

Spring 2013

# Standard Operating Procedure: Deferred Action for Childhood Arrivals (DACA)

Shoba S Wadhia



Homeland  
Security

March 4, 2013

Shoba Sivaprasad Wadhia, Esq.  
Clinical Professor and Director  
Penn State/Center for Immigrants Rights  
329 Innovation Blvd  
Suite 118  
State College, Pennsylvania 16803

Re: **COW2012000939**  
**2013-HQFO-00305**

Dear Ms. Wadhia:

This is the final response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated and received by the United States Citizenship and Immigration Services (USCIS) on September 13, 2012 and received by this office on November 16, 2012. Specifically, you requested the disclosure of any and all records that were prepared, received, transmitted, collected, and/or maintained by the U.S. Department of Homeland Security (DHS) and/or U.S. Citizenship and Immigration Services (USCIS) that describe, refer, or relate to applications for deferred action since June 17, 2011, and Consideration of Deferred Action for Childhood Arrivals (DACA) since August 15, 2012.

A search for documents responsive to your request produced a total of 459 pages. Of those pages, I have determined that 406 pages of the records are releasable in their entirety and 53 pages are partially releasable pursuant to Title 5 U.S.C. § 552 (b)(7)E, FOIA Exemptions b7(E).

You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: Associate General Counsel (General Law), Mailstop 0655, U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

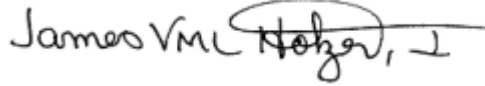
The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at [ogis@nara.gov](mailto:ogis@nara.gov) or call 1-877-684-6448.



Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge. 6 CFR § 5.11(d)(4).

If you need to contact our office again about this matter, please refer to **COW201200093, HQFO-00305**. This office can be reached at 866-431-0486.

Sincerely,

A handwritten signature in black ink that reads "James VML Holzer, J." The signature is written in a cursive style with a large, looping "H" and a final flourish.

James Holzer  
Director  
Disclosure and FOIA Operations

Enclosure(s): Responsive Documents



**National Standard Operating Procedures (SOP)**

**Deferred Action for Childhood Arrivals  
(DACA)**

**(Form I-821D and Form I-765)**

Prepared by: Service Center Operations Directorate

September 13, 2012  
Version 1.0

## Table of Contents

Chapter	Page #
1: Definitions and Applicability to DACA	5-14
2: Introduction	15-18
3: Summary of the Overall Process Flow for DACA Filings	19-20
4: Lockbox Intake	21-22
5: Service Center Intake	23-29
6: Background and Security Checks	30-38
7: DACA Overview	39-41
8: Adjudication of the DACA Request	
A. Procedural Overview	42
B. System Searches	43
C. Determining if Guidelines are Met	44-63
D. Economic Necessity	64
E. Removal Proceedings	65-70
F. Fingerprints and RAP Sheets	71-73
G. Evaluating Issues of Criminality, Public Safety, and National Security	74-76
• Court Dispositions	77-79
• Arrests and Convictions	80
• Public Safety Concerns	81
• National Security Concerns	81
• Handling Procedures	82-84
H. Adjudicating Form I-821D, Part 3, Criminal, National Security, and Public Safety Information	85-87
I. Fraud Review and Fraud Referrals	88-91
9: Decisions	
A. Request for Evidence	92
B. Notice of Intent to Deny	93
C. Approvals	94-95
D. Denials	96-99
• Supervisory Review	96
10: Post Denial Process	100
11: Returned Mail	101

Continued on next page

## Table of Contents

Chapter	Page #
12: Employment Authorization	
A. General Information	102-103
B. Adjudication	104-109
C. Replacement Cards	110
13: Customer Service - Use of Service Request Management Tool (SRMT) to Respond to Requests to Review Certain Denials	111-121
14: DACA Termination	122-124
15: Processing Form I-131, Application for Travel Document, for Individuals With Approved Form I-821D, Consideration of Deferred Action for Childhood Arrivals (DACA)	125-127

## Appendices

**Appendix A:** June 15, 2012, Secretary of Homeland Security memorandum entitled, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children.

**Appendix B:** November 7, 2011, memorandum entitled, Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens.

**Appendix C:** Overview of the Background Check Process

**Appendix D:** DACA RFE Call Ups

**Appendix E:** Notice of Intent to Deny -- Not a Brief, Casual, or Innocent Departure Under Voluntary Departure, or Final Exclusion, Deportation, or Removal Order

**Appendix F:** DACA Denial Template

**Appendix G:** SRMT Responses

**Appendix H:** SRMT Denial Template

**Appendix I:** Notice of Intent to Terminate Deferred Action for Childhood Arrivals and Termination Notice



## Chapter 1: Definitions and Applicability to DACA

<b>Absconder</b>	An alien who failed to surrender to DHS for removal after receiving a final order of deportation, exclusion, or removal.
<b>Aggravated Felon</b>	Any alien who has been convicted of a criminal offense within the definition of 101(a)(43) of the Immigration and Nationality Act (Act).
<b>Alias</b>	An additional name (e.g., nickname, maiden name, or married name) or an assumed name.
<b>Ancillary Application</b>	Applications for travel, employment authorization, or applications that do not convey an immigrant or nonimmigrant status, and are filed in connection with a primary or an underlying application or petition.
<b>ASC</b>	Application Support Center. The ASCs, which are located throughout the United States and its outlying territories, facilitate the capture of fingerprints and biometric data.
<b>BCU</b>	Background Check Unit. A work unit located at each of the Service Centers and the National Benefits Center. The BCU is responsible for reviewing and resolving (b) (7)(E) units and other criminal, national security, and public safety concerns in accordance with Agency policy.
<b>BCU DACA Team</b>	A specialized team within the BCU that specifically reviews and adjudicates issues of criminality arising from DACA requests. The team may consist of Immigration Services Officers, as well as officers assigned to CARRP, NTA issuance, and Triage duties, and the analysts who support them.

*Continued on next page*

## Definitions and Applicability to DACA, Continued

### Brief, Casual, and Innocent Absence

A brief, casual, and innocent absence from the United States before August 15, 2012 will not interrupt continuous residence for purposes of DACA. An absence will be considered brief, casual, and innocent, if:

- (1) The absence was short and reasonably calculated to accomplish the purpose of the absence;
- (2) The absence was not the result of an order of exclusion, deportation, or removal;
- (3) The absence was not because of an order of voluntary departure, or an administrative grant of voluntary departure before the requestor was placed in exclusion, deportation, or removal proceedings; and
- (4) The purpose of the absence from the United States or actions while outside of the United States were not contrary to law.

This definition of a brief, casual, and innocent absence has its basis in case law and was codified into the regulations for the Temporary Protected Status (TPS) program. Elements of this definition of brief, casual, and innocent will be used for individuals requesting DACA. See 8 C.F.R. §244.1. See also "Continuous Residence" below for additional circumstances that will not break continuous residence.

### CFDO

The Center Fraud Detection Operations (CFDO) is the Fraud Detection and National Security (FDNS) organization within Service Centers. The CFDO is comprised of FDNS officers under the direction of an FDNS supervisor who reports directly to the CFDO Assistant Center Director (ACD). While most CFDO work occurs in an office environment, some Service Centers conduct administrative investigations in support of FDNS's field operations.

### CLAIMS (C3)

Computer - Linked Application Information Management System Version 3. A case management application system to track and process the adjudication of applications, petitions, and other requests for immigration benefits and services.

