

Deferred Action for Childhood Arrivals

Immigration Law Unit
The Legal Aid Society, New York

Disclaimer

- Presentation intended for volunteers at Legal Aid Society application assistance events
- Certain ancillary forms and processes might not apply outside this limited context



What is Deferred Action?

- June 15, 2012, announcement by Secretary of Homeland Security
- Certain young people can request “deferred action” on case-by-case basis
- Upon approval, can live and work in US without fear of removal (deportation)
 - Unless new ground of removability occurs
- Subject to renewal after two years

Limitations of Deferred Action

- Not DREAM Act
- No lawful status
 - Still undocumented
 - Subject to termination at any time
- No road to permanent residence
- No road to citizenship
- No family reunification
- No federal financial aid



Benefits of Deferred Action

- No removal (deportation)
- Stop accruing unlawful presence
- Employment authorization (work permit)
- Social Security number
- Medicaid, if otherwise eligible
 - In New York State
- Public assistance, if otherwise eligible
 - In New York State



Pre-screening

- Legal Aid staff will pre-screen for basic eligibility
- Also for other forms of relief
 - INA § 245(i)
 - Stateside I-601 waivers
 - VAWA
 - U visa
 - SIJS
 - etc.



Basic Eligibility (overview)

- Age
- Entry to US
- Physical presence
- Education
- Disqualifiers



Basic Eligibility – Age

- 15-30 years old
- Not yet turned 31 (as of June 15, 2012)
 - Born on or after June 16, 1981
- Entered the US before age 16



Basic Eligibility – Age (cont.)

- 15yo or older:
 - Never been in removal proceedings
 - Removal proceedings terminated
- Under 15yo is ok:
 - Currently in removal proceedings but not detained
 - If detained, different process
 - Have final removal order
 - Have voluntary departure order



Basic Eligibility – Presence

- Continuously lived in US since at least June 15, 2007
- Brief, innocent & casual departures ok
 - short absence
 - reasonably calculated to accomplish purpose of absence
 - not for criminal purpose
- Physically present in US on June 15, 2012



Basic Eligibility – Education or Military Service

- Currently enrolled in school **at time of application**
 - Includes GED program
- Graduated from high school
- Have GED
- Honorably discharged from:
 - U.S. Armed Forces
 - U.S. Coast Guard



Basic Eligibility – Unlawful Status

- Unlawful status
 - Entered without inspection
 - Lawful entry, but status expired as of June 15, 2012
- If any valid status on June 15, 2012, cannot apply!



Basic Eligibility - Disqualifiers

- Prosecutorial discretion
 - High enforcement priority
 - Low enforcement priority
 - Napolitano Memo, June 15, 2012
 - Morton Memos (2), June 17, 2011
 - Morton Memo, June 30, 2010
 - Napolitano letter to Durbin, August 8, 2011



Basic Eligibility - Disqualifiers

Ineligible for Deferred Action if convicted of:

- any felony
 - any "significant" misdemeanor, or
 - three or more misdemeanors of any kind
- or
- otherwise pose a threat to public safety or national security



What constitutes a conviction?

TWO PART TEST:

- A formal judgment of guilt entered by a judge,
- or where adjudication of guilt is withheld, a judge or jury found the non-citizen guilty, or
- the non-citizen entered a plea of guilty or *nolo contendere* or admitted sufficient facts to warrant a finding of guilt

AND



What constitutes a conviction?

TWO PART TEST (cont.):

- The Judge has ordered some form of punishment, penalty or restraint on the non-citizen to be imposed.
 - 8 USC §1101(a)(48)(A) or INA §101(a)(48)(A)



What constitutes a conviction? (cont.)

Punishment, penalty or restraint on liberty include:

- Incarceration, including suspended sentence
- Probation, conditional discharge
- Community service
- Drug program or other rehabilitative programs
- Adjudgment with “no new arrests” condition
- Suspension of drivers license
- Costs surcharges and fines



What constitutes a conviction? (cont.)

