

**DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA):  
HOW IS IT HELPFUL FOR IMMIGRANT CRIME & VIOLENCE SURVIVORS?  
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## **What is Deferred Action for Childhood Arrivals (DACA)?**

On June 15, 2012, the Obama Administration announced the availability of “deferred action” to immigrants who were brought to the U.S. prior to their 16<sup>th</sup> birthday, were under 31 and had no valid immigration status on June 15, 2012, and meet several other requirements. Deferred action provides certain undocumented immigrants temporary protection from deportation and work authorization for a period of two years.<sup>1</sup> The Migration Policy Institute (MPI) estimates that approximately 1.76 million individuals are currently eligible to apply for DACA.<sup>2</sup> On November 20, 2014 President Barack Obama announced an Executive Order that alters these criteria, increasing the number of immigrants who may be eligible.

For the first time, many young people are consulting with service providers to determine eligibility for DACA. Young people coming forward for DACA may also have been victims of domestic violence, sexual assault, human trafficking and other crimes that would make them eligible for permanent legal immigration status as a result of having been crime victims. For this reason, service providers working with DACA applicants should carefully screen for crime victim related remedies that could provide permanent legal status<sup>3</sup>. Similarly, advocates working with victims should screen for DACA eligibility as it may result in earlier receipt of work authorization. Survivors applying for DACA can apply prior to, concurrently, or while waiting for approval of crime victim-related immigration remedies.

## **Who is Eligible for DACA?<sup>4</sup>**

To meet the basic eligibility requirements, applicants must prove that they:

- Were under the age of 31 on June 15, 2012 (the date the program was announced);
- Arrived in the U.S. under the age of 16;

<sup>1</sup> For more information, see the USCIS website: [www.uscis.gov/childhoodarrivals](http://www.uscis.gov/childhoodarrivals).

<sup>2</sup> See Migration Policy Institute, “Key Factors, Unresolved Issues in New Deferred Action Program for Immigrant Youth Will Determine Its Success,” August 16, 2012, <http://www.migrationinformation.org/Feature/display.cfm?ID=903>.

<sup>3</sup> “Advocate—Immigrant Survivor Flow Chart,” <http://iwp.legalmomentum.org/reference/additional-materials/iwp-training-powerpoints/july-11-2012-st.-paul-mn/screening-tools/Advocate-Immigrant%20Victims%20Safety%20Flow%20Chart%2007-03-2012.doc>.

<sup>4</sup> USCIS DACA guidelines can be found at

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=f2ef2f19470f7310VgnVCM10000082ca60aRCRD&vgnnextchannel=f2ef2f19470f7310VgnVCM100000082ca60aRCRD#guidelines>.

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- Are at least 15 years old, unless they are in removal proceedings or have a final order of removal or voluntary departure order;
- Entered the U.S. without inspection prior to June 15, 2012 or were in the U.S. without status on June 15, 2012;
- Continuously resided in the U.S. since June 15, 2007;
- Are currently in school, have graduated from high school, have earned a GED, or have honorably served in the armed forces;
- Have not been convicted of a felony, significant misdemeanor, or three or more misdemeanors; and
- Do not pose a threat to public safety or national security.

## What is the Benefit of DACA?

DACA provides qualifying individuals protection from deportation for a period of two years with the potential for renewal. DACA recipients will also receive work authorization, and will not accrue unlawful presence during the period deferred action is in effect. DACA applicants can expect to wait 4-6 months for approval and work authorization.

## What are the Drawbacks of DACA?

- DACA is a *temporary* form of relief and *does not* provide a pathway towards permanent residence; it is an act of prosecutorial discretion that can be revoked at any time, for any reason, and is not appealable if denied.
- DACA denials could result in an individuals' referral to ICE for the initiation of removal proceedings.
- Applicants lose eligibility for DACA if they leave the U.S. after August 15, 2012 and before DACA is granted. Additionally, DACA recipients wishing to travel abroad must seek advance parole to re-enter the U.S. prior to departure.
- DACA recipients cannot sponsor family members for deferred action immigration relief.
- Applicants must not have serious criminal history, including gang activity.
- Applicants must have graduated high school, earned a GED, served honorably in the armed forces, or be currently enrolled in school or a qualifying educational program.<sup>5</sup>
- DACA does not grant access to public benefits or to federal educational financial aid.