*Continued on next page*



## Definitions and Applicability to DACA, Continued

Continuous Residence	The DACA requestor is to reside in the United States for the entire period specified in the guidelines for DACA to be considered. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section.
CARRP	Controlled Application Review and Resolution Program. This program outlines the process to identify, record, and adjudicate applications/petitions/requests where a National Security concern is identified.
DACA	Deferred Action for Childhood Arrivals
Deferred Action	Deferred action is a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion. Deferred action does not confer any lawful status.
DNR	Does Not Relate. A determination by USCIS personnel of whether a security check result relates to a DACA requestor.
Egregious Public Safety (EPS) Concern	Any case where routine systems and background checks indicate that an individual is under investigation for, has been arrested for (without disposition), or has been convicted of, a specified crime, including but not limited to, murder, rape, sexual abuse of a minor, trafficking in firearms or explosives, or other crimes listed in the November 7, 2011, memorandum entitled <u>Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens.</u>

Continued on next page



## Definitions and Applicability to DACA, Continued

### Evidence

#### Affidavits

Affidavits generally will not be sufficient on their own to demonstrate that a requestor meets the DACA guidelines. However, affidavits may be used to support the following guidelines when primary and secondary evidence are unavailable:

- A gap in the documentation demonstrating that the requestor meets the five year continuous residence requirement; and
- A shortcoming in documentation with respect to the brief, casual and innocent departures during the five years of required continuous presence.

Two or more affidavits, sworn to or affirmed by people other than the requestor, who have direct personal knowledge of the events and circumstances, can be submitted. If the affidavits are not sufficient to establish that the guideline is met, issue an RFE using RFE DACA 302 call up in Appendix D.

USCIS will not accept affidavits as proof of satisfying the following guidelines:

- The requestor is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a general education development certificate, or is an honorably discharged veteran from the Coast Guard or Armed Forces of the United States;
- The requestor was physically present in the United States on June 15, 2012;
- The requestor came to the United States before reaching his/her 16th birthday;
- The requestor was under the age of 31 on June 15, 2012; and
- The requestor's criminal history, if applicable.

Weigh the assertions in the affidavit in light of the totality of all the evidence presented. When evaluating what weight to give an affidavit, take the following into consideration:

- An affidavit needs to be signed and dated;
- The identity of the affidavit needs to be readily ascertainable from the information in the affidavit;
- The affidavit should state the relationship between the affiant and the DACA requestor and contain facts that are relevant to the guideline the requestor seeks to meet;
- The affidavit should state the basis of the affiant's knowledge and exhibit first-hand knowledge of the fact asserted.

*Continued on next page*

## Definitions and Applicability to DACA, Continued

Evidence  
(Continued)

### Preponderance of the Evidence

A DACA requestor is to establish by a preponderance of the evidence that he/she meets the guidelines for the exercise of prosecutorial discretion in the form of deferred action. Under this standard, the requestor must demonstrate that it is more likely than not that he or she meets those guidelines. The preponderance of the evidence standard is a lower standard of proof than both the "clear and convincing evidence" standard and the "beyond a reasonable doubt" standard applicable to criminal cases.

### Primary Evidence

Primary evidence is evidence which, on its face, proves a fact. In the DACA context, an example of primary evidence that could be submitted to satisfy the age guideline would be a birth certificate. An example of primary evidence that could be submitted to satisfy all or part of the continuous residence guideline would be rental agreements or school records in the DACA requestor's name.

### Secondary Evidence

Secondary evidence must lead the officer to conclude that it is more likely than not (in other words, probable) that the fact sought to be proven is true. For example, if an individual is unable to obtain a copy of his birth certificate to establish his date of birth, baptismal records issued by a church showing that an individual was born at a certain time would be acceptable secondary evidence of the birth for purposes of satisfying the DACA age guideline. Similarly, to satisfy the continuous residence guideline under DACA, rental agreements in the name of the DACA requestor's parent could be acceptable secondary evidence demonstrating periods of the requestor's residence in the United States, if corroborating evidence in the file (for example, school or medical records) points to the DACA requestor's residence at that address.

### Sufficiency of the Evidence

The sufficiency of all evidence is judged according to its relevance, consistency, and credibility.

*Continued on next page*

## Definitions and Applicability to DACA, Continued

### Evidence (Continued)

#### Totality of the Evidence

For DACA, the totality of the documentary evidence should be reviewed to determine whether the facts needed to establish a specific guideline have been demonstrated. In many instances, an adjudicator may be satisfied based upon the review of all the documentary evidence, that it is more likely than not that a specific guideline has been met even if the record does not contain one specific document that, in fact, satisfies the guideline. For example, if a DACA requestor is unable to submit a specific document evidencing his/her presence in the United States on June 15, 2012, he/she may be able to satisfy this guideline by submitting various forms of credible documentation evidencing that he/she was present in the United States shortly before and shortly after June 15, 2012 from which the officer could infer, based on the totality of the evidence, that the individual was present in the United States on June 15, 2012. (Note: evidence upon which one may infer that a fact has been demonstrated is also known as "circumstantial evidence," a term that appears in many DACA public information documents).

Officers must see documentary evidence (either primary or secondary) in order to determine if the following guidelines have been met:

- Requestor was under the age of 31 on June 15, 2012; and
  - Requestor is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a general education development certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States
- Officers may not infer from other sources that either of these two guidelines have been met.

Officers should look to the totality of the evidence (meaning that facts can be inferred from one or more sources) to determine if the following guidelines have been met:

- The requestor was physically present in the United States on June 15, 2012;
- The requestor came to the United States before reaching his/her 16th birthday;
- The requestor satisfies the continuous residence requirement, (as long as he or she presented clear documentation of continuous residence in the United States for a portion of the required five-year period and any other evidence submitted supports a finding that the requestor was actually residing in the U.S. during the period for which he has not provided clear documentary evidence of such residence); and
- Any travel outside the United States during the five years of required continuous presence was brief, casual, and innocent.

*Continued on next page*



## Definitions and Applicability to DACA, Continued

<b>Evidence (Continued)</b>	For the remaining guidelines, i.e., the requestor was in unlawful status on June 15, 2012, has no disqualifying criminal convictions, and does not otherwise pose a threat to public safety or national security, the information presented by the DACA requestor on his/her Form I-821D in combination with background and security checks, routine systems checks, supporting evidence submitted by the requestor, and any other information on file, may establish that these guidelines have been met.
<b>Front End Check</b>	Security and systems checks performed upon the receipt of an application or petition or other requests to screen for national security, EPS, fraud, or other criminal concerns.
<b>HQ FDNS</b>	Headquarters Office of the Fraud Detection and National Security Directorate of USCIS.
<b>Hit</b>	A record returned by a security or background check system in response to a query that may relate to the subject being queried.
<b>Interpol</b>	International Criminal Police Organization, the world's largest international police organization. This organization facilitates cross-border police cooperation and supports and assists all organizations, authorities, and services whose mission is to prevent or combat international crime.
<b>JTTF</b>	Joint Terrorism Task Force. The JTTF is run by the Federal Bureau of Investigation (FBI). The JTTF is comprised of small groups of highly trained, locally based members from U.S. law enforcement and intelligence agencies. JTTF is responsible for all domestic and international terrorism matters.

*Continued on next page*

## Definitions and Applicability to DACA, Continued

KST

Known or Suspected Terrorist.

(b) (7)(E)

(b) (7)(E)

National  
Security  
(NS)  
Concern

An NS Concern exists when an individual or organization has been determined to have an articulable link to prior, current, or planned involvement in, or association with, an activity, individual, or organization described in §§ 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the Act. This determination requires that the case be handled according to the CARRP policy outlined in the memorandum issued on April 11, 2008.

(b) (7)(E)

NCTC

National Counterterrorism Center. In August 2004, the President established NCTC, a multi-agency organization, to serve as the primary organization for the U.S. Government for integrating and analyzing all intelligence pertaining to terrorism and counterterrorism (CT) and to conduct strategic operational planning by integrating all instruments of national power.

