



LEGAL ALERT

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DHS Final Rule to Preserve Deferred Action for Childhood Arrivals (DACA)

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On October 31, 2022, the Department of Homeland Security (DHS) implemented a final rule aimed to preserve and strengthen the Deferred Action for Childhood Arrivals (DACA) program.

The implementation of the final rule means that DACA is now based on a formal regulation, rather than just a policy memorandum.

The DACA program has allowed over 800,000 young people to remain with their families in the United States since its creation in 2012. Often referred to as "Dreamers," young people under DACA can apply for a driver's license, social security number, and work permit despite their unlawful status.

However, DACA currently remains the subject of litigation after the Southern District of Texas ruled it unlawful in 2021, and the U.S. Court of Appeals for the Fifth Circuit affirmed this decision in October 2022, and remanded the case back to the district court for further proceedings. This means that while USCIS will continue renewing applications for current DACA recipients, they are unable to process DACA requests from new applicants.

The final rule is a DHS effort to strengthen the legality of DACA during this period of litigation, Secretary of Homeland Security Alejandro N. Mayorkas indicated in last year's announcement.

The final rule confirms three main points:

1. Establishes that each current DACA recipient's deferred action, employment authorization, and advance parole will continue to be recognized as valid under the final rule.
2. Reiterates that DACA is not a form of lawful status, but DACA recipients are considered "lawfully present" for certain purposes.
3. Eligible non-citizens may be granted deferred action and obtain renewable two-year work authorizations – pending litigation. Until a final court decision is made, USCIS is currently barred from granting deferred action to any new DACA applicants.

The final rule does not change the existing rules for DACA eligibility and does not affect the status of existing recipients.

Mayorkas said that while the final rule helps strengthen DACA, Congress ultimately needs to pass legislation that provides Dreamers with permanent protections.

We will continue to closely monitor and report on any further changes to DACA.

For more information about DACA, the final rule, or your status as a Dreamer, please contact attorney Rebecca Cohen.

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