or is designed to lead to placement in postsecondary education, job training, or employment and where you are working toward such placement. Such programs include, but are not limited to, programs funded, in whole or in part, by federal, state, county or municipal grants or administered by non-profit organizations, or if funded by other sources, are programs of demonstrated effectiveness.

**Q39: If I am enrolled in an English as a Second Language (ESL) program, can I meet the guidelines?**

A39: Yes, in certain circumstances. Enrollment in an ESL program may be used to meet the guidelines if the ESL program is funded in whole or in part by federal, state, county or municipal grants, or administered by non-profit organizations, or if funded by other sources is a program of demonstrated effectiveness. For more information on demonstrated effectiveness, see Q34. You must submit direct documentary evidence that the program is funded in whole or part by federal, state, county or municipal grants, administered by a non-profit organization, or of demonstrated effectiveness.

**Q40: Will USCIS consider evidence other than that listed in Chart #1 to show that I have met the education guidelines?**

A40: No. Evidence not listed in Chart #1 will not be accepted to establish that you are currently in school, have graduated or obtained a certificate of completion from high school, or have obtained a GED or passed another state-authorized exam (e.g., HiSet or TASC). You must submit any of the documentary evidence listed in Chart #1 to show that you meet the education guidelines.

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**Q41: Will USCIS consider evidence other than that listed in Chart #1 to show that I have met certain initial guidelines?**

A41: Yes. Evidence other than those documents listed in Chart #1 may be used to establish the following guidelines and factual showings if available documentary evidence is insufficient or lacking and shows that:

- You were physically present in the United States on June 15, 2012;
- You came to the United States before reaching your 16th birthday;
- You satisfy the continuous residence guideline, as long as you present direct evidence of your continued residence in the United States for a portion of the required period and the circumstantial evidence is used only to fill in gaps in the length of continuous residence demonstrated by the direct evidence; and
- Any travel outside the United States during the period of relevant continuous residence was brief, casual, and innocent.

However, USCIS will not accept evidence other than the documents listed in Chart #1 as proof that you are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a GED certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States.

For example, even if you do not have documentary proof of your presence in the United States on June 15, 2012, you may still be able to satisfy the guideline. You may do so by submitting credible documentary evidence that you were present in the United States shortly before and shortly after June 15, 2012, which, under the facts presented, may give rise to an inference of your presence on June 15, 2012 as well. However, evidence other than that listed in Chart #1 will not be accepted to establish that you have graduated high school. You must submit the designated documentary evidence to satisfy that you meet this guideline.

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Chart #1 provides examples of documentation you may submit to demonstrate you meet the initial guidelines for consideration of deferred action under this process. Please see the instructions of [Form I-821D, Consideration of Deferred Action for Childhood Arrivals](#), for additional details of acceptable documentation.

Chart #1 Examples of Documents to Submit to Demonstrate You Meet the Guidelines	
Proof of identity	<ul style="list-style-type: none"> <li>• Passport or national identity document from your country of origin</li> <li>• Birth certificate with photo identification</li> <li>• School or military ID with photo</li> <li>• Any U.S. government immigration or other document bearing your name and photo</li> </ul>
Proof you came to U.S. before your 16th birthday	<ul style="list-style-type: none"> <li>• Passport with admission stamp</li> <li>• Form I-94/I-95/I-94W</li> <li>• School records from the U.S. schools you have attended</li> <li>• Any Immigration and Naturalization Service or DHS document stating your date of entry (Form I-862, Notice to Appear)</li> <li>• Travel records</li> <li>• Hospital or medical records</li> <li>• Rent receipts or utility bills</li> <li>• Employment records (pay stubs, W-2 Forms, etc.)</li> <li>• Official records from a religious entity confirming participation in a religious ceremony</li> <li>• Copies of money order receipts for money sent in or out of the country</li> <li>• Birth certificates of children born in the U.S.</li> <li>• Dated bank transactions</li> <li>• Automobile license receipts or registration</li> <li>• Deeds, mortgages, rental agreement contracts</li> <li>• Tax receipts, insurance policies</li> </ul>
Proof of immigration status	<ul style="list-style-type: none"> <li>• Form I-94/I-95/I-94W with authorized stay expiration date</li> <li>• Final order of exclusion, deportation, or removal issued as of June 15, 2012</li> <li>• A charging document placing you into removal proceedings</li> </ul>
Proof of presence in U.S. on June 15, 2012	<ul style="list-style-type: none"> <li>• Rent receipts or utility bills</li> <li>• Employment records (pay stubs, W-2 Forms, etc.)</li> <li>• School records (letters, report cards, etc.)</li> <li>• Military records (Form DD-214 or NGB Form 22)</li> </ul>
Proof you continuously resided in	<ul style="list-style-type: none"> <li>• Official records from a religious entity confirming participation in a religious ceremony</li> </ul>



