

3.7 Criminal Bars to Deferred Action for Childhood Arrivals

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Some individuals without status might be eligible for Deferred Action for Childhood Arrivals (DACA). On June 15, 2012, the Obama Administration announced that it would not deport certain undocumented people who entered the U.S. as children. Deferred action means that even though the noncitizen is here without status and subject to deportation, the government agrees to “defer” any actions to remove them. Individuals granted DACA receive a two year deferral of deportation and are able to apply for work authorization and a social security number. While deferred action does not provide a pathway to getting LPR status or citizenship, it does allow noncitizens without status to stay and work legally in the U.S.

Practice Note: The Trump administration is considering repealing DACA but hasn’t taken action as of release of this edition of the manual.

To qualify, the individual must:

- be younger than 31 years old as of June 15, 2012;
- have entered the U.S. when he or she was under age 16;
- have been physically present in the U.S. on June 15, 2012, and have continuously resided in the U.S. during the preceding five years (except for brief, casual, and innocent absences); and
- currently be in school or have graduated from high school or obtained a GED, or been honorably discharged from the coast guard or armed forces.

Convictions of a broad array of criminal offenses will bar eligibility unless a person can show “exceptional circumstances” (but such approvals are very rare). Such convictions will also bar someone who already has DACA from renewing his or her status, which must be done every two years. The convictions below have this effect:

- conviction of any felony (federal, state, or local offense that is punishable by imprisonment of more than one year);
- conviction of a “significant misdemeanor,” which means an offense that is punishable by imprisonment of one year or less but more than five days and is an offense of
 - domestic violence,
 - sexual abuse or exploitation,
 - burglary,
 - unlawful possession or use of a firearm,
 - drug distribution or trafficking,
 - driving under the influence of alcohol or drugs, or
 - any conviction for which the individual was sentenced to a jail sentence of more than 90 days (suspended sentences do not count toward the 90 days);

- conviction of three or more non-significant misdemeanors that do not occur on the same day or arise from the same act or scheme of conduct. (Minor traffic offenses, such as driving without a license, will not count against the limit of three nonsignificant misdemeanors.)

The following dispositions will *not* automatically disqualify someone, but the Department of Homeland Security (DHS) will consider them on a case by case basis:

- any state immigration-related felony or misdemeanor (to the extent any exist),
- juvenile delinquency adjudications, and
- expunged convictions.

For more information on the DACA criminal bars, see Immigrant Legal Resource Center, [Understanding the Criminal Bars to the Deferred Action Policy for Childhood Arrivals](#) (Oct. 2012).