



Big Changes Possible for DACA Program

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Since its 2012 inception, the Deferred Action for Childhood Arrivals (“DACA”) program has survived various lawsuits challenging its constitutionality as well as an attempt by the Department of Homeland Security (“DHS”) to rescind the program. Despite its checkered history, DACA looks poised to continue into the future after the Biden administration recently issued an Executive Order directing the Attorney General to “take all actions he deems appropriate, consistent with applicable law, to preserve and fortify DACA.”

DACA provides protection from removal as well as work authorization for certain individuals who came to the United States as children, have no lawful immigration status, have not been convicted of a felony or other significant crimes, and are either in school or have graduated from high school or obtained a GED certificate.

As part of the attempted wind down, DHS stopped processing first-time DACA applications in September 2017. After lengthy litigation involving multiple lawsuits, DHS began again accepting first-time DACA applicants in late 2020. Some believe hundreds of thousands of individuals are currently eligible to submit a DACA application for the first time. The number should continue to increase in the coming years as additional potential individuals reach their fifteenth birthday—the minimum age required to file a DACA application.

Not only does DACA appear to have been solidified for the immediate future, but newly introduced legislation may also provide DACA beneficiaries with a pathway to citizenship. If enacted, the U.S. Citizenship Act of 2021 would first provide undocumented individuals the ability to apply for a Green Card if they have lived in the United States for a five-year period, can pass criminal and national security background checks, and demonstrate they have been paying taxes. Under the legislation, most DACA beneficiaries could be immediately eligible to apply for a Green Card. They could also obtain U.S. Citizenship after three (3) years if they can pass additional background checks, pass the U.S. civics exam, and demonstrate knowledge of English.

The recent updates come as good news to both DACA beneficiaries and their employers. Many employers had concerns about their continuing ability to employ DACA beneficiaries given the recent attempts to end the program. The U.S. Citizenship Act of 2021 is likely to be hotly contested in Congress, but marks one of the better opportunities for comprehensive immigration reform in the last thirty years.

The Burr & Forman immigration team will continue to monitor DACA and other immigration updates over the coming months. If you have questions about immigration issues, please contact Melissa Azallion Kenny (MAkenny@burr.com); Anna Scully (AScully@burr.com); or Jon Eggert (JEggert@burr.com) on the Burr & Forman Immigration Team.

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