

Latest Developments in TPS and DACA – Dec. 17, 2020 Webinar - Q&A Transcript

DACA Questions

Education Requirement

Q: Can someone who is currently obtaining a GED satisfy the education eligibility requirement?

A: Yes. Someone who has obtained a GED satisfies the education requirement. Being enrolled in a GED prep course may also count as being currently enrolled in school. See [USCIS Archived FAQs](#) Q32-39.

Q: How do we check whether a GED, ESL, homeschooling or other educational program is considered valid for DACA purposes?

A: See the [USCIS Archived FAQs](#) Q32 -34.

Q: If a client drops out of high school before graduating, will she not be eligible until she enrolls in a GED program?

A: To meet the educational requirement, a person must be enrolled in school at the time of filing or must have obtained a GED or high school diploma. Enrolling in a GED preparation course or re-enrolling in high school are two examples that would satisfy the education requirement.

Q: Does USCIS require certified school records? Will including school records that are from 2007 to date be sufficient to prove continued presence in U.S.?

A: School records don't need to be certified. Whether school records alone are sufficient to show continuous residence probably depends on case and how complete the records are.

Litigation

Q: Do you know how USCIS will handle 1-year grants of DACA? Would they publish a Federal Register Notice or send out 2-year EADs and approval notices? Our office received the first 2-year grant since summer. It was approved on 12/11/2020.

A: USCIS is required to mail individualized notices to all impacted DACA recipients stating that their current period of DACA and EAD have been extended from one year to two, in addition to publishing guidance making it clear that extended EADs should be treated as having a two-year expiration date for all purposes for which EADs are used, including eligibility for state services. Finally, the *Batalla Vidal* court ordered the government to issue new EADs to all DACA recipients who received one-year EADs. The new EADs are to be issued no later than 30 days before the expiration date of the current EADs and at no cost to the DACA recipients.

Q: I have clients that received EAD and DACA renewals for one year. What do we have to do to get a new card and the renewal for 2 years at no cost?

A: As explained in the previous question, no action is required from individual clients or counsel. USCIS is supposed to handle this itself under the terms of the *Batalla Vidal* court order.

Q: I understand we don't know how long DACA will continue to be implemented. That said, with the new administration coming in, are there plans to continue with DACA until Congress decides a more permanent approach?

A: Biden has stated he would reinstate DACA, but it's unclear how ongoing legal challenges to DACA will impact his ability to protect or expand the program.

Q: Can you provide the number of people who were given only 1-year DACA grants and EADs?

A: Yes, 65,800 people got 1-year DACA grants and EADs.

Q: Could Judge Hanen stop DACA again on December 22? If so, would all the applications sent to USCIS be left pending? Do we need to send them all in before that date to be sure?

A: We don't know how USCIS will/would respond if there were a negative decision from Judge Hanen in the Texas case. There is a possibility that a negative decision would prevent USCIS from issuing new DACA grants.

Continuous Residence, Physical Presence

Q: Should we worry about thin proof of presence or continuous residence? Will we likely see an RFE or denial?

A: If evidence is thin, we would normally expect USCIS to issue an RFE before issuing a denial. But there have been instances where applications were denied without an RFE.

Q: How much documentation is needed to show the client arrived in the U.S. before June 2007 if he was very young and not in school yet?

A: This will vary depending on each case and what evidence you have available. As a starting point, we suggest trying to include some piece of evidence for every 3 months.

No lawful status

Q: Is someone eligible for DACA if they entered on a tourist visa but it expired by the key dates?

A: Yes, if they entered with a visa but their authorized stay expired by 6/15/12 then they are eligible for DACA. If an I-94 was issued, it must have been expired by 6/15/12.

Q: What evidence is used to prove no immigration status? Is there a need to show no lawful status or is it sufficient to simply say "I have no lawful status?"

A: If the person entered EWI, it should be enough to explain that. If they entered with a visa, then you should try to document that they were here without lawful status on 6/15/12 and on the date they apply. For example, you might be able to include a copy of an expired I-94.

Q: How much evidence must we include per year to prove physical presence? Do we include something for every month since the person entered or since 6/15/2007?

A: We try to aim for some documentation every 3 months but there's no specific requirement and it will vary from case to case depending on the evidence that is available.

Q: Can someone who has had TPS they apply for initial DACA?

A: Only if they were out of status (meaning they did not have TPS) on June 15, 2012 and at the time they seek DACA, and, of course, met the other eligibility criteria.

Crimes

Q: Should traffic violations still be disclosed on the last page of the I-821D application?

A: Per the I-821D form and instructions, applicants do not need to disclose or include documentation concerning minor traffic violations unless they were alcohol or drug related.

Q: How about driving without a license, if they went to traffic school?

A: This is a minor traffic offense and is not a misdemeanor conviction for DACA purposes.

Q: Does a DUI conviction automatically make someone ineligible for DACA?

A: Yes. USCIS has discretion to approve a DACA application despite a criminal bar if the adjudicator determines there are "exceptional circumstances," however there is no guidance specifying what this requires.

Q: Can individuals with expunged convictions still apply for DACA?

