

DEFERRED ACTION TRAINING

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Presented by

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WHAT IS DEFERRED ACTION

- DHS discretionary decision not to deport or initiate enforcement against a person
- Valid for two years and can be renewed
- Announced by Secretary of Homeland Security on June 15, 2012; Application period opened August 15, 2012
- Is not a path to permanent residency or citizenship

BENEFITS OF DEFERRED ACTION

- Removes fear of deportation
- Eligibility for work authorization; social sec.
- Driver's license????
- Will not accrue “unlawful presence” if under 18 when application filed
- After DA grant, may be eligible for advance parole (permission to travel) but must consult with lawyer before travel abroad

RISKS OF DEFERRED ACTION

- Admitting facts which establish removability; creating permanent record
- Those found ineligible and who have crimes making them enforcement priority can be detained/deported
- Program may be discontinued or rules changed

ELIGIBILITY

- Entered U.S. before age 16
- Under 31 on June 15, 2012
- Continuously resided in US since June 15, 2007 up to the present
- Physically present in the US on June 15, 2012 and at time of applying for deferred action

ELIGIBILITY

(continued)

- Entered without inspection before 6/15/12 or lawful immigration status expired as of 6/15/2012
- Currently in school, graduated or obtained certificate of completion from high school, have obtained GED, or are honorably discharged from military

ELIGIBILITY

(continued)

- Not been convicted of:
 - felony (offense punishable by imprisonment for term exceeding one year)
 - significant misdemeanor
 - three or more other misdemeanors
 - and do not otherwise pose threat to national security or public safety

MINIMUM AGE REQUIREMENT

- If never in removal proceedings, must be 15 at time of applying (can apply on 15th birthday)
- If in removal proceedings or subject to final removal or voluntary departure order, can apply if under 15

SIGNIFICANT MISDEMEANOR DEFINED

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

CONVICTIONS OF THREE OR MORE MISDEMEANORS

- Any misdemeanor that is not a significant misdemeanor as defined above and for which the individual was sentenced to time in custody of 90 days or less
- Minor traffic offenses will not be considered a misdemeanor for purposes of deferred action, but can go to the exercise of discretion
- Immigration related offenses by state immigration laws will not be treated as disqualifying crimes

Public Safety and National Security Threat

- Juvenile delinquency adjudications: do not count as convictions but may lead to public safety or security threat determination and denial
- Gang membership: DHS will rely on information from local police or gang units; field interviews by police during stop and frisk can lead to entry into gang databases

Expunged Convictions

- These will not automatically disqualify you; assessed on a case-by-case basis to determine whether under all circumstances a favorable exercise of prosecutorial discretion is warranted
- Is there any hope if disqualifying crime? If convicted of a felony, significant misdemeanor offense or three or more other misdemeanors, you will not be considered for deferred action except where DHS determines there are exceptional circumstances

RISKS OF APPLYING

- DHS will not share information from applications with ICE or CBP for purpose of immigration enforcement
- Exception for those who meet criteria for the issuance of Notice to Appear or referral to ICE under criteria set forth in CIS Notice to Appear guidance
- Information may be shared with national security and law enforcement agencies for purposes other than removal, including assistance in identifying fraudulent claims, national security or investigation of crimes.
- If referred to ICE for removal, information related to family members contained in request will not be shared for purposes of immigration enforcement

DEFINITION OF CURRENTLY IN SCHOOL

- Public or private elementary, junior high, high school or secondary school
- Education, literacy or career training center (including vocational) designed to lead to placement in postsecondary education, job training or employment and you are working toward such placement;
- Program assisting students in obtaining a high school diploma or recognized equivalent or passing GED exam

CONTINUOUS PRESENCE

- Brief, casual and innocent absence does not interrupt five year continuous presence.
Travel must be before August 15, 2012
- BCI means: 1) short and reasonably calculated to establish purpose; 2) not result of exclusion, deport, or removal order; 3) not because of vol. departure order or administrative vol. departure; 4) purpose and actions did not violate law

OTHER CONSEQUENCES OF DEPARTURES

- 3/10 year bars for departure after unlawful presence (INA 212(a)(9)(B)(i))
- Permanent bar for re-entry (or attempted re-entry) ewi after accruing over a year of unlawful presence in US or leaving under order of removal (INA 212(a)(9)(C))
- Note: these bars do not create problems for DACA but *do create* huge problems for other forms of immigration relief

EVIDENCE

- Affidavits cannot be used to establish entry before age 16, physical presence on June 15, 2012, under 31 on June 15, 2012, or education requirements
- Affidavits can be used to fill gaps in documentation used to establish five years of CP; can be used to fill gaps in documentation to establish that departure brief, casual and innocent. If using affidavits, you must submit two or more by people who have direct personal knowledge
- Documentation to support claim: can include but not limited to school records, medical records, financial records, employment and military records

APPLICATION FORMS

- I-821D, Consideration of Deferred Action for Childhood Arrivals
- I-765
- I-765WS
- G-28 if attorney of record
- See form instructions for where to file
- Always file certified mail and save mail receipt

FILING FEES

- TOTAL \$465 (includes biometrics processing fee)
- Fee Waivers

generally unavailable unless under 150 percent of poverty line and under 18 and in foster care or homeless; suffering from serious chronic disability; or have accumulated \$25,000 or more in debt for medical expenses

FILING TIPS

- Two passport size photos needed for I-765
- If attorney of record, attorney and client must sign G-28
- Send certified mail
- Send G-1145 form with application to request E-notification
- Certificate of Translation must accompany English translations
- Save complete copy of application, including copy of money order

CLIENTS IN REMOVAL PROCEEDINGS

- Eligible to file before USCIS even if in removal proceedings, with a final removal order, or with a voluntary departure order
- Only exception is for those currently detained; must contact ICE Public Advocate at 1-888-351-4024 or EROPublicAdvocate@ice.dhs.gov and seek ICE review

APPEALS OF USCIS DENIAL

- Cannot file motion to reopen or reconsider
- Cannot appeal
- May request review if: 1) USCIS denied request based on abandonment and you claim you did respond to a RFE within prescribed time; or 2) USCIS mailed RFE to wrong address and you had properly filed change of address

QUALITY CONTROL

- Comprehensive and confidential intake
- Effective case management system with capability for efficient renewals in two years
- Careful review of forms and evidence by attorney and client prior to filing; the forms matter!
- Educating clients on DA and other remedies