

Client Alert

September 6, 2017

Trump Administration Rescinds DACA Program

On September 5, 2017, Attorney General Jeff Sessions announced the decision to rescind the Deferred Action for Childhood Arrivals (DACA) program, which was originally adopted in 2012 and provided deferred action (protection from deportation from the United States) and two-year employment authorization to certain undocumented immigrants who had been brought to the country as minors (i.e., younger than 16 years old). This alert provides detailed information for our business clients regarding their DACA employees' ability to continue working, and it outlines the steps those employees would need to take to obtain maximum work authorization under the program before it is completely phased out.

Background

President Obama announced the DACA policy on June 15, 2012, and the Department of Homeland Security (DHS) established the program on the same day in a memorandum. Since the DHS began accepting DACA applications, almost 800,000 qualifying individuals have been granted DACA status. In order to qualify for DACA, an applicant was required to show, among other requirements, that he or she came to the United States under the age of 16; resided in the country continuously since June 15, 2007; was under the age of 31 on June 15, 2012; fulfilled certain educational or military requirements; and had not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors. In November 2014, the DHS expanded the DACA program to allow for three-year work permits and a higher maximum age of recipients at the time of application; it also introduced the Deferred Action for Parents of Americans (DAPA) program that would have conferred similar benefits to parents of U.S. citizens or permanent residents. The DACA expansion and the DAPA program were enjoined by the courts after Texas and other states challenged the President's executive authority. On June 29, 2017, attorneys general of Texas and nine other states sent a letter to Attorney General Sessions stating that they would challenge the DACA program in federal court unless the DHS agreed to "phase out" the program by rescinding the 2012 DACA memorandum and halting approval of any new or renewal DACA applications. On September 4, 2017, Attorney General Sessions sent a letter to DHS Acting Secretary Elaine Duke stating that DACA was an "unconstitutional exercise of authority by the Executive Branch" and that legal challenges to the program would "likely" result in DACA being deemed unlawful. The next day, he announced the rescission of the program.

DHS Memorandum

The same day as the Attorney General's announcement, the DHS released a memorandum that outlined the process for winding down the DACA program. The complete memorandum can be found here:

<https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>. Below are the summary points:

- **Current DACA grants:** Previously issued Employment Authorization Documents (EAD) will remain valid for their full validity period. The DHS will not terminate deferred action or revoke EADs solely on

the basis of the DACA program rescission. The DHS will continue to retain its authority to terminate or deny deferred action where it deems appropriate.

- **Pending initial DACA requests:** Currently pending **initial** requests for DACA applications will be adjudicated as before. No **new** initial requests for DACA will be accepted after September 5, 2017.
- **Pending DACA renewals:** Currently pending applications for renewal of EADs will be adjudicated as before.
- **New DACA renewals:** DACA beneficiaries whose EADs expire between September 5, 2017 and March 5, 2018, can file renewal applications, but those applications must be **accepted by the DHS by October 5, 2017**: Any renewal applications received by the DHS after October 5, 2017, will be rejected, even if the original EADs are still valid. It is not yet known whether DHS will grant renewal applications for the full two-year period or for a shorter period of time.
- **Travel document applications:** DACA recipients are normally eligible for a travel document, officially referred to as Advance Parole. After September 5, 2017, no new DACA Advance Parole applications will be approved. All pending Advance Parole applications will be administratively closed, and all government fees associated with those applications will be returned to the applicants.
- **Current DACA Advance Parole documents:** Previously approved Advance Parole documents will generally be honored for the purposes of re-entry to the United States, though the DHS retains the authority to deny admission and/or revoke or terminate any Advance Parole document where it deems appropriate.
- **Enforcement of immigration laws against DACA recipients with pending applications:** The DHS stated in FAQs posted on its website on September 5, 2017, that it generally will not proactively share information provided in DACA applications with law enforcement entities (including Immigration and Customs Enforcement (ICE)), unless the DACA applicant poses a risk to national security or public safety, or commits certain crimes that trigger a referral of the case to ICE or the immigration court.
- **What does DACA rescission mean for employers?** Currently issued DACA EADs will remain valid, so employers can continue to employ DACA recipients who present a valid EAD for employment authorization purposes. DACA employees whose EADs expire before March 5, 2018, will have an opportunity to renew their EADs, as long as their renewal applications are received by the DHS before October 5, 2017. Once their renewal EADs are adjudicated, they will need to present their new EADs to their employers to show their continued employment eligibility. DACA recipients whose EADs expire after March 5, 2018, will not have an opportunity to renew their EADs and will lose their employment eligibility once their EADs expire. Employers will not be able to continue employing them, unless they can prove employment eligibility with a document other than a DACA EAD.

In a separate statement issued the same day as the Attorney General's announcement, President Trump called on Congress to work on legislation that would protect DACA recipients from deportation from the

United States and put them on a path to legal status. He also encouraged Congress to seek a broader immigration reform that would benefit American workers and the country as a whole.

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