## **BUT might a DACA applicant be eligible for LONGER-TERM immigration relief with MORE benefits?**

DACA provides certain foreign nationals temporary protection from deportation and work authorization for a period of two years. While it may be renewed after two years, DACA is not immigration status, does

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<sup>5</sup> For USCIS guidance on what educational programs fulfill the school requirement, see <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=3a4dbc4b04499310VgnVCM1000082ca60aRCRD&vgnnextchannel=3a4dbc4b04499310VgnVCM10000082ca60aRCRD#education>.

not provide a path towards permanent residence or citizenship, and does not extend to family members. Additionally, it can be revoked at any time.

However, certain crime survivors and abandoned, abused, and neglected children may be eligible for LONGER-TERM immigration relief that does offer a path towards permanent residence and citizenship, while also granting work authorization and sponsorship of family members and sometimes, access to public benefits. Individuals can apply for the following immigration relief *and* DACA *at the same time*, as long as they are not currently in status, and were not on June 15, 2012! As soon as VAWA, U, T, or SIJS is granted, however, the individual no longer needs deferred action.

If you think you may qualify for one of the following types of immigration relief, contact a reputable immigration attorney or organization to help you (see below for referral information)!

### **VAWA Self-Petition**

The Violence Against Women Act (VAWA) Self-Petition is available to survivors of domestic violence who have or had a qualifying relationship with the abuser, reside or resided with the abuser, have good moral character, and have been the victim of battery or extreme cruelty. The self-petition allows spouses, parents, or children abused by a U.S. citizen or lawful permanent resident to apply for permanent residence (a “green card”) without needing the abuser to file an immigration petition on their behalf.

### **U Visa**

The U visa is available to victims of qualifying criminal activity who have suffered substantial physical or mental abuse as a result of the crime and who possess information about the crime and are willing to cooperate with a law enforcement investigation or prosecution. Examples of qualifying crimes are domestic violence, sexual assault, felonious assault, rape, murder, and human trafficking.

### **T Visa**

The T visa is available to victims of trafficking who are physically present in the U.S. on account of the trafficking and comply with any reasonable request for assistance with an investigation or prosecution, and would suffer extreme hardship if removed from the U.S. Human trafficking, often referred to as “contemporary slavery,” may take the form of labor or sexual exploitation.

### **SIJ Status**

Special Immigrant Juvenile Status (SIJS) is available to unmarried youths under the age of 21 in the U.S. who have been abused, abandoned, or neglected by either one or both parents, where a court finds that reunification is not viable and removal is not in the child’s best interests. Abused, abandoned, and neglected immigrant children are among the most vulnerable individuals in the U.S. and as such, are very susceptible to domestic violence, sexual assault, and other crimes and victimization.



## **When is DACA Particularly Useful for a Crime or Violence Survivor Client?**

### ***DACA as a quicker means to obtaining work authorization for VAWA self-petitioners and U visa applicants***

In a 2011 national survey of service providers, Legal Momentum revealed that almost 75% of VAWA self-petitioners waited more than 6 months after filing to receive work authorization, and under 50% had received it within 1 year of filing. Most VAWA self-petitioners who do receive work authorization in under 6 months also were able to file for adjustment of status to permanent residence at the same time, which yields a faster and more likely grant of work authorization. Over a quarter of VAWA self-petitioners await work authorization for 13 to 24 months! Similarly, over 90% of U visa applicants must wait more than 6 months after filing to receive work authorization, and only 60% had received work authorization within 1 year of filing.<sup>6</sup>

DACA may afford quicker access to work authorization than the above survivor-based immigration remedies, which do not yield work authorization for a year and a half, in many cases. DACA applications, which are being processed in approximately 2 months right now, may provide survivors a quicker pathway to work authorization, which decreases their vulnerability to abuse and enhances their ability to recover from their victimization.

### ***DACA as a Remedy for Survivors' Children Who Have "Aged Out" or Are Too Old for Derivative Status***

DACA may also serve an important remedy for the children of U visa survivors who are over the age of 21 and therefore, too old to receive derivative status based on a parent's petition. This helps children who were over 21 at the time the principal applicant filed an application for relief, and also those who have "aged out" because they turned 21 while awaiting approval.

## **Need Immigration Legal Advice?**

Call NIWAP for a referral or search our online Service Provider Directory!

<http://niwap.org/directory/>

1 (202) 274-4457

## **Resources for Human Trafficking & Domestic Violence Survivors**

24-hour National Human Trafficking Resource Center: 1 (888) 3737-888

24-hour National Domestic Violence Hotline: 1 (800) 799-SAFE (7233)

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<sup>6</sup> See Legal Momentum/NIWAP's national service provider survey here:

<http://iwp.legalmomentum.org/reference/additional-materials/immigration/vawa-t-and-u-procedures/Timing-of-Immigrant-Victim-Access-to-Work-Authorization.pdf/view>.