U.S. since January 1, 2010	<ul style="list-style-type: none"> <li>• Copies of money order receipts for money sent in or out of the country</li> <li>• Passport entries</li> <li>• Birth certificates of children born in the U.S.</li> <li>• Dated bank transactions</li> <li>• Automobile license receipts or registration</li> <li>• Deeds, mortgages, rental agreement contracts</li> <li>• Tax receipts, insurance policies</li> </ul>
Proof of your education status at the time of requesting consideration of DACA	<ul style="list-style-type: none"> <li>• School records (transcripts, report cards, etc.) from the school that you are currently attending in the United States showing the name(s) of the school(s) and periods of school attendance and the current educational or grade level</li> <li>• U.S. high school diploma, certificate of completion, or other alternate award</li> <li>• High school equivalency diploma or certificate recognized under state law</li> <li>• Evidence that you passed a state-authorized exam, including the GED or other state-authorized exam (for example, HiSet or TASC) in the United States</li> </ul>
Proof you are an honorably discharged veteran of the U.S. Armed Forces or the U.S. Coast Guard	<ul style="list-style-type: none"> <li>• Form DD-214, Certificate of Release or Discharge from Active Duty</li> <li>• NGB Form 22, National Guard Report of Separation and Record of Service</li> <li>• Military personnel records</li> <li>• Military health records</li> </ul>

**Q42: May I file affidavits as proof that I meet the initial guidelines for consideration of DACA?**

A42: Affidavits generally will not be sufficient on their own to demonstrate that you meet the guidelines for USCIS to consider you for DACA. However, affidavits may be used to support meeting the following guidelines only if the documentary evidence available to you is insufficient or lacking:

- Demonstrating that you meet the continuous residence guideline; and
- Establishing that departures during the required period of continuous residence were brief, casual and innocent.

If you submit affidavits related to the above criteria, you must submit two or more affidavits, sworn to or affirmed by people other than yourself, who have direct personal knowledge of the events and circumstances. Should USCIS determine that the affidavits are insufficient to overcome the unavailability or the lack of documentary evidence with respect to either of these guidelines, it will issue a Request for Evidence, indicating that further evidence must be submitted to demonstrate that you meet these guidelines.

USCIS will not accept affidavits as proof of satisfying the following guidelines:

- You are currently in school, have graduated or obtained a certificate of completion or other alternate award from high school, have obtained a high school equivalency diploma or certificate (such as by passing the GED exam or other state-authorized exam [for example, HiSet or TASC]), or are an honorably discharged veteran from the Coast Guard or Armed Forces of the United States;
- You were physically present in the United States on June 15, 2012;
- You came to the United States before reaching your 16th birthday; and
- Your criminal history, if applicable.

If the only evidence you submit to demonstrate you meet any of the above guidelines is an affidavit, USCIS will issue a Request for Evidence indicating that you have not demonstrated that you meet these guidelines and that you must do so in order to demonstrate that you meet that guideline.

**Q43: Will I be considered to be in unlawful status if I had an application for asylum or cancellation of removal pending before either USCIS or the Executive Office for Immigration Review (EOIR) on June 15, 2012?**

A43: Yes. If you had an application for asylum or cancellation of removal, or similar relief, pending before either USCIS or EOIR as of June 15, 2012, but had no lawful status, you may request consideration of DACA.

**Q44: I was admitted for "duration of status" or for a period of time that extended past June 14, 2012, but violated my immigration status (e.g., by engaging in unauthorized employment, failing to report to my employer, or failing to pursue a full course of study) before June 15, 2012. May I be considered for deferred action under this process?**

A44: No, unless the Executive Office for Immigration Review terminated your status by issuing a final order of removal against you before June 15, 2012.