*Continued on next page*



## Definitions and Applicability to DACA, Continued

No Match	This annotation is used on the (b) (7)(E) if a (b) (7)(E) query results in no (b) (7)(E) hit.
Non-KST	A Non-KST NS concern includes all other NS concerns, regardless of the source, including but not limited to: associates of KSTs, unindicted coconspirators, terrorist organization members, persons involved with providing material support to terrorists or terrorist organizations, and agents of foreign governments.
Primary Name and DOB	The name and date of birth provided by an applicant, petitioner, or requestor as his/her given name and date of birth. This is generally listed in the first part of the application/petition/request.
Relates	This annotation is used on the ROIQ if a (b) (7)(E) query results in a hit that closely corresponds to the subject queried.
Resolution	A determination of the effect or relevance of the available information on the eligibility of the applicant, requestor, petitioner, beneficiary, or derivative for the benefit or request sought.
ROIQ	Record of IBIS Query. This form is used to record the search criteria queried and the results of those queries.
SNAP	Scheduling and Notification of Applicants For Processing. An automated system that schedules appointments for individuals to submit biometric information to ASCs.
Secretary's Memorandum	The June 15, 2012, memorandum entitled, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children, issued by the Secretary of Homeland Security.

*Continued on next page*

## Definitions and Applicability to DACA, Continued

Security Check	A specific check or a combination of checks required for each application, petition, or request conducted in accordance with Agency policy.
System Match	A record returned by (b) (7)(E) in response to a query, the subject of which may or may not relate to the subject being queried. This is the same as (b) (7)(E) Hit.
TECS	TECS is formerly known as the Treasury Enforcement Communications System/Interagency Border Inspection System. TECS is an automated enforcement and inspection lookout system that combines information from multiple agencies, databases, and system interfaces to compile data relating to national security risks, public safety issues, current or past targets of investigations, and other law enforcement concerns. The system is maintained by U.S. Customs and Border Protection.
VGTOF	Violent Gang and Terrorist Organization File. The VGTOF file has been designed to provide identifying information about violent criminal gangs and terrorist organizations and members of those gangs and organizations to law enforcement personnel. This information serves to warn law enforcement officers of the potential danger posed by violent individuals and to promote the exchange of information about these organizations and members to facilitate criminal investigations. USCIS has access to VGTOF through NCIC.



## Chapter 2: Introduction

Purpose	This SOP describes the procedures Service Centers are to follow when adjudicating DACA requests. This SOP includes the procedures for processing Form I-821D, Consideration of Deferred Action for Childhood Arrivals, and Form I-765, Application for Employment Authorization. It also describes the procedures for adjudicating advance parole requests for individuals whose removal has been deferred under DACA and who need to travel outside of the United States for educational, employment, or humanitarian purposes.
References	<p><b>For DACA:</b> Memorandum issued June 15, 2012, <u>Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children</u>, by Secretary of Homeland Security Janet Napolitano to U.S. Customs and Border Protection; U.S. Citizenship and Immigration Services; and Immigration and Customs Enforcement. See Appendix A for a copy of <u>the Secretary's memorandum</u>.</p> <p><b>For Employment Authorization:</b> 8 C.F.R. § 274a.12(c)(14) is the legal authority for employment authorization based on a grant of deferred action. The (c)(33) code will be used to distinguish EAD grants under DACA from EAD grants under other forms of deferred action. See also the Secretary's memorandum, which provides that USCIS shall accept applications to determine whether individuals whose removal has been deferred under DACA qualify for work authorization during the period of deferred action.</p>
Fraud Cases	All officers are required to review cases for the possibility of fraud. All officers should review the case based on the standard fraud referral protocols and the additional guidance provided in Chapter 8, Section K of this SOP.
Applicability	This SOP is applicable to all Service Center personnel performing adjudicative and clerical functions or review of those functions. Personnel outside of Service Centers performing duties related to DACA processing will be similarly bound by the provisions of this SOP.

*Continued on next page*

(b) (5)



## Introduction, Continued

### Conflict Resolution

Any provision of the Act or 8 C.F.R. found by Headquarters Service Center Operations Directorate (SCOPS) to be in conflict with this SOP will take precedence over the SOP; any individual who identifies such an apparent conflict will report the matter immediately to the DACA SISO POC, who will in turn report the conflict to SCOPS.

If any apparent conflict is noted between this SOP and policy or guidance documents, the matter should be reported to SCOPS through the supervisory chain of command.

### Revisions

SCOPS will issue numbered revisions to this SOP. No other document will be considered a valid modification.

#### *Version Control*

All personnel who maintain a hard copy of the SOP will ensure that it is the latest version. An electronic copy of the latest version will be posted per local procedures. The training unit will archive all prior electronic versions of this SOP.

### Additional Resources

For additional resources on DACA, please see a supervisor or training coordinator for DACA training presentations and modules.

*Continued on next page*

## Introduction, Continued

### DACA Overview

On June 15, 2012, the Secretary of Homeland Security issued a memorandum entitled, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children. In this memorandum, the Secretary provides guidelines for exercising prosecutorial discretion on a case-by-case basis to defer removal action of individuals who were brought to the United States as children. By issuing this memorandum, the Secretary recognized that, as a general matter, these individuals lacked the requisite intent to violate the law when they entered the United States as children. Therefore, the Secretary determined that additional measures are necessary to ensure that enforcement resources are not expended on these low priority cases, but rather, on those who meet DHS's enforcement priorities.

### Childhood Arrival

For purposes of considering an individual for DACA under the Secretary's memorandum, an individual may be favorably considered for DACA if he/she:

1. Entered without inspection before June 15, 2012, and had no lawful status as of that date, or if admitted or paroled, his/her lawful immigration status expired as of June 15, 2012;
2. Was under the age of 31 as of June 15, 2012;
3. Came to the United States prior to reaching his/her 16<sup>th</sup> birthday;
4. Has continuously resided in the United States since June 15, 2007, up to the date of filing;
5. Was present in the United States on June 15, 2012, and at the time of making his/her request for consideration of deferred action with USCIS;
6. Is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a GED certificate, or is an honorably discharged veteran of the U.S. Coast Guard or U.S. Armed Forces; and
7. Has not been convicted of a felony, a significant misdemeanor, or three or more misdemeanors, and does not otherwise pose a threat to national security or public safety.

*Continued on next page*

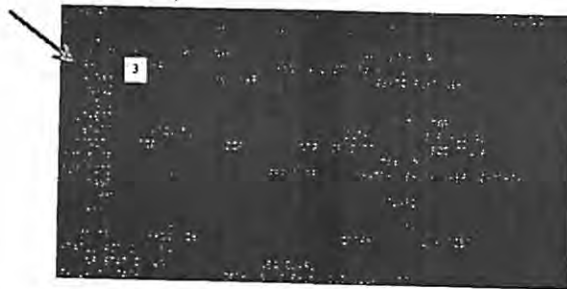
## Introduction, Continued

### DACA Requests Filed with USCIS

USCIS will process all DACA requests, regardless of whether the individual is in removal proceedings (unless the individual is in immigration detention under the custody of ICE) or subject to a final order of removal. Depending on when the order was issued, this could be an order of deportation, exclusion or removal. A complete DACA package consists of concurrently filed Forms I-821D, Consideration of Deferred Action for Childhood Arrivals and I-765, Application for Employment Authorization, with the worksheet, Form I-765WS. Forms I-821D and I-765 must be filed concurrently. DACA requests will be adjudicated by all four Service Centers.

### Lockbox

All DACA requests are filed, with applicable fees, and with the appropriate USCIS Lockbox. DACA filings mistakenly mailed to a Service Center will be forwarded to the appropriate Lockbox for processing. Requests received at a Lockbox Facility will be electronically scanned into OnBase (the Lockbox intake system) and all pertinent fields will be populated in CLAIMS 3 (C3) into the Form I-821 screen, but with a new category "3" as the basis for requesting DACA. While Forms I-821 for TPS, and I-821D for DACA are very similar, when Form I-821 appears in CLAIMS with category "3" (to denote that it is actually an I-821D for DACA), only those fields pertaining to the DACA request will be active.