Conviction	Not a Conviction
1. Formal judgment of guilt	1. Family court disposition
2. Deferred adjudication (drug treatment, anger management any other conditions) after plea or admission of guilt)	2. Deferred Adjudication without plea or admission of guilt
3. Conviction on collateral attack	3. Conviction on direct appeal
4. Criminal disposition vacated or expunged in interest of justice or rehabilitative reasons	4. Criminal disposition vacated on legal defect in criminal court
5. Court Martial	5. Juvenile delinquency adjudication
6. Juvenile Offender	6. Youthful Offender Adjudication (YO)

What is the “Record of Conviction”?

- Complaint / Indictment
- Certificate of Disposition
- Plea minutes
- Sentence minutes

Does **not** include:

- Police reports
- Pre-sentence reports



Basic Eligibility – Disqualifiers (cont.)

- Any felony
 - Offense in the U.S. punishable by more than one year of imprisonment,
 - Regardless of offense classification under state law



Basic Eligibility – Disqualifiers (cont.)

- A “significant” misdemeanor
 - Defined by federal law as an offense punishable by a maximum term of imprisonment of one year or less but more than five days

AND



Basic Eligibility – Disqualifiers (cont.)

- “Significant” misdemeanor (cont.)
 - Regardless of the sentence imposed, any misdemeanor offense that involves:
 - domestic violence;
 - sexual abuse or exploitation;
 - burglary;
 - unlawful possession or use of a firearm;
 - drug distribution or trafficking;
 - driving under the influence
 - OR



Basic Eligibility – Disqualifiers (cont.)

- “Significant” misdemeanor (cont.)
 - If not an offense listed above, any misdemeanor offense where the individual received a jail sentence of more than 90 days.
 - Sentence must involve time to be served in custody
 - Does not include a suspended sentence



Basic Eligibility – Disqualifiers (cont.)

- Three or more misdemeanors of any kind
 - Defined by federal law as an offense punishable by imprisonment of one year or less but more than five days
 - Not committed on same day and did not arise from same scheme of misconduct
 - Jail sentence imposed is 90 days or less



Basic Eligibility – Disqualifiers (cont.)

Not misdemeanor

- Minor traffic offenses
 - E.g., Driving without a license
 - But factor to be considered

Not automatic disqualifier

- Expunged / vacated convictions
 - Case by case



Basic Eligibility – Disqualifiers (cont.)

Youth offenses

Not Automatic Disqualifier

- Juvenile Delinquency
- Youthful Offender convictions
 - Case by case
 - Totality of circumstances/threat to public safety

May Be Disqualifier

- Juvenile Offender



DHS Has Complete Unreviewable Discretion – “Exceptional Circumstances”

- Not defined by DHS
- May include
 - Underlying facts of offense
 - Absence or presence of other criminal history
 - DV victim not perpetrator
 - Employment history
 - Filed taxes
 - Family ties and background

PROCEED WITH EXTREME CAUTION BEFORE ASSISTING AN APPLICANT ON THIS BASIS



DHS Has Complete Unreviewable Discretion

- Threat to national security or public safety
 - Participation in criminal activities
 - Gang membership
 - Other criminal activity
 - arrests and dismissed charges
 - Participation in crimes or activities that threaten the US



Basic Eligibility – Disqualifiers (cont.)

- Ask about **all** contacts with law enforcement, including **ALL** arrests and DISPOSITIONS:
- Even if;
 - sealed
 - dismissed
 - summons, desk appearance ticket
 - violation, infraction
 - committed outside the country
 - used a different name



10 Takeaways (1-5)

- Any arrests, charges or convictions could disqualify from DA
- There is no statute of limitations for immigration purposes
- Cannot lie or fail to disclose arrest or conviction
- Do not assume anything or make hasty decisions
- Ask to see criminal documents



10 Takeaways (6-10)

- Inquire about underlying facts of conviction
- If client cannot remember or unsure about criminal disposition, order FBI rap sheet
- Remember: denial of DA on criminal grounds or Fraud/Misrepresentation could result in removal proceedings and detention
- Intersection between immigration and criminal law is complex and ever changing
- Always consult with a reputable immigration attorney or legal services provider.



