

GETTING READY FOR ADMINISTRATIVE RELIEF: WHAT WE KNOW NOW

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THE BIG PICTURE

Presidential announcement of executive action on immigration reform involving changes to enforcement policy, deferred action expansion, and changes to our legal immigration system.

• DHS described in ten separate executive action memos
<http://www.dhs.gov/immigration-action>

- See also
 - ICE: <http://www.ice.gov/immigrationaction>
 - USCIS: <http://www.uscis.gov/immigrationaction>

• 2 Presidential Memoranda: <http://www.whitehouse.gov/briefing-room/presidential-actions>

• DOL Fact Sheets: <http://www.dol.gov/dol/fact-sheet/immigration/>

SCOPE OF EXECUTIVE ACTION

- **Border Security**
- **Revised Removal Priorities**
- **Replacing Secure Communities with New Priority Enforcement Program**
- **Personnel Reform – ICE**
- **Entrepreneur Parole**
- **PIP for enlistees**
- **New Efforts by DOL For U & T Visas**
- **DACA Expansion**
- **DAPA (for parents of USC and LPRs)**
- **Expansion of Provisional Waivers**
- **Advance Parole Policy**
- **Naturalization Promotion**
- **Support for High-Skilled Business and Workers**

PROJECTED IMPACT

- **Deferred Action for Parental Accountability: Estimated 4 million potential beneficiaries**
- **Expanded DACA eligibility: Estimated 270,000 potential beneficiaries**

DEFERRED ACTION FOR PARENTAL ACCOUNTABILITY: WHO QUALIFIES?

- **Continuous residence in U.S. since before 01/01/10**
- **As of 11/20/14, have USC or LPR son or daughter**
- **Physical presence in U.S. on 11/20/14 and at time of application**
- **No lawful status on 11/20/14**
- **Not an enforcement priority, defined in the new enforcement priorities memo as:**
 - people suspected of terrorism, gang associations, or significant visa abusers, recent unlawful border crossers, and people convicted of felonies, aggravated felonies, significant misdemeanors, or three or more misdemeanors, final removal orders issued on or after 01/01/14
- **No factors to warrant denial based on discretion**

DAPA HYPOS

- **Maria and Brian entered the United States without inspection in May of 2007 and have never left. They have two children. Both children were born in the United States.**
 - Maria has not had any contact with law enforcement. Maria is eligible for DAPA.
 - Brian had no trouble with the police but he does have a final order of removal issued against him in 2010. The order was never effectuated. Brian is also eligible for DAPA.

DAPA HYPOS

- **Susanna has been living in the United States since 2000, when she entered without inspection. She has never left. She has three U.S. citizen children. Last year, Susanna was convicted of driving without a license, which is a misdemeanor in the state where she lives. Susanna has had no other trouble with the police.**
 - Susanna is eligible because minor traffic offenses are exempt.
- **What if Susanna has a DUI conviction but didn't serve any time for this offense?**
 - Susanna is not eligible because a DUI is a listed offense in the enforcement priorities memo (Priority 2 "significant misdemeanor")

APPLYING FOR DEFERRED ACTION

- **\$465.00 Fee**
- **Biometrics**
- **Limited fee exemptions, no waivers**
- **Application period to commence within 180 days (by May 19, 2015)**
- **Approved applicants get deferred action and EAD for 3 yrs**

DAPA: WHAT WE DON'T KNOW YET

- How will the Administration interpret the new enforcement priorities memo?
- What is the definition of continuous residence and how much evidence will be required?
- How will USCIS define the terms “son” and “daughter?”
- What will the application look like & when will the application period begin?

DAPA: DISCLOSURE OF INFORMATION; EXPOSURE TO ENFORCEMENT

- Same policy as applies to DACA cases:
 - Case information protected from disclosure.
 - Denied case will not trigger referral to ICE unless circumstances fall within Nov. 2011 USCIS policy guidelines for enforcement

WHAT CAN POTENTIAL APPLICANTS DO NOW?

- Gather documents related to:
 - Identity
 - Relationship to USC or LPR child
 - Continuous residence
 - Physical presence around November 20, 2014
 - Criminal record, if any
- Save money for fee
- Do **NOT** travel abroad
- BE ON GUARD AGAINST FRAUD

EXPANDED DACA ELIGIBILITY

- No Age Cap
- Revised Eligibility Entry Date: moved to January 1, 2010 (from June 15, 2007)
- Three-year deferred action and EAD, effective November 24

NOT ELIGIBLE FOR DACA BEFORE, ELIGIBLE NOW

- Maricel, from the Philippines, is 17- years-old. She entered the U.S. with a tourist visa in 2008 and has been in the U.S. since then, attending school. She wasn't eligible for DACA before but she is now.
- Paula, from Mexico, is 35-years-old. She entered the U.S. EWI 20 years ago when she was 15, and she completed high school here. She was too old to qualify for DACA before but she is eligible now.

EXPANDED DACA ELIGIBILITY: WHEN AND HOW?

- No set date but within 90 days of announcement
- Expect Form I-821D to be revised to reflect new eligibility changes
- People eligible for DACA under the June 15, 2012 Napolitano Memo may continue to apply for Initial DACA and DACA Renewal

WHAT CAN POTENTIAL APPLICANTS DO NOW?