The file containing the Form I-821D and Form I-765 will be forwarded to the appropriate Service Center for adjudication, based on the agreed upon routing logic between Service Centers and Lockbox.

The Lockbox will screen DACA requests to determine whether they have been filed correctly with USCIS.

## Chapter 3: Summary of Overall Process Flow For DACA Filings

Introduction	This section summarizes the general process flow for an initial DACA request, from intake at the Lockbox, to the point of a final decision.
Process Flow	<p><u>Step 1:</u> Intake occurs at the Lockbox per the agreed upon Lockbox/SCOPS business rules.</p> <p><u>Step 2:</u> Service Center Records performs the A-number look-up and validation process.</p> <p><u>Step 3:</u> Data is populated into C3 via the Lockbox-Service Center interface.</p> <p><u>Step 4:</u> Lockbox creates and ships A-Files/T-Files to the appropriate Service Center based on the agreed upon routing.</p> <p><u>Step 5:</u> Service Centers receive the files and perform file intake functions.</p> <p><u>Step 6:</u> ASC appointments are scheduled via SNAP by the Service Center pursuant to local procedures.</p>

*Continued on next page*



## Summary of Overall Process Flow For DACA Filings, Continued

### Process Flow (Continued)

#### Step 7:

In parallel to the SNAP scheduling process, background and security checks are initiated via TECS.

#### Step 8:

The Service Center must look for the following to determine the next steps:

- Whether the DACA requestor appeared at the ASC for biometrics capture and whether the FBI returned the fingerprint results (fingerprint results are required only for those 14 years and older); and
- Whether (b) (7)(E) fingerprint results returned derogatory information impacting the exercise of discretion for DACA.

#### Step 9:

The Service Center will take adjudicative action.

#### Step 10:

The process flow splits off here, depending on the results from the FBI, the (b) (7)(E) check, on whether a supervisory hold should be placed on the request. A DACA request will be routed based on these results, as laid out in the chart below:

(b) (7)(E)	
No hit	are routed to an officer for adjudication.
A hit	is routed to adjudications from BCU with the annotation Does Not Relate (DNR); or is routed to BCU for confirmation and vetting of the related hit.

## Chapter 4: Lockbox Intake

### Rejection Criteria

The Lockbox will use the following rejection criteria for DACA filings:

#### Rejection of Form I-821D:

- Missing Signature on either Form I-821D or Form I-765;
- Missing or wrong fee for Form I-765 (Expecting \$465 total, which includes the biometrics fee, unless the individual fits within certain fee exemptions established for DACA requestors and an exemption has been previously approved);
- Missing Required Fields – needed for ingestion to C3:
  - Family Name
  - Address: or
  - Date of Birth:
- Form I-821D received without Form I-765;
- Filed from a foreign address;
- Form I-131 for advance parole received with Form I-821D (If the Form I-131 is filed with a separate check, only the Form I-131 will be rejected and the Form I-821D and Form I-765 will be accepted);
- The requestor was 31 years or older on June 15, 2012;
- The requestor is under 15 at time of filing and does not indicate that he/she is in removal proceedings in Question 3.b. of Form I-821D.

#### Rejection of Form I-765 (based on DACA grant):

- Missing or wrong fee (Expecting \$465 total, including the biometrics fee, unless the individual fits within certain fee exemptions established for DACA requestors and an exemption has been previously approved); or
- Missing Signature.

*The "stand-alone" Form I-765s filed by those whose removal has been deferred under DACA by ICE will be processed at the National Benefit Center. Prior to the decision that USCIS will process all DACA requests to include those in removal proceedings, ICE did defer removal for some DACA requestors.*

*Continued on next page*

## Lockbox Intake, Continued

### A# Validation/ Assignment

The Lockbox will perform the following:

- A# validation is triggered by the Form I-821D;
- If the requestor provides an A# that matches the Central Index System (CIS) based upon the same name and date of birth, the A# is retained and cloned to the Form I-765;
- If the A# provided by the requestor is incorrect, the transaction goes to the queue for research. If the correct A# is found in USCIS systems, it is inserted into the Form I-821D record and cloned to the Form I-765. If no A# is found in USCIS systems, then an A# is assigned to Form I-821D and cloned to the Form I-765;
- If there is no A# on the Form I-821D, the transaction goes to the queue for research. If the correct A# is found, it will be inserted into the Form I-821D record and cloned to the Form I-765. If no A# is found in USCIS records (manual search), then the A# is assigned to Form I-821D and cloned to the Form I-765.

Research is completed by Service Center staff remotely accessing the Lockbox intake system. DACA requests with a missing or invalid A# are routed to USCIS to review. USCIS may correct the A# or assign a new A#.

### Record of Proceeding (ROP)

The Lockbox will assemble the DACA files in the following order:

Records Side	Non-Records Side
Valid Form G-28	Form G-28 (not-valid) face down
Form I-821D	Property Envelope (facing backward and upside down)
Form I-765WS	
Form G-1145	
Attorney's Letter (if applicable)	
Passport	
Birth Certificate	
Form I-94	
Other Supporting Documentation	
Form I-765 (2 requestor's photos will be placed in a ziplock bag and stapled to the Form I-765)	
Address Side of Envelope	



## Chapter 5: Service Center Intake

### Incoming Files

The contractor will perform the following actions:

- Open the boxes from the Lockbox;
- Date stamp and check the manifest against the files in the boxes;
- Separate A-file and T-files;
- Perform "new add" for the receipt files, A-files, and T-files, as well as consolidate Forms I-821D and I-765 into the A-file/T-file in the National File Tracking System (NFTS);
- T-files – locate the A-file(s) using the NFTS inquiry screen and if the A-file(s) are located outside the Service Center, initiate the A-file request;
- A-files – Perform "new add the A-file" into the Central Index System (CIS); and
- Deliver DACA files to work distribution. Responsible Party Codes (RPCs) are used to track the location of files at the Service Center. An NFTS barcode is placed on each shelf, box, or drawer in which DACA files are stored.

The Service Center will perform the following actions:

- Perform a Quality Assurance review on a random sample of incoming DACA files. ROP order, proper acceptance, and correct matching data on the form compared with the CLAIMS record, will all be reviewed. Any errors will be recorded and reported back to the Lockbox service provider for process improvement steps. Corrections will be made at the Service Center.
- Initiate an automated (b) (7)(E) check of the DACA requestor's name(s) and date(s) of birth; and
- Review and resolve any identified hit (performed by BCU officers).

See Chapter 6 for more detailed information relating to background checks.

### Biometric Capture

The Service Center will perform the following actions:

- Compile **daily bulk scheduling** requests and send them to the ASC for SNAP scheduling; and
- Fill officer work orders, as biometric and fingerprint results post for DACA requestors.

*Continued next page*



## Service Center Intake, Continued

### Biometric Rescheduling

All reschedule requests will go through the centralized rescheduling facility. The centers will be notified via a spreadsheet from the centralized rescheduling facility upon rescheduling of an original ASC appointment.

The requestor can reschedule multiple times within 87 days of the initial ASC appointment date. If the requestor fails to appear at the ASC within the 87 days, the DACA request will be denied for abandonment.

If the requestor asks for an appointment beyond 30 days into the future, the centralized rescheduling facility will send a scanned request to the Service Center for processing. The rescheduled ASC appointment date is not to exceed the 87-day window.