Resources

- Legal Aid Society (crimes@legal-aid.org)
- Immigrant Defense Project
- New York State Defenders Association



Evidence - Age

- Passport
- Birth certificate plus photo ID
- Secondary evidence
 - Baptism certificate
 - Affidavits by parents



Evidence – Presence

- medical records
- immunization records
- school records
- bills (cell phone, Con Ed, cable)
- bank statements
- leases
- children's birth certificates
- etc



Evidence – Unlawful status 6-15-12

- Expired I-94, I-94W, I-95
- Removal order prior to 6-15-12
- Notice to Appear issued prior to 6-15-12

- Not needed if Entered Without Inspection (EWI)



Evidence – school and military

- High school diploma
- Report cards or transcript
- GED certificate
- DD-214 from military
 - Other military records



Each application packet contains:

- Applicant disclaimer
- G-1145
- I-821D
- I-765
- I-765WS
- Next Steps (Eng/Sp)
- Checklist for completed applications
- Travel Advisory (Eng/Sp)
- Criminal Bars
- Envelope, certified mail forms



Application Assistance

- G-1145, E-Notification of Application/Petition Acceptance
- I-821D Deferred Action
- I-765 – Employment Authorization
- I-765WS – Worksheet



Write legibly!

- If you make a mistake, use the white-out tape
- Do not cross out
- Use only **BLACK** pens
- If question doesn't apply, leave blank
 - Do not write N/A



Write legibly!

- Sloppy handwriting = misspelled names on approval notices and employment authorizations



I-821D Application for Deferred Action

Part 1. Information About You (continued)

Other Information

4. Alien Registration Number (A-Number) (if any)

▶ A-

5. U.S. Social Security Number (if any)

▶

- A-Number only if prior involvement with immigration authorities
- SSN – make sure not a Tax ID Number

I-821D Application for Deferred Action

Removal Proceedings Information

3.a. Are you now or have you ever been in removal proceedings? Yes No

If you answered "Yes" to the above question, you must check a box below indicating your current status or outcome of your removal proceedings.

3.b. Type of proceedings:

- a. Currently in Proceedings c. Terminated
b. Administratively Closed d. Subject to a Final Order

3.c. Date and Location of Proceedings

- Order / other document from Immigration Judge
- Decision from Board of Immigration Appeals
- A# Hotline: (800) 898-7180

I-821D Application for Deferred Action

- 8.b. Country of Birth
9. Country of Residence
10. Country of Citizenship/Nationality

- Country of residence **must** be United States
- Countries of birth and citizenship might be different
 - Check birth certificate and passport

I-821D Application for Deferred Action

U.S. Entry Information

13. Date of *Initial* Entry into the United States, on or about:
(mm/dd/yyyy) ▶
14. Place of Entry into the United States.

- May need to estimate
 - Approximate date
 - Mexico/Arizona border

I-821D Application for Deferred Action

15. Status at Entry (e.g., B2, F1, J1, No Lawful Status, etc.)

- Common statuses:
 - EWI (entered without inspection)
 - B2 (visitor visa)
 - F1 (student visa)
- Must now be out of status!

I-821D Application for Deferred Action

Part 2. Arrival/Residence Information

1.a. I arrived in the United States on or before June 15, 2007.

Yes No

1.b. I have been continuously residing in the United States since at least June 15, 2007.

Yes No

NOTE: If you answer "No" to Item Numbers 1.a. or 1.b., use **Part 7., Additional Information**, to include a full explanation.

- Both must be "Yes"
- Otherwise, not eligible for Deferred Action!

I-821D Application for Deferred Action

Part 3. Criminal, National Security and Public Safety Information

If any of the following questions apply to you, use **Part 7., Additional Information**, to describe the circumstances and include a full explanation.

- We will pre-screen for criminal issues
- If these come up during application assistance, advise a supervising attorney

I-821D Application for Deferred Action

Preparer's Full Name

Provide the following information concerning the preparer:

2.a. Preparer's Family Name (*Last Name*)

2.b. Preparer's Given Name (*First Name*)

3. Preparer's Business or Organization Name

- DO NOT complete this part
- One of the Legal Aid staff will review and sign

I-765 Application for EAD

I am applying for: Permission to accept employment.
 Replacement (of last employment authorization document).
 Renewal of my permission to accept employment (attach previ

- If first time applying for EAD, check top box
- If previously had EAD, check "Renewal"
- **Everyone** must fill out an I-765, no matter what
 - Even if they don't want an EAD



I-765 Application for EAD

16. Go to the "Who May File Form I-765?" section of the instructions. In the space below, place the letter and number of the eligibility category you selected from the instructions. (For example, (a)(8), (c)(17)(iii), etc.).

