



Labor & Employment ADVISORY ■

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DACA Reinstated – A Win for “Dreamers”

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On December 4, 2020, a federal judge in Brooklyn, New York, ordered the government to fully restore the Deferred Action for Childhood Arrivals (DACA) program (a program that prevents the deportation of certain minors who were brought into the U.S. as children) as it was meant to be implemented under the Obama Administration. *Vidal v. Wolf*, Nos. 1:16-cv-04756 & 1:17-cv-05228 (E.D.N.Y. Dec. 4, 2020).

DACA allows some minors who entered the U.S. as children to be permitted to remain, work, and pay taxes in the U.S., provided they meet certain criteria, including being enrolled in school, having graduated or being in the process of completing high school or obtaining a GED, and having not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors.

The restored version of DACA will allow for first-time applicants to apply, as well as allow for permission to travel, if applicants can meet additional criteria for advanced parole.

Under normal circumstances, vacatur alone would be a sufficient remedy by a court for agency action that is found to be unlawful. However, because the government had refused to implement the prior DACA-related court decisions, the court left no room for finagling and ordered the government to:

- Post public notice on its website within three calendar days of the judge’s order (by Monday, December 7, 2020) that U.S. Citizenship & Immigration Services (USCIS) will accept “first-time requests for consideration of deferred action under DACA, renewal requests, and advance parole requests, based on the terms of the DACA program prior to September 5, 2017.” The government must also provide a copy of the notice to the plaintiffs and post it to the docket within three calendar days of the order.
- The government must make it clear that DACA and employment authorization documents (EADs) granted for only one year are extended to two years.

Late in the day on Monday, December 7, 2020, the government posted the [public notice](#) required by the court. The notice confirms that prospective DACA applicants can submit initial and renewal applications with the full benefit of the law as it was implemented under the Obama Administration.

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First-time DACA applicants may apply for DACA if they meet the following requirements:

1. Under the age of 31 as of June 15, 2012.
2. Came to the United States before turning 16.
3. Have continuously resided in the United States since June 15, 2007.
4. Were physically present in the United States on June 15, 2012, and at the time of making their request for consideration of deferred action with USCIS.
5. Had no lawful status on June 15, 2012.
6. 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.
7. Have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

We will continue to monitor future developments on this topic. Please contact our team with any questions or concerns.

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If you have any questions or would like additional information, please visit our [Labor & Employment](#) group or contact any of the following:

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