### Biometric No Shows

If a requestor is originally scheduled for an ASC appointment and does not appear, the center should send an RFE with instructions to contact the National Customer Service Center to facilitate rescheduling his/her appointment. A written response to the RFE is not required, provided that the requestor timely reschedules and goes to the rescheduled ASC appointment.

The centers will be notified via a spreadsheet from the centralized rescheduling facility upon rescheduling of an original ASC appointment. The center will then hold the case for the new appointment, and if the requestor fails to appear again, or if the requestor fails to reschedule a second appointment within 87 days based on that RFE, the case will be denied for abandonment.

### Officer Work Orders

The contractor will perform the following actions:

- In accordance with local procedures, screen prints may be provided to officers to reduce the need to search systems at the point of adjudication; and
- Adjudication ready DACA files will be delivered to officers.

*Continued on next page*

## Service Center Intake, Continued

### Non-Sufficient Funds (NSF) Background

This section addresses the procedures to be used for completing the non-sufficient funds (NSF) cases. The NSF cases are identified by the Burlington Finance Center (BFC) and are listed in the NSF "New Bill Report" in the Federal Finance Management Service (FFMS) system.

For DACA, Forms I-821D and I-765 must be filed concurrently. There is no fee for Form I-821D. The \$380 fee is required for Form I-765. The \$85 biometrics fee is also required. Lockbox will be looking for \$465, either in one check or in two checks. The I-765 fee and the biometrics fee will be bundled in C3 and listed as one fee — \$465. If the DACA requestor does not remit \$465, Lockbox will reject the entire filing. Even when the proper fee has been remitted, it is possible that payment may be returned due to NSF. The NSF can occur in a combination of scenarios: the fees are paid in one check and the entire check is returned as NSF; or the fee is paid in two checks and either or both checks are returned as NSF. Failure of either fee or both fees to clear the bank, or being made good within the 14 calendar days allowed, will result in denial of Form I-821D and rejection of Form I-765. See Chapter 9 for more information on the denial.

### Retrieving the New Bill Listing Report in FFMS

Fee payments in the form of personal checks, cashier checks, or money orders are submitted along with a DACA request. When a discrepancy is found in a payment, such as stale, dated, or without sufficient funds, etc., the bank will notify the Burlington Finance Center (BFC) in Vermont. These non-payment checks or money orders are referred to as bounced checks. The BFC will compile all the bounced checks and enter the data into the FFMS system, create an invoice number for each bounced check case, and place them on the bounced check "New Bill Report." The Service Center Records Divisions, on a daily basis, access this data via the FFMS website to download a bounced check "New Bill Report."

*Continued on next page*

## Service Center Intake, Continued

Non-Sufficient  
Funds (NSF)  
(continued)

### Invoicing the Payee

Along with listing the case in FFMS, the BFC will also mail an invoice to the payee of the fee, requesting that the new payment be sent to them and that a \$30 NSF charge also be paid. The \$30 NSF charge is assessed on each bounced check.

### Notifying the DACA Requestor

The Service Center will mail an informational notice on the I-797C to the DACA requestor regarding the specific NSF payment. In this case, the DACA requestor will receive the NSF notice, regardless of whether they are the payee or not. In this manner, both the payee and the DACA requestor receive notification if they are different parties.

### Placing Case in Hold Status

To reflect the hold status of the case, the action codes will be recorded in C3, are as follows:

(b) (7)(E) CHECK BOUNCED, CASE NOT YET COMPLETED and  
CHECK DEFICIENCY NOTICE 1 SENT

Place file on a hold shelf.

### Completion procedure when case is paid

The bounced check paid cases are identified by Burlington Finance Center and are listed in the bounced check "Paid Activity Report" in the FFMS system. The Service Center Records Divisions access this data daily via the FFMS website to download the bounced check Paid Activity Report.

*Continued on next page*



## Service Center Intake, Continued

Non-Sufficient  
Funds (NSF)  
(continued)

### System Update Steps

The CLAIMS GUI I-765 record will be accessed. The new paid date from the Paid Activity Report will become the new Received Date in the record.

The remittance screen will be updated with the action code:

(b) (7)(E) FEE COLLECTED ELSEWHERE

A modified receipt notice will be printed and mailed reflecting the new Received Date. The action code recording this is: (b) (7)(E) MODIFIED RECEIPT NOTICE 1 SENT

The hold status will be removed from the record. The action code recording this is: (b) (7)(E) BOUNCED CHECK CORRECTED ON CASE NOT YET COMPLETED

The case is now ready to proceed again through the pre-adjudication process. Schedule the biometrics appointment in SNAP and place the file on the biometrics hold shelf.

### Mailing the Receipt notice

The receipt notice states:

"This is to notify you that we have received full payment for the above referenced application or petition and processing has resumed. Your filing date has been adjusted to reflect the receipt of payment. We will notify you separately of our decision on the application or petition."

### Completion procedure when case remains unpaid

Unless fee exempt, the DACA requestor has 14 calendar days from the invoice date to submit proper payment by credit card, money order or cashier's check to the BFC. The proper payment is \$465 -- \$380 for the Form I-765 and \$85 for the biometrics fee. If the \$465 was paid in two checks, either check exceeding the 14 calendar days allowed to correct NSF status will result in rejection of Form I-765.

- Pull the files that have been staged on the bounced check hold shelf for over 14 days and verify the case in the CLAIMS system and determine the bounced check "paid" status in FFMS.

Continued on next page

## Service Center Intake, Continued

Non-Sufficient  
Funds (NSF)  
(continued)

The FFMS "Status" box indicates "OPEN"

The "Open" status means the BFC has not received the bounced check payment in full from the debtor. After the 14-day hold on the bounced check hold shelf, a C3/GUI application/petition shall be pulled from the hold shelf for review. If it has been over 14 days past due and the case status shows "Open" in FFMS and there is no indication of a "Change of the Due Date" made by the BFC in the Customer Log (RM043) screen, reject the Form I-765 as "untimely paid."

### Recording the Rejection

The case is accessed in C3 and the action code recorded is: (b) (7)(E)  
BOUNCED CHECK NOT CORRECTED, REJECTED

Form I-765 form will be closed by the Records Analyst in this manner:  
In the "Action Block" of the application, stamp in red or black ink  
"REJECTED Bounced Check."

A memorandum is printed from a template in MS Word recording the following data:

- Today's Date
- Form Type
- A# (if available)
- Receipt #
- Date Rejected
- Invoice #
- Amount
- Debtor's Name (Optional)

Place this memo on the top of the right side of the DACA A-file.

*Continued on next page*



## Service Center Intake, Continued

Non-Sufficient  
Funds (NSF)  
(continued)

---

### Mailing the Rejection

A rejection notice printed on I-797 is generated from C3 and mailed to the requestor. It reads:

We previously notified you that the payment for the filing fee in the above case was returned. The Burlington Finance Center did not receive payment within 14 days of the invoice.

Your application or petition has been rejected as improperly filed. Any previously assigned priority or processing date is no longer applicable. A new application or petition must be filed, and a new fee is required, if you wish to pursue the benefit. Personal Checks will not be accepted.

### Disposition of the I-821D

After processing the rejection for Form I-765 due to the NSF, on the same day, route the A-file to a DACA Supervisory Immigration Services Officer for issuance of a denial for the Form I-821D.

The denial should be issued per the instructions in Chapter 9 of this SOP.

---

## Chapter 6: Background and Security Checks

### Introduction

Background and security checks will be conducted for all DACA requests. As part of the background check, USCIS requires that specific security checks or a combination of checks are completed for Forms I-821D and I-765. The background checks refer to the analysis of the results of the security checks or any other identified concern relating to national security or public safety and the actions required to resolve the concern. The resolution must be conducted in accordance with current NaBISCOP and CARRP policies.