**Q45: I was admitted for "duration of status" or for a period of time that extended past June 14, 2012 but "aged out" of my dependent nonimmigrant status as of June 15, 2012. May I be considered for deferred action under this process?**

A45: Yes. For purposes of satisfying the "had no lawful status on June 15, 2012" guideline alone, if you were admitted for "duration of status" or for a period of time that extended past June 14, 2012 but "aged out" of your dependent nonimmigrant status, on or before June 15, 2012, (meaning you turned 21 years old on or before June 15, 2012), you may be considered for deferred action under this process.

**Q46: I was admitted for "duration of status" but my status in SEVIS is listed as terminated on or before June 15, 2012. May I be considered for deferred action under this process?**

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A46: Yes. For the purposes of satisfying the ““had no lawful status on June 15, 2012” guideline alone, if your status as of June 15, 2012, is listed as “terminated” in SEVIS, you may be considered for deferred action under this process.

**Q47: I am a Canadian citizen who was inspected by CBP but was not issued an I-94 at the time of admission. May I be considered for deferred action under this process?**

A47: In general, a Canadian citizen who was admitted as a visitor for business or pleasure and not issued an I-94, Arrival/Departure Record, (also known as a “non-controlled” Canadian nonimmigrant) is lawfully admitted for a period of six months. For that reason, unless there is evidence, including verifiable evidence provided by the individual, that he or she was specifically advised that his or her admission would be for a different length of time, the Department of Homeland Security (DHS) will consider for DACA purposes only, that the alien was lawfully admitted for a period of six months. Therefore, if DHS is able to verify from its records that your last non-controlled entry occurred on or before Dec. 14, 2011, DHS will consider your nonimmigrant visitor status to have expired as of June 15, 2012 and you may be considered for deferred action under this process.

**Q48: I used my Border Crossing Card (BCC) to obtain admission to the United States and was not issued an I-94 at the time of admission. May I be considered for deferred action under this process?**

A48: Because the limitations on entry for a BCC holder vary based on location of admission and travel, DHS will assume that the BCC holder who was not provided an I-94 was admitted for the longest period legally possible—30 days—unless the individual can demonstrate, through verifiable evidence, that he or she was specifically advised that his or her admission would be for a different length of time. Accordingly, if DHS is able to verify from its records that your last admission was using a BCC, you were not issued an I-94 at the time of admission, and it occurred on or before May 14, 2012, DHS will consider your nonimmigrant visitor status to have expired as of June 15, 2012, and you may be considered for deferred action under this process.

**Q49: Do I accrue unlawful presence if I have a pending initial request for consideration of DACA?**

A49: You will continue to accrue unlawful presence while the request for consideration of DACA is pending unless you are under 18 years of age at the time of the request. If you are under 18 years of age at the time you submit your request, you will not accrue unlawful presence while the request is pending, even if you turn 18 while your request is pending with USCIS. If action on your case is deferred, you will not accrue unlawful presence during the period of deferred action. However, having action deferred on your case will not excuse previously accrued unlawful presence.

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### III. Renewal of DACA

**Q50: When should I file my renewal request with U.S. Citizenship and Immigration Services (USCIS)?**

A50: USCIS strongly encourages you to submit your Deferred Action for Childhood Arrivals (DACA) renewal request between 150 days and 120 days before the expiration date located on your current Form I-797 DACA approval notice and Employment Authorization Document (EAD). Filing during this window will minimize the possibility that your current period of DACA will expire before you receive a decision on your renewal request. If you have filed your renewal request at least 120 days before your deferred action expires and USCIS is delayed in processing your renewal request, USCIS may provide you with DACA and employment authorization for up to an additional 120 days.

**Please Note:** USCIS will not provide any such short-term deferred action and employment authorization when USCIS is delayed in reaching a final decision on your renewal request because, for example: 1) of factors within your control (such as failure to file the renewal request within the suggested timeframe or filing an incomplete renewal request); 2) USCIS has not been able to complete your background check; and/or 3) your renewal submission contained evidence that you may not satisfy the DACA renewal guidelines and USCIS must send you a request for additional information or explanation.

**Q51: Can I file a renewal request outside the recommended filing period of 150 days to 120 days before my current DACA expires?**

A51: Yes, you may submit your renewal request outside of the recommended filing window.

However:

- If you file before the recommended filing window (meaning more than 150 days before your current period of DACA expires), USCIS may reject your submission and return it to you with instructions to resubmit your request within the recommended filing period.
- If you file after the recommended filing period (meaning less than 120 days before your current period of DACA expires), USCIS will not consider providing you with any additional short-term period of deferred action and employment authorization before reaching a final decision on your renewal request. This will be true even if your current period of DACA expires while USCIS is considering your renewal request.

