



GMS Flash Alert

Immigration Edition

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United States - Interim Changes While DHS Considers Future of DACA Program

On July 28, 2020, the Department of Homeland Security (DHS) announced interim changes to the Deferred Action for Childhood Arrivals (DACA) program.¹ Effective immediately, the DHS will not accept any initial DACA applications, and renewals for DACA benefits will only be granted in one-year increments. The DHS will also reject all DACA applications for travel authorization except in extraordinary circumstances. These interim changes were announced to allow the DHS time to consider the full rescission of the DACA program, in light of the U.S. Supreme Court's recent decision on the agency's 2017 attempt to end DACA.²

WHY THIS MATTERS

The DACA program provides certain undocumented migrants temporary protection from deportation, as well as the ability to obtain temporary employment authorization.³ According to statistics published by the USCIS, there were approximately 649,070 active DACA beneficiaries as of December 2019, with approximately 89 percent of these beneficiaries employed in the U.S. across various industry sectors.⁴

For these DACA individuals who are employed in the U.S., the latest DHS memorandum on the DACA program maintains the status quo that has been in place since the agency attempted to terminate the DACA program in 2017 – they may continue to reside and work in the country, however their ability to exit and re-enter the U.S. remains suspended except in extraordinary circumstances. Employers of DACA beneficiaries should take note of this travel restriction, as DACA employees continue to be unable to participate in global mobility assignments or engage in international business travel under the latest DHS memorandum.

Given that the DHS may take further action to change the DACA program in the coming months, it is prudent for DACA employees who remain eligible to renew their DACA benefits as soon as possible, to prevent disruptions to their status and work authorization in the United States. DACA employees who wish to travel outside of the U.S. are advised to first consult with immigration legal counsel.

Background

The Deferred Action for Childhood Arrivals (DACA) program was established in 2012 to provide temporary relief from deportation and work authorization to undocumented immigrants who came to the U.S. as children.⁵ The program originally allowed beneficiaries to secure DACA-related travel documents, known as “Advance Parole,” which permitted return to the U.S. following international travel. Issuance of DACA-related travel documents and initial applications for DACA benefits have been suspended since 2017, when the DHS introduced plans to rescind the DACA program.⁶

On June 18, 2020, the U.S. Supreme Court held that the Administration’s attempt to dismantle the DACA program was improper, but left open the possibility for the Administration to terminate the DACA program through legislative efforts.⁷

DHS July 28 Memorandum

The DHS July 28, 2020 memorandum confirms the agency’s position that termination of the DACA program is warranted based on existing DHS immigration enforcement policies, but that additional careful consideration is required prior to a full rescission of the program. While the agency considers next steps and the future of DACA, the memorandum introduces the following three interim changes to the program:

- No initial DACA applications will be accepted, but the USCIS will continue to process applications to renew DACA benefits;
- Renewals of DACA benefits will be granted in one-year (instead of two-year) increments; and
- Applications for DACA-related Advance Parole will only be granted in exceptional circumstances.

All of these **interim changes take effect immediately**, and will apply to both applications that are currently pending with the USCIS, as well as those submitted after the issuance of the memorandum. Initial DACA applications and applications for DACA-related Advance Parole pending with the USCIS will be rejected, and filing fees refunded to applicants.

KPMG NOTE

KPMG Law LLP in Canada is closely monitoring the Administration’s actions on the DACA program. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur.

Employers must be mindful not to treat DACA beneficiaries’ employment differently than other similarly employed individuals. Differential treatment between employees based on the type and/or period of validity of an employee’s work authorization is considered discriminatory and runs afoul of federal regulations mandating fair employment practices for U.S. employers.

FOOTNOTES:

1 To read the Department of Homeland Security’s memorandum issued on July 28, 2020, [click here](#).

2 For prior coverage of the U.S. Supreme Court decision and the litigation surrounding the termination of the DACA program, read the following issues of *GMS Flash Alert*: [2020-291](#) (June 22, 2020) and [2019-117](#) (July 16, 2019).

FOOTNOTES continued:

3 For the U.S. Citizenship and Immigration Services' statistics on the Deferred Action for Childhood Arrivals (DACA) program, [click here](#).

4 For the U.S. Citizenship and Immigration Services' statistics on the Deferred Action for Childhood Arrivals (DACA) program, click [here](#).

See also Tom K. Wong et al., "2019 National DACA Study," September 2019 at:

<https://www.americanprogress.org/issues/immigration/news/2019/09/19/474636/daca-recipients-livelihoods-families-sense-security-stake-november/> and the results of the survey at:

<https://cdn.americanprogress.org/content/uploads/2019/09/18122133/New-DACA-Survey-2019-Final-1.pdf> . (Note that this is a 3rd party (non-governmental, non-KPMG) website. Providing this link does not represent an endorsement of this website by KPMG.)

5 For background information on the DACA program prior to the announced rescission in 2017, [click here](#). For additional background on DACA, see the following issues of *GMS Flash Alert*: [2020-291](#) (June 22, 2020) and [2019-117](#) (July 16, 2019).

6 To read then U.S. Attorney General Jeffrey Sessions' September 2017 remarks on DACA, [click here](#). For prior coverage on the Department of Homeland Security's announcement to rescind the DACA program, read *GMS Flash Alert* [2017-135](#) (September 12, 2017).

7 To read the Supreme Court ruling issued on June 18, 2020, [click here](#).

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Contact us

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