Fraud related concerns that arise during the course of background and security checks should be addressed according to the March 2011 SOP, 2008 ICE/USCIS MOA and Chapter 8, Section K of this SOP. Fraud related issues will be referred to CFDO.

The following specific background and security checks apply to DACA requestors:

(b) (7)(E)

### Responsibility

All DACA requestors with national security issues, (b) (7)(E) hits, or other criminality concerns will be processed by the BCU DACA team per the following guidance:

- **National Security:** All (b) (7)(E) national security issues will be resolved through the established CARRP process. All cases with National Security concerns will be resolved and adjudicated by the CARRP officer attached to the BCU DACA Team.

(b) (7)(E)

*Continued on next page*



## Background and Security Checks, Continued

Responsibility  
(continued)

(b) (7)(E)

(b) (7)(E)

System Updates  
for DACA File  
Movement Into  
and Out of  
BCU

For reporting purposes, DACA file movement into and out of the BCU will require the following updates in C3:

- "Sent to Background Check Unit (BCU) for Resolution" (b) (7)(E) when sending a DACA request to the BCU; and
- "Received from Background Check Unit (BCU) with Resolution" (b) (7)(E) when receiving a DACA request from the BCU for final processing.

*Continued on next page*



## Background and Security Checks, Continued

### Overview of Background Check Process

Appendix C illustrates a high level overview of the background check process once potentially derogatory information has been identified as a result of the security checks, or from other sources.

(b) (7)(E)



#### A. Procedures for confirming a match

USCIS personnel must:

- Determine if the subject of the derogatory information relates to the requestor; and
- Compare the information from the security check or other source to the biographic, biometric information, and physical descriptors about the individual.

USCIS personnel may use any combination of available identifiers, to assist in the determination. While USCIS officers primarily rely on best judgment and experience in determining whether the information relates to the individual, USCIS personnel should consult with a supervisor if there is any uncertainty as to whether the information relates to the DACA requestor. If there continues to be any uncertainty about the match, supervisors may work through their chain of command and with HQ, if necessary.

*Continued on next page*

## Background and Security Checks, Continued

### Overview of Background Check Process (continued)

#### B. Triage Information

##### 1. Conclusive Match

Once it is determined that the information relates to the individual, USCIS personnel must determine if the results fall into the following categories, which require special processing:

- National Security;
- EPS or other criminal cases; or
- Articulated immigration Fraud.

Criminal hits, which involve a violation of U.S., state, or local criminal law, but do not rise to the level of an EPS concern, as defined in the November 7, 2011, NTA memorandum, impact each case differently and should be considered during the adjudication process to determine if such activity is germane to the request for consideration of deferred action for childhood arrivals. Criminal activity occurring outside of the United States (including foreign convictions) that may be revealed during routine background checks or which the requestor may have disclosed on the deferred action request, factor into the evaluation of whether the requestor poses a public safety concern, under the totality of the circumstances.

##### 2. Inconclusive Match

When USCIS officers are unable to confirm the match after exhausting available electronic systems searches and other resources, personnel must consult their chain of command to determine the appropriate follow-up action. (b) (7)(E) an RFE to confirm the match, or other appropriate action may be required. USCIS personnel must then document the hit, include a statement in the Resolution Memorandum or other memoranda, as required, explaining the inconclusive nature of the match determination, the actions taken to resolve the hit, and refer the case to the appropriate unit or field office to confirm the match. If USCIS personnel are still unable to confirm the match, refer the case through the chain of command.

#### C. Resolve Concern

Resolution may require a variety of activities to be completed by the BCU which include, but are not limited to: (b) (7)(E)

(b) (7)(E)

Continued on next page



## Background and Security Checks, Continued

### Overview of Background Check Process (continued)

Deconfliction is the coordination between USCIS and another governmental agency or record owner to ensure that planned adjudicative activities (e.g., interview, request for evidence, site visit, decision to grant or deny, issue an NTA, and the timing of such) do not compromise or impede an ongoing investigation or other record owner interest.

#### D. Document the Resolution

Each hit requires documentation by the BCU DACA Team member of any resolution. Review the specific information for each background and security check for more information on documenting the resolution.

#### E. Adjudication

Once the NS/EPs/other criminal concern has been resolved, the BCU DACA ISO should proceed with adjudication.

(b) (7)(E)

USCIS will conduct (b) (7)(E) queries on (b) (7)(E) on all DACA requests within 15 calendar days of initial receipt. The objective of

(b) (7)(E)

In addition, USCIS has access to other types of records (b) (7)(E)

(b) (7)(E)

Continued on next page



## Background and Security Checks, Continued

(b) (7)(E)

(continued)

Officers must determine whether the result of a security check relates to the subject or does not relate (DNR). Officers review and resolve security checks and complete the background checks. For (b) (7)(E) procedures, search criteria and best practices, refer to the current NaBISCOP policy.

(b) (7)(E)

The following items, if present, must be reviewed in the DACA A-file for name and DOB combinations and aliases, (b) (7)(E)

- Form I-821D;
- Form I-765;
- All supporting documents; and
- Any other documents in the A-file relating to the DACA request including, but not limited to the following:
  - Passports;
  - Visas;
  - Border Crossing Cards (BCC);
  - Forms I-94;
  - Birth Certificates;
  - Marriage Certificates;
  - Divorce Decrees;
  - Diplomas/Academic Transcripts;
  - Student Identification Cards;
  - Military Identification Cards;
  - Driver's Licenses;
  - Social Security Cards; or
  - Business/Membership Cards.

Continued on next page

## Background and Security Checks, Continued

(b) (7)(E)

(b) (7)(E)

(b) (7)(E)

*Continued on next page*

FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE (LES)  
This document is FOR OFFICIAL USE ONLY. It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. § 552). This document is to be controlled, handled, transmitted, distributed, and disposed of in accordance with FOUO policy relating to Sensitive But Unclassified (SBU) information, and is not to be released to the public or other personnel who do not have a valid "need-to-know" basis without prior approval from the originator.



## Background and Security Checks, Continued

### Resolution Memorandum

The resolution memorandum is the formal documentation of the reconciliation of a related hit. This is a mandatory action that must be completed before rendering a final adjudicative decision. Before completing the adjudication, the officer should ensure that each resolution memorandum completely resolves the hit. For a related hit, a separate resolution memorandum must be completed for each subject with a related hit and each file containing a related hit. For procedures and formats for the resolution of related hits, refer to the current NaBISCOP policy.

### FBI Fingerprint Check

The FBI Fingerprint Check provides summary information of an individual's administrative or criminal record within the United States. The FBI Fingerprint Check is conducted through the Integrated Automated Fingerprint Identification System (IAFIS). The IAFIS is a national fingerprint and criminal history system maintained by the FBI's Criminal Justice Information System (CJIS) Division. State, local, and Federal law enforcement agencies submit fingerprints and corresponding administrative or criminal history information to IAFIS. Participation by state and local agencies is not mandatory, so the FBI Fingerprint check does not contain records from every jurisdiction. The information contained in the record is obtained using prior fingerprint submissions to the FBI related to arrests and, in some instances, Federal employment, naturalization, or military service.

(b) (7)(E)

*Continued on next page*



## Background and Security Checks, Continued

### FBI Fingerprint Check Procedures

All individuals filing a DACA request will be scheduled for biometrics capture (photo, fingerprints, and signature) at an ASC regardless of whether biometrics were captured for the requestor from a previous filing with USCIS within the last 15 months. DACA requestors under the age of 14 will have the press print captured instead of full fingerprints.

## Chapter 7: DACA Overview

### Filing

All individuals requesting DACA must file their request individually and satisfy the DACA guidelines in their own right; USCIS will not consider deferring removal action of an individual under DACA based on their familial relationship to someone who has received DACA. There is no derivative DACA.