If you file after your most recent DACA period expired, but within one year of its expiration, you may submit a request to renew your DACA. If you are filing beyond one year after your most recent period of DACA expired, you may still request DACA by submitting a new initial request.

**Q52: How will USCIS evaluate my request for renewal of DACA?**

A52: You may be considered for renewal of DACA if you met the guidelines for consideration of Initial DACA (see above), have not obtained a lawful immigration status AND you:

1. Did not depart the United States without advance parole after receiving DACA;
2. Have continuously resided in the United States since you submitted your most recent request for DACA that was approved up to the present time; and

3. Have not been convicted of a felony, a significant misdemeanor, or three or more misdemeanors, and do not otherwise pose a threat to national security or public safety.

These guidelines must be met for consideration of DACA renewal. USCIS retains the ultimate discretion to determine whether deferred action is appropriate in any given case even if the guidelines are met.

**Q53 Do I accrue unlawful presence if I am seeking renewal and my previous period of DACA expires before I receive a renewal of deferred action under DACA? Similarly, what would happen to my work authorization?**

A53: Yes, if your previous period of DACA expires before you receive a renewal of deferred action under DACA, you will accrue unlawful presence for any time between the periods of deferred action unless you are under 18 years of age at the time you submit your renewal request.

Similarly, if your previous period of DACA expires before you receive a renewal of deferred action under DACA, you will not be authorized to work in the United States regardless of your age at time of filing until and unless you receive a new employment authorization document from USCIS.

If you have filed your renewal request at least 120 days before your deferred action expires and USCIS is delayed in processing your renewal request, USCIS may provide you with DACA and employment authorization for up to an additional 120 days. For additional information, please refer to Q50 above.

**Q54. Do I need to provide additional documents when I request renewal of deferred action under DACA?**

A54. No, unless you have *new* documents pertaining to removal proceedings or criminal history that you have not already submitted to USCIS in a previously approved DACA request. USCIS, however, reserves the authority to request at its discretion additional documents, information or statements relating to a DACA renewal request determination.

CAUTION: If you knowingly and willfully provide materially false information on Form I-821D, you will be committing a federal felony punishable by a fine, or imprisonment up to five years, or both, under 18 U.S.C. Section 1001. In addition, individuals may be placed into removal proceedings, face severe penalties provided by law, and be subject to criminal prosecution.

**Q55. If I am no longer in school, can I still request to renew my DACA?**

A55. Yes. Neither Form I-821D nor the instructions ask renewal requestors for information about continued school enrollment or graduation. The instructions for renewal requests specify that you may be considered for DACA renewal if you met the guidelines for consideration of initial DACA, including the educational guidelines, have not obtained a lawful immigration status, and:

1. Did not depart the United States after receiving DACA without advance parole;
2. Have continuously resided in the United States, up to the present time, since you submitted your most recent request for DACA that was approved; and
3. Have not been convicted of a felony, a significant misdemeanor or three or more misdemeanors, and are not a threat to national security or public safety.

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## IV. Travel

**Q57: May I travel outside of the United States before I submit an initial Deferred Action for Childhood Arrivals (DACA) request or while my initial DACA request remains pending with the Department of Homeland Security (DHS)?**

A57: Any unauthorized travel outside of the United States on or after January 1, 2014, will interrupt your continuous residence and you will not be considered for deferred action under this process. Any travel outside of the United States that occurred on or after January 1, 2010, but before January 1, 2014, will be assessed by U.S. Citizenship and Immigration Services (USCIS) to determine whether the travel qualifies as brief, casual and innocent. (See Chart #2.)

CAUTION: You should be aware that if you have been ordered deported or removed and you then leave the United States (even with advance parole), your departure will likely result in your being considered deported or removed, with potentially serious future immigration consequences. For information regarding travel *after* USCIS has deferred action in your case, see Q58.

**Q58: If my case is deferred under DACA, will I be able to travel outside of the United States?**

A58: Not automatically. You may apply for advance parole by filing a [Form I-131, Application for Travel Document](#) and paying the applicable fee (\$360) if you are requesting or have received deferred action under DACA. Generally, USCIS will only grant advance parole if your travel abroad will be in furtherance of:

- Humanitarian purposes, including travel to obtain medical treatment, attending funeral services for a family member, or visiting an ailing relative;
- Educational purposes, such as semester-abroad programs and academic research, or;
- Employment purposes such as overseas assignments, interviews, conferences or, training, or meetings with clients overseas.

