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[via www.regulations.gov](http://www.regulations.gov)

November 29, 2021

Samantha Deshommnes
Regulatory Coordination Division Chief
Office of Policy and Strategy
U.S. Citizenship and Immigration Services

RE: Comment in Response to DHS/USCIS Notice of Proposed Rulemaking (NPRM) Deferred Action for Childhood Arrivals; CIS NO. 2691-21; DHS Docket No. USCIS-2021-0006; RIN 1615-AC64

Dear Mx. Deshommnes,

I write on behalf of the Human Rights Initiative of North Texas (“HRI”) in response to U.S. Department of Citizenship and Immigration Services’s notice of proposed rulemaking on Deferred Action for Childhood Arrivals (“DACA”), published in the Federal Register on September 28, 2021.

HRI is a non-profit legal services agency that represents people fleeing humanitarian abuses from all over the world. They include undocumented people here in the United States who have survived serious crimes and who have come forward to protect themselves and their children from danger, to protect their friends and families, and protect their communities. While we work with survivors and their immediate family members primarily to apply for relief through the Violence Against Women Act and the U visa program, we also work with them to apply for DACA when they meet the program requirements. Access to DACA as interim relief has helped many of our clients manage through otherwise lengthy USCIS backlogs. As an organization, HRI has also been proud to employ DACA-mented individuals as members of our team.

Until Congress passes comprehensive immigration relief that offers permanent protection for DREAMers and other immigrants who have made the United States their home, DACA is a critical protection for immigrant youth. The program, which is lawful and within the Department’s authority, ensures that youth in Texas can:

- Have a form of government identification, which is often a prerequisite for community services;
- Obtain a driver’s license, helping to keep youth and the larger community safe on the roads;
- Work with authorization, helping youth build their careers and broader society benefit from their talents; and

- Obtain a social security number, which is often required to rent apartments, open credit cards, take out loans, and access benefit programs.

HRI asks that in reauthorizing the DACA program, USCIS:

- Expand the individuals eligible for DACA;
- Streamline the DACA and work authorization (I-765) applications into a singular process, eliminating the proposed bifurcation; and
- Eliminate across-the-board criminal bars and ensure expungements eliminate convictions considered in the DACA application.

I. USCIS should expand the category of individuals who are eligible for DACA.

The initial iteration of DACA was implemented by the Obama Administration in 2012 after years of organizing to protect undocumented students. The movement came to national attention in 2001, when the precursor to the DREAM Act, the Student Adjustment Act, was introduced in Congress to provide a pathway to citizenship for undocumented students. That same year, Texas and California passed bills allowing undocumented students to qualify for in-state tuition.

Over the course of the next decade, undocumented students put their safety and dreams at great risk, coming forward to advocate for full protection under the laws of the country they called home. They began organizing in visible groups throughout the country, like the Austin-based University Leadership Initiative and the California Dream Team Alliance. By the tail-end of the decade, students had built the national, Dreamer-led network United We Dream. They relentlessly fought for protection through various iterations of the DREAM Act, ultimately winning some interim protections when then-DHS Secretary Janet Napolitano announced the DACA program in 2012.

At its inception, DACA instituted arbitrary cutoff dates tied to the 2012 Napolitano memo date, many of which excluded Dreamers who had long fought for protection. USCIS should discontinue the use of these arbitrary cutoff dates and implement eligibility requirements that more fully implement the intent of the program. Specifically:

- Continuous Residence: The Proposed Rule retains the initial June 15, 2007 continuous residence date from the 2012 Napolitano memo. In 2012, that date meant a DACA applicant must have lived in the United States at least five years before submitting their application. Today, that means a DACA applicant must have lived in the United States at least fifteen years. The codification of this deadline inexplicably leaves behind youth who should be covered by the program. For example, a present-day 18-year-old who just graduated high school but was brought to the U.S. by her parents in 2008 at the age of five, would be excluded. In other words, children who, as the Proposed Rule explains, “came to this country many years ago as children” and “remain valued members of our communities,” may be ineligible. To the extent continuous presence is required, it should be tied in close proximity to the final rule’s promulgation date.
- Age at entrance: The Proposed Rule also retains the age-16 date of U.S. entry from the 2012 Napolitano memo. The Proposed Rule’s justification that the cap would “limit DACA to those individuals who came to the United States as children” ignores the age of majority otherwise used in immigration law. The TVPRA, for example, which sets out the humanitarian protections afforded to unaccompanied youth, defines the age of majority as

21. The Proposed Rule should implement an age-at-entrance cutoff consistent with the larger body of immigration law.

- Age at filing: The Proposed Rule also retains the requirement that an individual be at least 15 years of age at the time of filing. Although youth younger than 15 are not working, access to work authorization—which opens the door to a social security number—is critical. Without it, youth in Texas lack access to governmental identification, which creates a myriad of barriers in access to services.

II. USCIS should streamline the DACA and work authorization (I-765) applications into a singular process, eliminating the proposed bifurcation.

The Proposed Rule proposes bifurcating the DACA application process into two parts: the DACA application and the work authorization. This proposed bifurcation is not only unnecessary; it jeopardizes the integrity of the program.

HRI has served children in their immigration cases for the better part of two decades. Our friends without personal experience with the immigration system are often surprised to learn that we submit work authorization applications for each family member when eligible, regardless of age. That's because the employment authorization card offers so much more than only the ability to work, particularly here in Texas. For many of our clients, the work authorization card is their only form of unexpired government identification. Government identification is necessary for obtaining many community services. (In our experience, even services that are intended to serve undocumented immigrants sometimes require unexpired government identification, which can be otherwise out-of-reach.) For adults, the work authorization card is especially important. In addition to opening doors to employment, it is the only eligible document that many of our clients can use to obtain a driver's license. Perhaps most importantly, the I-765 is the pathway to a social security number, which is a prerequisite to so many services in the United States, including credit cards and bank loans.

In our experience, work authorization is not an add-on benefit; it is among the most important benefits associated with an immigration approval, regardless of age. We do not expect that any of our clients would choose to apply for DACA without work authorization. The immigration process, however streamlined, is always complicated and confusing to navigate. Divorcing the DACA application from the I-765 will cause unnecessary confusion around the most important benefit for DACA holders.

III. USCIS should eliminate across-the-board criminal bars and ensure expungements eliminate convictions considered in the DACA application.

The Proposed Rule contains various categorical bars to DACA based on criminal history. These bars are unjust. DACA applicants should be entitled to case-by-case assessments of any relevant criminal history.

The vast majority of DACA applicants are persons of color, who are targeted by discriminatory policing, prosecution, and sentencing in our criminal system. Applying categorical bars directly imported from a discriminatory system bakes that discrimination directly into the DACA process,

with extra harm to Black immigrants in particular. And because the vast majority of the American criminal system is administered on state-by-state basis with differences in sentencing and severity of punishment across localities, the categorical bars produce inconsistent results by residence.

To the extent that DHS continues to use criminal bars as disqualifying, it should implement the following guideposts:

- A single offense or offenses where a sentence of 90 days or less was imposed should not create an automatic bar.
- The definition of “conviction” for DACA should not include any form of rehabilitative relief that permitted the criminal court to erase a prior conviction.

Conclusion

HRI strongly urges USCIS to consider the recommendations proposed here.

For further information, please do not hesitate to reach us at kcohn@hrionline.org.

Respectfully,

A handwritten signature in black ink that reads "Kali Cohn". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kali Cohn
Community Education & Advocacy Director