### Commonwealth of the Northern Mariana Islands (CNMI) Not Eligible

Individuals in the CNMI are not to be considered for deferred action for childhood arrivals, because the CNMI did not become part of the United States for immigration purposes until November 28, 2009. As a result, requestors could not establish continuous residence in the United States during the 5-year period immediately preceding the Secretary's memorandum and/or entry into the United States before their 16<sup>th</sup> birthday. Instead, these individuals may request parole on a case-by-case basis. These requests will be considered under the same general guidelines used for DACA, except that the five years of continuous residency required will be residency in the CNMI, not the United States. Requests for consideration of deferred action for childhood arrivals received from individuals in the CNMI should be referred to USCIS District 26 (Honolulu District) for case-by-case consideration by officers knowledgeable about the unique immigration situation in the CNMI.

*Continued on next page*

## DACA Overview, Continued

### Initial DACA Package

A complete DACA package must include the following items:

1. Form **I-821D**, Consideration of Deferred Action for Childhood Arrivals, properly filed with proper signature.
2. Form **I-765**, Application for Employment Authorization with **I-765 WS**, properly filed with proper signature, the base filing fee, and the biometric services fee. The fees for Form I-765, and the biometric services fee are not eligible for fee waiver consideration.\*
3. Evidence of identity to include date of birth, which would establish compliance with the upper and lower age limits.
4. Evidence of entry prior to the requestor's 16<sup>th</sup> birthday.
5. Evidence of continuous residence since June 15, 2007, up to the date of filing.
6. Evidence of unlawful status as of June 15, 2012, if admitted or expired parole (if paroled).
7. Evidence of presence in the United States on June 15, 2012.
8. Evidence that any absences from the United States during the required period of continuous residence were brief, casual, and innocent absences.
9. Evidence that the requestor is currently in school, graduated or obtained a certificate of completion from high school, obtained a general educational certificate (GED), or is an honorably discharged veteran of the Coast Guard or U.S. Armed Forces.

\*If the requestor has been determined exempt from the fee. The DACA package must be accompanied by the exemption approval letter from USCIS Headquarters.

*Continued on next page*



## DACA Overview, Continued

### DACA Guidelines

An individual meeting the following guidelines may be favorably considered for DACA if, under the totality of the circumstances, he/she:

1. Was in unlawful status as of June 15, 2012;
2. Is at least 15 years of age on the date of filing, if not in removal proceedings or with a final order of removal or voluntary departure order;
3. Arrived in the United States prior to reaching his/her 16th birthday;
4. Has continuously resided in the United States since June 15, 2007, up to the time the request for consideration of deferred action for childhood arrivals is submitted;
5. Was present in the United States on June 15, 2012;
6. Is currently in school, graduated from high school, obtained a general educational certificate (GED), is currently enrolled in an accredited GED program, or is an honorably discharged veteran of the Coast Guard or U.S. Armed Forces;
7. Was born after June 15, 1981 (i.e., was not age 31 or older on June 15, 2012);
8. Has not been convicted of a felony offense, a significant misdemeanor offense, or three or more non-significant misdemeanor offenses; and
9. Does not otherwise pose a threat to national security or public safety.

## Chapter 8: Adjudication of The DACA Request

### A. Procedural Overview

#### Evaluating the Evidence

When evaluating the evidence submitted in support of a request for DACA consideration, refer to the discussion of the different types of evidence, the weight to be given to such evidence, and the standards of proof, all of which are discussed in Chapter 1.

#### Request for Evidence (RFE) versus Notice of Intent to Deny (NOID)

Officers will **NOT** deny a DACA request solely because the DACA requestor failed to submit sufficient evidence with the request (unless there is sufficient evidence in our records to support a denial). As a matter of policy, officers will issue an RFE or a Notice of Intent to Deny (NOID).

If additional evidence is needed, issue an RFE whenever possible.

When an RFE is issued, the response time given shall be 87 days. A list of DACA RFE call-ups and the actual templates can be found in Appendix D.

When a NOID is issued, the response time given shall be 33 days.

#### Unobtainable A-files

After requesting an A-file from the FCO, there may be occasions when there is no response or the file cannot be released (e.g., pending interview, etc.). After three unsuccessful attempts to obtain the file from a field office via CIS or from ICE, adjudicate the DACA filing from the T-file. If the A-file is with ICE, the center should send three requests via CIS using standard procedures. However, if the A-file is not received from ICE within the 30 days allowed after the initial request, the center's Records Section should send a manifest containing a list of the A-files requested from ICE to the designated ICE e-mail box that has been created specifically for the DACA workload.

## B. System Searches

(b) (7)(E)



FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE (LES)  
This document is FOR OFFICIAL USE ONLY. It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. § 552). This document is to be controlled, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to Sensitive but Unclassified (SBU) information, and is not to be released to the public or other personnel who do not have a valid "need-to-know" basis without prior approval from the originator.



## C. Determining if Guidelines are Met

### Introduction

Individuals may be considered for DACA upon showing that they meet the prescribed guidelines by a preponderance of the evidence. The evidentiary standards are discussed in Chapter 1. If additional information is needed for DACA consideration, issue an RFE. Appendix D has a list of DACA RFE call ups.

### Identity

Acceptable evidence may consist of, but is not limited to:

- A passport,
- A birth certificate accompanied by some type of photo identification,
- Any national identity document from the requestor's country of origin bearing the requestor's photo and/or fingerprint;
- Any U.S.-government immigration or other document bearing the requestor's name and photograph (e.g., Employment Authorization Documents (EADs), expired visas, driver's licenses, non-driver cards);
- Any school-issued form of identification with photo;
- Military identification document with photo; or
- Any document that the requestor believes is relevant.

The Matricular Consular or other form of consular identification issued by a consulate or embassy in the United States will be accepted as proof of identity.

If identity is not established, then issue RFE DACA 100 call up from Appendix D.

### Age at Time of Filing

If the DACA requestor is not in removal proceedings, does not have a final removal order, or does not have voluntary departure, he/she is to be age 15 or older to file the DACA request. To determine the requestor's age at the time of filing, review the requestor's birth certificate or other acceptable secondary evidence establishing the requestor's date of birth.

If the DACA requestor is in removal proceedings (including cases that have been administratively closed), which includes having an order of voluntary departure after proceedings were initiated or a final order, he/she may be under age 15 at the time of filing the DACA request.

Regardless of whether the DACA requestor is in removal proceedings or not, he/she was born after June 15, 1981 and meets the remaining guidelines in the Secretary's memorandum.

*Continued on next page*

## C. Determining if Guidelines are Met, Continued

### Arrived in the United States Prior to 16<sup>th</sup> Birthday

The Secretary's memorandum states as one of the guidelines to be met before an individual is considered for DACA is that he/she arrived in the United States prior to reaching his/her 16<sup>th</sup> birthday. To determine the date of arrival, review the response to Part 1, questions 13 through 17 of Form I-821D for the date and place of initial entry into the United States and status at entry. In addition, review question 6 in Part 1 and the requestor's birth certificate or other acceptable evidence establishing the requestor's date of birth.

If the requestor indicates a status in response to question 15 of Form I-821D, but does not provide the I-94# or a copy of the I-94 or any other document, such as a copy of his/her passport showing the date of initial entry, perform a systems check (SQ94/Arrival Departure Information System (ADIS)) to validate the date of entry, if needed.

If the requestor entered "no status" in response to question 15 of Form I-821D, or if the requestor indicates that he/she arrived with a status or was paroled into the United States, but this cannot be validated through a systems check, review the totality of the evidence submitted to establish whether the individual entered before age 16.

If the totality of the evidence does not establish that the requestor arrived in the United States before his/her 16<sup>th</sup> birthday, issue RFE DACA 103 call up from Appendix D for evidence of the date of arrival.