(C) (33) ()

17. If you entered the eligibility category, (c)(3)(C), in Question 16 above, list your degree, your employer's name as listed in E-Verify, and your employer's E-Verify Company Identification Number or a valid E-Verify Client Company Identification Number in the space below.

Degree: _____

Employer's Name as listed in E-Verify: _____

Employer's E-Verify Company Identification Number or a valid E-Verify Client Company Identification Number _____

- Question 16: **(C)(33)**
- Question 17: **leave blank**

I-765 Application for EAD

Signature of Person Preparing Form, If Other Than Above: I declare that this document was prepared by me at the request of the applicant and is based on all information of which I have any knowledge.

Print Name _____ Address _____ Signature _____ Date _____

- **DO NOT** complete this part
- One of the Legal Aid staff will review and sign

I-765WS Worksheet

Part 2. Financial Information

2. My current annual income is: \$
3. My current annual expenses are: \$
4. The current value of my assets is: \$

- Use Legal Aid Guide to compute expenses:
 - Rent
 - Utilities
 - Commuting
 - Medical
 - Tuition
- Assets will likely be zero

I-765WS Worksheet

Part 3. Additional Information

If you would like to provide an explanation of the above information, please use the space below.

- Note if full time student
- Note if living at home with parents
- Note if other significant expenses
 - disability
 - caring for sick relative
 - etc
- For all others, leave blank

No Form G-28

- Not submitting Form G-28, Notice of Appearance as Attorney or Accredited Representative
- Consistent with USCIS's February 18, 2011 Statement of Intent regarding pro bono group events
- Our I-821D and I-765's already have pre-printed language to this effect.

EXEMPT

Photos

- Two passport pictures
- Name and A# (if any) on back of each



Application deadline

- None yet announced



Sample EADs

- Note the A number
- Enter A number on the:
 - I-821D
 - I-765
 - back of passport photos



Fees

- Deferred Action biometrics: \$85
- Employment Authorization Document (EAD): \$380
- Total cost: **\$465**

- NO FEE WAIVERS!
 - Limited fee "exemptions"



Fee Exemption (1 of 3)

- Under 18 years of age,
- homeless, in foster care or otherwise lacking any parental or other familial support,
AND
- income less than 150% of the U.S. poverty level



Fee Exemption (2 of 3)

- Cannot care for self due to serious, chronic disability,
AND
- income less than 150% of the U.S. poverty level



Fee Exemption (3 of 3)

- At time of request, accumulated \$25,000 or more in debt in past 12 months as result of unreimbursed medical expenses for self or immediate family member
- AND
- income is less than 150% of the U.S. poverty level



Fee Exemptions first!

- **First** request fee exemption
 - Send to different address
- If approved, **then** apply for Deferred Action
 - No simultaneous submissions



“Next Steps” – review with applicant

- Receipt within 4 weeks
- Biometrics appointment
- Approvals take “several months”
- Work permit (EAD) within 90 days after approval
- Deferred action renewable after 2 years
- Complete / continue schooling
- Travel
- Public health insurance



Other considerations

- Discretionary form of relief
 - no appeals
- Confidential
 - Not to be used for other purposes
 - NTA policy
 - Family members will not be investigated
- Fraud
 - Enforcement priority
- Travel issues



Checkout

Order of documents:

- G-1145
- I-821D
- I-765
- I-765WS
- Check or money order \$465
- Passport photos
- Supporting Documents:
 - Passport / birth certificate
 - Unlawful immigration status
 - Unless EWI
 - Diploma/enrollment/discharge
 - Certificate(s) of disposition
 - Physical presence



Checkout

- Final review of application
- Make copies
- Certified mail labels
- **Collect the yellow registration sheets!**





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