Travel for vacation is not a valid basis for advance parole.

You may file Form I-131 together with your request for DACA, but USCIS will not consider your Form I-131 until a decision is made on your DACA request. You may also file Form I-131 separately after you have received DACA. All advance parole requests will be considered on a case-by-case basis.

If USCIS has deferred action in your case under the DACA process after you have been ordered deported or removed, you may still request advance parole if you meet the guidelines for advance parole described above.

**CAUTION:** However, for those individuals who have been ordered deported or removed, before you actually leave the United States, you should seek to reopen your case before the Executive Office for Immigration Review (EOIR) and obtain administrative closure or termination of your removal proceeding. Even after you have asked EOIR to reopen your case, you should not leave the United States until after EOIR has granted your request. If you depart after being ordered deported or removed (even with advance parole), and your removal proceeding has not been reopened and administratively closed or terminated, your departure may result in your being considered deported or removed, with potentially serious future immigration consequences. If you have any questions about this process, you may contact U.S. Immigration and Customs Enforcement (ICE) through the local ICE Office of the Chief Counsel with jurisdiction over your case.

**CAUTION:** If you received DACA and you travel outside the United States without first receiving advance parole, your departure automatically terminates your deferred action under DACA.

**Q59: Do brief departures from the United States interrupt my continuous residence?**

A59: A brief, casual and innocent absence from the United States will not interrupt your continuous residence. If you were absent from the United States, your absence will be considered brief, casual and innocent if it was on or after January 1, 2010, and before January 1, 2014, and:

1. The absence was short and reasonably calculated to accomplish the purpose for the absence;
2. The absence was not because of an order of exclusion, deportation or removal;
3. The absence was not because of an order of voluntary departure, or an administrative grant of voluntary departure before you were placed in exclusion, deportation or removal proceedings; and
4. The purpose of the absence and/or your actions while outside the United States were not contrary to law.

**Travel Guidelines (Chart #2)**

Travel Dates	Type of Travel	Does It Affect Continuous Residence?
On or after January 1, 2010, but before January 1, 2014	Brief, casual and innocent	No
	For an extended time	Yes
	Because of an order of exclusion, deportation, voluntary departure, or removal	Yes. In addition, if you have previously been ordered deported and removed and you depart the United States without taking additional steps to address your removal proceedings, your departure will likely result in your being considered deported or removed, with potentially serious future immigration consequences.
On or after January 1, 2014	To participate in criminal activity	Yes
	Any	Yes. Any unauthorized travel outside of the United States on or after January 1, 2014, will interrupt your continuous residence.  You may apply for advance parole to obtain permission to travel, but you cannot be granted advance parole unless and until DHS has determined to defer action in your case.

**CAUTION:** If you received DACA and you travel outside the United States without first receiving advance parole, your departure automatically terminates your deferred action under DACA.

**Q59: May I file a request for advance parole concurrently with my DACA package?**

A59: Yes. Concurrent filing will be available as of February 18, 2015. You may also file separately after you have received DACA.

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## V. Criminal Convictions

**Q60: If I have a conviction for a felony offense, a significant misdemeanor offense, or multiple misdemeanors, can I receive an exercise of prosecutorial discretion under this new process?**

A60: No. If you have been convicted of a felony offense, a significant misdemeanor offense, or three or more other misdemeanor offenses not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct, you will not be considered for Deferred Action for Childhood Arrivals (DACA) except where the Department of Homeland Security (DHS) determines there are exceptional circumstances.

**Q61: What offenses qualify as a felony?**

A61: A felony is a federal, state, or local criminal offense punishable by imprisonment for a term exceeding one year.

**Q62: What offenses constitute a significant misdemeanor?**

A62: For the purposes of this process, a significant misdemeanor is a misdemeanor as defined by federal law (specifically, one for which the maximum term of imprisonment authorized is one year or less but greater than five days) and that meets the following criteria:

1. Regardless of the sentence imposed, is an offense of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or, driving under the influence; or
2. If not an offense listed above, is one for which the individual was sentenced to time in custody of more than 90 days. The sentence must involve time to be served in custody, and therefore does not include a suspended sentence.