A: Yes. Expunged convictions are not a bar to eligibility but can still be considered as a discretionary matter.

Q: Where is a list of crimes, as you mentioned?

A: You'll find them in the 2012 DACA memo and the archived USCIS FAQs.

Inadmissibility

Q: Is someone who is subject to the permanent bar due to multiple entries in danger of being denied or detained if we file his initial DACA application?

A: DACA applicants don't need to demonstrate that they are admissible. Cases like this have been approved in the past. According to the current DACA policy, triggering the permanent bar should not lead to referral to ICE for issuance of an NTA.

Removal Proceedings

Q: Is someone with a final order of removal still eligible to apply? What if removal proceedings have been administratively closed? What evidence do you need to submit for this?

A: Yes, you can apply for DACA in both situations. As long as the applicant is not in ICE custody, they should apply before USCIS. We suggest you review the I-821D instructions to check what evidence must be included.

Q: Are we able to terminate proceeding if our client are eligible for DACA?

A: See CLINIC's practice advisory, [Motions to Reopen for DACA Recipients with Final Removal Orders](#)

Q: Does the requirement of continuous residency since 2007 to the present apply to those who are in removal proceedings?

A: Yes.

Advance Parole

Q: How much time can a DACA recipient request for advance parole travel abroad?

A: There is no specific limitation, but the time abroad should be reasonable in relation to the purpose.

Q: If someone has not renewed DACA for over a year, do they have to re-apply or just renew?

A: They may reapply for DACA but will need to include the supporting evidence that is required for initial applications.

Q: Can we file a DACA application concurrently with the advance parole application?

A: No, only those who already have DACA may submit an application for advance parole.

Q: Do you need to be admissible to re-enter the U.S. with DACA-based advance parole? Will the permanent bar harm someone attempting to re-enter with advance parole?

A: CBP officers have the discretion to deny parole. Because the parolee is considered an “applicant for admission,” she is subject to the grounds of inadmissibility. While, in practice, DACA recipients returning with advance parole have sometimes been paroled by CBP despite being inadmissible, they could be screened for inadmissibility and denied entry on this basis.

Q: Can you go into some of the humanitarian reasons for requesting advance parole? Is visiting a family member's grave valid enough for advance parole?

A: Examples of humanitarian purposes provided by USCIS include visiting an ill relative or seeking medical treatment. Requests for advance parole are evaluated on a case by case basis. Whatever the reason for travel is, you should document the purpose(s) and provide an explanation as to why it is a humanitarian issue.

Q: If advance parole is granted, will that allow a DACA recipient to apply for adjustment of status? Is re-entry after advanced parole considered “inspected and admitted,” which permits adjustment of status for EWI DACAs?

A: Travel and return with advance parole should still be considered an “admission or parole” for purposes of INA 245(a) adjustment of status. The applicant will still need to meet all other requirements for adjustment of status. Recent policies limiting advance parole as an avenue for TPS recipients to become adjustment eligible do not apply to DACA recipients.

Program Management

Q: What is the difference/benefit between doing a consultation with a client over the phone to fill out their application vs. a doing it in a workshop?

A: Virtual workshops can pool applicants and volunteers in one setting to reach and serve more folks.

Q: Can you restate the point on updating one’s address with USCIS for DACA applicants? Would this be filing an AR-11?

A: Since USCIS will be sending new EADs and Notices of Action to those who received one-year EADs, it is important to make sure that USCIS has the correct mailing address for your client. Update your client’s address by completing a Form AR-11.

Renewal and other filing questions

Q: We have clients with one-year DACA grants and EADs who need to renew due to upcoming expiration dates. Should they file renewals or should they wait for the notice of extension?

A: These clients should not need to file renewal requests. By virtue of the *Batalla Vidal* court order, all one-year EADs and DACA grants have been automatically converted into two-year grants and EADs. USCIS should mail individualized notices about these extensions by Jan. 8, 2021. The new two-year EADs that will be issued at no cost to DACA recipients will not be issued until right before the one-year cards expire.

Q: When should DACA renewals be filed? How close to the expiration date?

A: USCIS recommends filing 120 -150 days before DACA expires.

Q: The Wolf memo indicated USCIS would reject DACA applications received 150 days before the expiration of an EAD. Is this still the case? If someone applies before 150 days, will it be accepted though not in the "recommended" window?

A: Our understanding is that applications filed earlier than 150 days before expiration will not be rejected.

Q: Should we use the 4/24/2019 edition I-821D form that's currently on the USCIS website?

A: Yes, as of the date of this webinar, that is the current version of the form. Continue to check the USCIS website for the latest version.

Q: My understanding is that previous DACA recipients whose DACA expired more than one year ago should be treated as first-timers. Should applicants like that file initial applications now? Do they have to follow the same guidelines as an initial applicant?

A: This is still the policy, yes. If you held DACA before and want to renew but your prior DACA grant expired more than 1 year ago you must follow the I-821D instructions for initial requestors.

Q: If a DACA recipient is reapplying three months after expiration of their most recent DACA grant, is it necessary to include a letter of explanation or any additional documentation?