- **Gather documents to satisfy education, date of entry, continuous residence requirements**
- **If any criminal record, get documents so that potential impact on eligibility may be assessed**
- **Save money for fee**
- **Do NOT travel abroad**
- **BE ON GUARD AGAINST FRAUD**

POTENTIAL APPLICANTS DETAINED OR IN PROCEEDINGS

- **DHS Memo instructs ICE and CBP to exercise discretion for individuals who meet DACA or DAPA criteria, including those in immigration custody, removal proceedings, or whom ICE or CBP encounters.**
 - **Individuals in ICE custody**
 - Detainees who may be eligible for DACA or DAPA should
 - Follow detainee-staff communication procedures;
 - Contact ICE ERO Detention Reporting and Information Line – 1-888-351-4024.
 - **Individuals in removal proceedings**
 - Individuals potentially eligible for DACA or DAPA and individuals not described under the priorities memo, may request administrative closure or termination from the ICE Office of the Principal Legal Advisor (OPLA). Visit webpage below for details.
 - **Individuals with removal orders who are scheduled for removal**
 - Contact ERO officer, ICE ERO Detention Reporting and Information Line, or your local OPLA office.
- **ICE webpage provides more detailed guidance on seeking discretion from ICE: <http://www.ice.gov/immigrationaction>**

WHAT'S NEW ON ENFORCEMENT?

- **Nov. 20, 2014 DHS Memo: Policies for the Apprehension, Detention and Removal of Undocumented Immigrants**
- **Rescinds most prior prosecutorial discretion memos, except 2011 memo re victims of DV and other crimes**

THREE-TIER ENFORCEMENT PRIORITIES

- Priority 1 : Apprehension at the border, national security threat, conviction for or participation in gangs, and conviction for a felony or an “aggravated felony.”
- Priority 2 : Conviction for a “significant misdemeanor” or three or more misdemeanors not arising out of the same incident, as well as “recent” illegal entry or reentry (after 1/1/14), and “significant[] abuse[] [of] the visa or visa waiver program.”
- Priority 3: issuance of a final order or removal on or after 1/1/14.

People who are not in a priority category may still be removable

WHAT'S NEW ON ENFORCEMENT?

- **Priorities Enforcement Program replaces Secure Communities Program**
- **DHS says hold requests will be replaced with notification requests, except in "special circumstances" which are not defined**

ADVANCE PAROLE TRAVEL GUIDANCE

Application of *Matter of Arabally and Yerabelly, 25 I&N Dec. 771 (BIA 2012)* to all travel on advance parole:

National guidance to be prepared stating that all travel on advance parole does not constitute a departure for purposes of 212(a)(9)(B) unlawful presence bars.

IT'S NOT JUST TRAVEL:
BENEFITS OF ADVANCE
PAROLE

- Gloria, age 23, entered the U.S. EWI and has never departed since her entry. She now has DACA. Last month, she traveled to Mexico to visit her critically ill grandmother. Gloria's travel did not trigger 212(a)(9)(B) inadmissibility. Gloria, who is married to a USC, may now adjust status under 245(a).

EXPANSION OF
PROVISIONAL WAIVERS

- **Current Policy:** Provisional Waivers for unlawful presence only available to IRs who can establish extreme hardship to USC spouse or parent
- **New Regulations to be Issued:** Provisional waiver to be available to all family-based immigrants

EXPANSION ELIGIBILITY IN
ACTION

- Kaleem, from Pakistan, entered the U.S. on a tourist visa 3 years ago, and overstayed. His 2B preference priority date is almost current and he will need to apply for his visa in Islamabad. When the regulations are amended, Kaleem may seek a provisional waiver of unlawful presence before going to his consular appointment.

**DEFINITION OF EXTREME
HARDSHIP**

- **USCIS to produce additional guidance on definition of extreme hardship**
- **USCIS to consider criteria by which a presumption of extreme hardship may be determined to exist**

U & T VISA CHANGES

- **The Department of Labor's Wage and Hour Division (WHD) will begin certifying T visas after publishing regulations.**
- **WHD will add 3 qualifying crimes for which it will complete U visa certifications:**
 - Extortion
 - Forced Labor
 - Fraud in foreign labor contracting

**PAROLE-IN-PLACE FOR
FAMILY MEMBERS OF
WOULD-BE ENLISTEES**

- **USCIS will explore granting**
 - Parole-in-place for certain spouses, children, and parents of those seeking to enlist in the U.S. Armed Forces
 - Deferred action to undocumented family members of U.S. military service members and veterans who would otherwise be eligible for PIP, but who were inspected and admitted into the United States.

STAY TUNED FOR MORE INFO

- Brought to you by CIRI: Committee for Immigration Reform Implementation
- Join listserv for legal practitioners:
 - To join, send a blank email to: adminrelief-subscribe@yahogroups.com

ADMINRELIEF.ORG

- One-stop website, including resources for
 - legal practitioners
 - community and religious organizations
 - volunteers
 - government agencies
 - consular officials
 - educators

ADMINISTRATIVE RELIEF
RESOURCE CENTER

www.adminrelief.org