The time in custody does not include any time served beyond the sentence for the criminal offense based on a state or local law enforcement agency honoring a detainer issued by U.S. Immigration and Customs Enforcement (ICE). Notwithstanding the above, the decision whether to defer action in a particular case is an individualized, discretionary one that is made taking into account the totality of the circumstances. Therefore, the absence of the criminal history outlined above, or its presence, is not necessarily determinative but is a factor to be considered in the unreviewable exercise of discretion. DHS retains the discretion to determine that an individual does not warrant deferred action on the basis of a single criminal offense for which the individual was sentenced to time in custody of 90 days or less.

**NOTE:** In evaluating whether an offense is a significant misdemeanor involving domestic violence, careful consideration will be given to whether the person convicted was the *victim* of domestic violence as a mitigating factor. See *Morton Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs* (June 17, 2011).

**Q63: What offenses constitute a non-significant misdemeanor?**

A63: For purposes of this process, a non-significant misdemeanor is any misdemeanor as defined by federal law (specifically, one for which the maximum term of imprisonment authorized is one year or less but greater than five days) and that meets the following criteria:

1. Is not an offense of domestic violence (see Note above); sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or driving under the influence; and
2. Is one for which the individual was sentenced to time in custody of 90 days or less. The time in custody does not include any time served beyond the sentence for the criminal offense based on a state or local law enforcement agency honoring a detainer issued by ICE.

Notwithstanding the above, the decision whether to defer action in a particular case is an individualized, discretionary one that is made taking into account the totality of the circumstances. Therefore, the absence of the criminal history outlined above, or its presence, is not necessarily determinative but is a factor to be considered in the unreviewable exercise of discretion.

**Q64: If I have a minor traffic offense, such as driving without a license, will it be considered a non-significant misdemeanor that counts towards the “three or more non-significant misdemeanors” making me unable to receive consideration for an exercise of prosecutorial discretion under this new process?**

A64: A minor traffic offense will not be considered a misdemeanor for purposes of this process. However, your entire offense history can be considered along with other facts to determine whether, under the totality of the circumstances, you warrant an exercise of prosecutorial discretion.

It is important to emphasize that driving under the influence is a significant misdemeanor regardless of the sentence imposed.

**Q65: What qualifies as a national security or public safety threat?**

A65: If the background check or other information uncovered during the review of your request for deferred action indicates that your presence in the United States threatens public safety or national security, you will not be able to receive consideration for an exercise of prosecutorial discretion except where DHS determines there are exceptional circumstances. Indicators that you pose such a threat include, but are not limited to, gang membership, participation in criminal activities, or participation in activities that threaten the United States.

**Q66: Will offenses criminalized as felonies or misdemeanors by state immigration laws be considered felonies or misdemeanors for purpose of this process?**

A66: No. Immigration-related offenses characterized as felonies or misdemeanors by state immigration laws will not be treated as disqualifying felonies or misdemeanors for the purpose of considering a request for consideration of deferred action under this

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process.

**Q67: Will DHS consider my expunged or juvenile conviction as an offense making me unable to receive an exercise of prosecutorial discretion?**

A67: Expunged convictions and juvenile convictions will not automatically disqualify you. Your request will be assessed on a case-by-case basis to determine whether, under the particular circumstances, a favorable exercise of prosecutorial discretion is warranted. If you were a juvenile but tried and convicted as an adult, you will be treated as an adult for purposes of the DACA process.

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## VI. Miscellaneous

**Q68: Does this Administration remain committed to comprehensive immigration reform?**

A68: Yes. The Administration has consistently pressed for passage of comprehensive immigration reform, including the DREAM Act and the 2013 bipartisan Senate Bill (S. 744), because the President believes these steps are critical to building a 21st century immigration system that meets our nation's economic and security needs.

**Q69: Is passage of the DREAM Act still necessary in light of the new process?**

A69: Yes. This process is one in a series of steps that DHS has taken to focus its enforcement resources on the removal of individuals who pose a danger to national security or a risk to public safety. Deferred Action for Childhood Arrivals (DACA) is an exercise of prosecutorial discretion and does not provide lawful status or a pathway to citizenship. As the President has stated, individuals who would qualify for the DREAM Act or a pathway to citizenship under the 2013 Senate bill deserve certainty about their status. Only the Congress, acting through its legislative authority, can confer the certainty that comes with a pathway to permanent lawful status.