A: It's not necessary to provide an explanation for allowing DACA to lapse. The applicant will need to include the same supporting evidence that an initial applicant would be required to submit.

Q: Do DACA applications have the same "N/A" and "none" requirements as some of the other USCIS forms, like for U visas?

A: I would recommend not leaving any blanks to avoid any chance of rejection/denial on that basis. However, as a result of class action litigation in *Vangala v. USCIS* challenging USCIS's "No Blank Space" policy, USCIS has agreed to stop implementing the rejection policy for asylum applications and U visa petitions starting December 28, 2020.

Q: Should we file DACA cases now? Or wait to see what happens with the Texas case?

A: There is a lot of uncertainty regarding how long the filing window might remain open and how further developments in the courts will impact the availability of DACA in the future. We recommend counseling clients about the risks and benefits of filing and, if they want to file, they should do so now rather than wait.

Resources

Q: This link on slide 14 doesn't work. Where can I find the resource on remote legal service delivery and virtual workshops?

A: Here is the link: <https://www.newamericanscampaign.org/wp-content/uploads/2020/03/Guide-to-Remote-Citizenship-Services-March-2020.pdf>

Q: Where can I find more information about the DACA class action lawsuit?

A: <https://www.nilc.org/issues/daca/daca-class-action-lawsuit/>

TPS Questions

Q: Can Biden just cancel the TPS terminations?

A: There are steps the incoming Biden administration could take to provide further protection to TPS recipients from countries where TPS designations have been terminated. The new administration could direct the Department of Justice to settle the litigation challenging the TPS terminations. It could issue Deferred Enforced Departure for those from certain countries, including the six countries whose TPS designations have been terminated. It could also begin the agency process of issuing designations or re-designations for TPS for certain countries.

Q: What if a TPS client covered by the automatic extension wants an EAD with the new expiration date? Can they can apply for a new EAD?

A: Yes, eligible TPS recipients can apply for a new EAD with an Oct. 4, 2021 expiration date. The Dec. 9, 2020 [Federal Register Notice](#) provides as follows: "If you are a beneficiary under the TPS designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, or Nepal and want to obtain a new EAD valid through October 4, 2021, then you must file Form I-765 and pay the associated fee. If you do not want a new EAD, you do not have to file Form I-765 or pay the Form I-765 fee."

If you do not want to request a new EAD now, you may file Form I-765 at a later date and pay the fee, provided that you still have TPS or a pending TPS application. You may file the application for a new EAD either before or after your current EAD has expired.”

Q: If a TPS recipient wants to get a new EAD, what documents must we submit with the I-765?

A: We recommend consulting the I-765 instructions which include guidance for TPS applicants.

Q: Should a TPS client apply for advance parole? Can a TPS recipient who initially entered without inspection still use advance parole to become eligible to adjust status?

A: In the past, a TPS recipient who initially entered without inspection but then traveled and returned with advance parole was able to satisfy the INA 245(a) requirement of having been “inspected and admitted or paroled.” This allowed certain TPS recipients who were immediate relatives to travel on advance parole and then qualify to adjust status under 245(a). However, USCIS now takes the position that TPS beneficiaries who return using advance parole on or after Aug. 20, 2020 do not satisfy the “inspected and admitted or paroled” eligibility requirement for adjusting status under 245(a). You can read more at CLINIC’s [Practice Advisory: Adjustment Options for TPS Beneficiaries](#).

Q: Can you repeat the 1-800 # for TPS info?

A: The [Federal Register Notice](#) provides that employers with questions about avoiding discrimination during the employment eligibility verification process (Form I-9 and E-Verify) may call the U.S. Department of Justice's Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800-255-8155 (TTY 800-237-2515). Employees may call the IER Worker Hotline at 800-255-7688 (TTY 800-237-2515) for information regarding employment discrimination based upon citizenship, immigration status, or national origin, including discrimination related to Form I-9 and E-Verify.

Q: What does the 365 days means to Salvadorans?

A: I think you are referring to the termination timeline on slide 24 that lists the TPS wind-down periods depending on the country. The Federal Register Notice provides that, if and when the *Ramos* injunction is lifted and an appellate mandate is issued to the district court, TPS holders from El Salvador could lose their TPS 365 days from the date an appellate mandate is issued.

Q: What strategy do you suggest when an agency does not accept a copy of the Federal Register Notice and insists on seeing a new or replacement EAD card?

A: There is specific guidance in the Federal Register Notice for federal, state, and local government agencies, including Departments of Motor Vehicles about what documents should be acceptable for proving continued TPS status. However, some clients may benefit from direct

advocacy from their legal representatives with agency officials. Here is a [template letter](#) that may be adapted for use with clients.

Q: How do we respond to a prospective client wondering whether they can apply for TPS now if they are in U.S. without status?

A: If you are referring to someone who meets all of the TPS eligibility requirements except for they did not register for TPS during the initial registration period for their country, late initial registration may be possible. Information about late initial filing is on the USCIS website at: <https://www.uscis.gov/humanitarian/temporary-protected-status>.