

## Immigration Alert

AUGUST 15, 2012

### Deferred Action Program Now Implemented by Homeland Security

Today, the Obama administration is implementing a new [Deferred Action Program](#) that the Department of Homeland Security (DHS) will administer. This program, which operates as a form of prosecutorial discretion, offers young people who are in the United States with no legal immigration status the opportunity to avoid deportation for at least two years and to gain work authorization.

The program is now open to individuals who: (1) were under the age of 31 as of June 15, 2012; (2) came to the United States before reaching their 16th birthday; (3) have continuously resided in the United States since June 15, 2007; (4) were physically present in the United States on June 15, 2012; (5) entered without inspection before June 15, 2012, or had no lawful immigration status as of June 15, 2012; (6) are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and (7) have not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, or do not otherwise pose a threat to national security or public safety. DHS published a helpful [guide](#) offering more in-depth guidance on the eligibility requirements for deferred action. The American Immigration Council also provides detailed guidance on eligibility for the program [here](#).

Those individuals who are 15 or older and not in immigration detention may affirmatively apply for deferred action through United States Citizenship and Immigration Services (USCIS). Last night, USCIS published the [Form I-821D](#), to be used to request deferred action. Applications for employment authorization may be submitted concurrently with the request for deferred action. The cost for both applications is \$465, though certain individuals unable to afford the fee may request an exemption.

The executive decision to offer deferred action comes two years after the DREAM Act failed to pass a Senate vote. The DREAM Act would have provided a path to permanent residence for thousands of young people who were brought to the United States as children. This diluted version of the DREAM Act does not provide a path to a green card, citizenship, or any other permanent, legal status in the United States. Decisions on deferred action will be made on a case-by-case basis. Because the process is discretionary, there is no appellate review.

Until the promises of the DREAM Act come before Congress again, Mintz Levin will keep you updated on any developments to DHS's Deferred Action Program.

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