**Q70: Does deferred action provide me with a path to permanent resident status or citizenship?**

A70: No. Deferred action is a form of prosecutorial discretion that does not confer lawful permanent resident status or a path to citizenship. Only the Congress, acting through its legislative authority, can confer these rights.

**Q71: Can I be considered for deferred action even if I do not meet the guidelines to be considered for DACA?**

A71: This process is only for individuals who meet the specific guidelines for DACA. Other individuals may, on a case-by-case basis, request deferred action from U.S. Citizenship and Immigration Services (USCIS) or U.S. Immigration and Customs Enforcement (ICE) in certain circumstances, consistent with longstanding practice.

**Q72: How will ICE and USCIS handle cases involving individuals who do not satisfy the guidelines of this process but believe they may warrant an exercise of prosecutorial discretion under the November 20, 2014 Policies for the Apprehension, Detention and Removal of Undocumented Immigrants Memorandum?**

A72: If USCIS determines that you do not satisfy the guidelines or otherwise determines you do not warrant an exercise of prosecutorial discretion, then it will decline to defer action in your case. If you are currently in removal proceedings, have a final order, or have a voluntary departure order, you may then request ICE consider whether to exercise prosecutorial discretion.

**Q73: How should I fill out question 9 on Form I-765, Application for Employment Authorization?**

A73: When you are filing a Form I-765 as part of a DACA request, question 9 is asking you to list any Social Security numbers that were *officially* issued to you by the Social Security Administration.

**Q74: Will there be supervisory review of decisions by USCIS under this process?**

A74: Yes. USCIS has implemented a successful supervisory review process to ensure a consistent process for considering requests for DACA.

**Q75: Will USCIS personnel responsible for reviewing requests for DACA receive special training?**

A75: Yes. USCIS personnel responsible for considering requests for consideration of DACA have received special training.

**Q76: Must attorneys and accredited representatives who provide pro bono services to deferred action requestors at group assistance events file a Form G-28 with USCIS?**

A76: An attorney or BIA-accredited representative who provides pro bono assistance to an individual in a workshop setting, but who does not intend to represent the individual after the workshop, should assess the extent of the relationship with the individual and the nature and type of the assistance provided. On that basis, the attorney or BIA-accredited representative should determine whether to file a Form G-28. If the attorney or BIA-accredited representative determines that the assistance does not rise to the level of representation requiring a Form G-28, he or she should determine whether it would be appropriate under the circumstances to provide the individual with a letter noting the limited extent of the representation or complete and sign the preparer section of the Form I-821D.

**Q77: When must an individual sign a Form I-821D as a preparer?**

A77: Anytime someone other than the requestor prepares or helps fill out the Form I-821D, that individual must complete Part 5 of the form.

**Q78: If I provide my employee with information regarding his or her employment to support a request for consideration of DACA, will that information be used for immigration enforcement purposes against me and/or my company?**

A78: You may, as you determine appropriate, provide individuals requesting DACA with documentation which verifies their employment. This information will not be shared with ICE for civil immigration enforcement purposes under section 274A of the Immigration and Nationality Act (relating to unlawful employment) unless there is evidence of egregious violations of criminal statutes or widespread abuses.

**Q79: Someone told me if I pay them a fee, they can expedite my DACA request. Is this true?**

A79: No. There is no expedited processing for deferred action. Dishonest practitioners may promise to provide you with faster services if you pay them a fee. These people are trying to scam you and take your money. Visit our [Avoid Scams](#) page to learn how you can protect yourself from immigration scams.

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Make sure you seek information about requests for consideration of DACA from official government sources such as USCIS or the DHS. If you are seeking legal advice, visit our [Find Legal Services](#) page to learn how to choose a licensed attorney or accredited representative.

**Q80: Am I required to register with the Selective Service?**

A80: Most male persons residing in the U.S., who are ages 18 through 25, are required to register with Selective Service. Please see link for more information. [[Selective Service](#)].

Last Reviewed/Updated: 02/11/2015



**U.S. Citizenship and  
Immigration Services**



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Appeals  
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Citizenship  
Citizenship Resource Center  
Executive Actions on Immigration  
Family  
Green Card  
History and Genealogy  
Humanitarian  
Military  
Outreach  
USCIS ELIS  
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Working in the U.S.

**VERIFICATION**

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myE-Verify  
SAVE

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No FEAR Act  
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Social Media Policy  
Plug-ins  
Adobe Reader

**GOVERNMENT**

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1-800-767-1833