### Present in the United States on June 15, 2012

The Secretary's memorandum states as one of the guidelines to be met before an individual may be considered for DACA that the individual was present in the United States on June 15, 2012. To determine if the requestor was present in the United States on June 15, 2012, review the responses to Part 1 regarding the date of entry, status at entry and date authorized stay expired, and the responses to the questions in Part 2 regarding all absences from the United States since June 15, 2007. Review the totality of the evidence submitted. The evidentiary standards are discussed in Chapter 1. If the requestor arrived before June 15, 2007, and there is no indication of any departure and the evidence submitted establishing his/her presence in the United States on June 15, 2012 is credible, then this guideline has been met.

If a given document does not specifically refer to June 15, 2012, review the dates on all the documentation submitted in its totality to establish presence in the United States on that date.

*Continued on next page*

## C. Determining if Guidelines are Met, Continued

Present in the  
United States on  
June 15, 2012  
(continued)

The following are examples of acceptable evidence to establish presence in the United States on June 15, 2012. This list of examples is not exhaustive.

Evidence	Acceptable Documentation
Employment Records	<ul style="list-style-type: none"> <li>• Pay stubs;</li> <li>• W-2 Forms;</li> <li>• Federal, State, or local income tax returns; or</li> <li>• Letters from employer(s) or, if the DACA requestor has been self-employed, letters from banks, and other firms with whom he/she has done business.</li> </ul> <p>In all of these documents, the employee's name and the name of the requestor's employer or other interested organization must appear on the form or letter, as well as relevant dates. Letters from employers must be signed by the employer and must include the employer's contact information.</p> <p>Such letters must include: (1) the requestor's address(es) at the time of employment; (2) the exact period(s) of employment; (3) period(s) of layoff; and (4) a brief summary of the requestor's duties with the company.</p>
Receipts, Bills, Letters	<ul style="list-style-type: none"> <li>• Rent receipts;</li> <li>• Utility bills (gas, electric, telephone, etc.) bearing the requestor's name (or family name if residing at same address) and address; or</li> <li>• Receipts or letters from companies showing the dates during which the requestor received service.</li> </ul>
School Records	Transcripts, letters, report cards, etc., from the school(s) that the requestor attended in the United States showing the name of school(s) and the period(s) of school attendance.
Medical Records	Hospital or medical records showing medical treatment or hospitalization of the requestor. Such records should show the name of the medical facility or physician, as well as the date(s) of the treatment or hospitalization.

Continued on next page



## C. Determining if Guidelines are Met, Continued

Present in the  
United States on  
June 15, 2012  
(continued)

Evidence	Acceptable Documentation
Memberships	<ul style="list-style-type: none"> <li>Official records from a religious entity in the United States confirming the requestor's membership or attendance in the entity, attendance at entity events, or participation in a religious ceremony, rite, or passage (e.g., baptism, first communion, wedding, etc.).</li> <li>Documentation showing membership in community organizations (e.g. Scouts).</li> </ul>
Military Records	Military records (e.g., Form DD-214, Certificate of Release or Discharge from Active Duty; NGB Form 22, National Guard Report of Separation and Record of Service; military personnel records; or military health records).
Additional Documents	<p>Additional documents to support the requestor's claim may include:</p> <ul style="list-style-type: none"> <li>Money order receipts for money sent in or out of the country;</li> <li>Passport entries;</li> <li>Birth certificates of children born in the United States;</li> <li>Dated bank transactions;</li> <li>Correspondence between the DACA requestor and other persons or organizations;</li> <li>U.S. Social Security card;</li> <li>Selective Service card;</li> <li>Automobile license receipts, title, vehicle registration, etc.;</li> <li>Deeds, mortgages, contracts to which the DACA requestor has been a party;</li> <li>Tax receipts;</li> <li>Insurance policies, receipts, or postmarked letters; and/or</li> <li>Any other relevant document.</li> </ul>

If the totality of the evidence does not establish that the requestor was present in the United States on June 15, 2012, issue RFE DACA 105 call up from Appendix D for additional evidence.

*Continued on next page*

## C. Determining if Guidelines are Met, Continued

### Unlawful Immigration Status as of June 15, 2012

To be considered for DACA, the requestor is to demonstrate that he/she was in an unlawful status as of June 15, 2012. Unlawful status means that the requestor's lawful immigration status expired before June 15, 2012; he/she entered the United States without inspection before June 15, 2012; or if paroled into the United States, his/her parole expired, and he/she did not attain any other lawful status or parole extension by that date.

To determine whether the requestor was in an unlawful status as of June 15, 2012, review the responses to Part 1 of Form I-821D regarding date of entry, status at entry, and any date that authorized stay or parole expired, if such authorized stay or parole existed.

Examples of documents that may show the requestor's immigration status on June 15, 2012 include, but are not limited to the following:

- I-94/I-95/I-94W Arrival/Departure Record showing the date the requestor's authorized stay expired;
- If the requestor has a final order of exclusion, deportation, or removal issued on or before June 15, 2012, a copy of that order and related charging documents, if available;
- An INS or DHS charging document placing the requestor into deportation, exclusion, or removal proceedings;
- Any other document that is relevant to show that the requestor lacked lawful immigration status on June 15, 2012; or
- Any document relating to parole.

If needed, officers should conduct a systems check (i.e., to determine if a record exists) for the DACA requestor that will help in establishing his/her unlawful status on June 15, 2012.

If the evidence submitted does not establish that the requestor was in an unlawful status on June 15, 2012, issue RFE DACA 104 call up from Appendix D for additional evidence.

An individual who had Temporary Protected Status (TPS) on June 15, 2012, will not be considered for deferred action for childhood arrivals.

### Not Age 31 or Older on June 15, 2012

The Secretary's memorandum provides that one of the guidelines to be met before an individual is considered for DACA is that the individual was not age 31 or older on June 15, 2012. In other words, the DACA requestor was born after June 15, 1981. To determine whether the requestor was born after June 15, 1981, review the requestor's birth certificate or other acceptable secondary evidence establishing the requestor's date of birth.

If there is no evidence establishing the requestor's date of birth, issue DACA RFE 140 call up from Appendix D.

*Continued on next page*

## C. Determining if Guidelines are Met, Continued

### Continuous Residence (CR)

The individual requesting DACA is to submit evidence that he/she has resided continuously in the United States since June 15, 2007, or earlier, and up to the present time. Present time means the date of filing.

If the answers to any of the questions on page 3 (Part 2, Arrival/Residence Information) of the Form I-821D are blank or if page 3 of the form is missing and no documentation was submitted, or the documentation submitted does not reasonably show when the requestor arrived and that the requestor meets the continuous residence (CR) guideline, issue an RFE. Return the original Form I-821D (if page 3 is missing, also include a blank page 3) with the RFE asking the requestor to provide the missing answers and to provide documentation that may establish CR.

The following are examples of acceptable evidence of (CR). This list of examples is not exhaustive.

Evidence	Acceptable Documentation
Employment Records	<ul style="list-style-type: none"> <li>• Pay stubs;</li> <li>• W-2 Forms;</li> <li>• Federal, State, or local income tax returns; or</li> <li>• Letters from employer(s) or, if the DACA requestor has been self-employed, letters from banks, and other firms with whom he/she has done business.</li> </ul> <p>In all of these documents, the employee's name and the name of the requestor's employer or other interested organization is to appear on the form or letter, as well as relevant dates. Letters from employers are to be signed by the employer and are to include the employer's contact information.</p> <ul style="list-style-type: none"> <li>• Such letters are to include: (1) the requestor's address(es) at the time of employment; (2) the exact period(s) of employment; (3) period(s) of layoff; (4) and a brief summary of the requestor's duties with the company</li> </ul>
Receipts, Bills, Letters	<ul style="list-style-type: none"> <li>• Rent receipts;</li> <li>• Utility bills (gas, electric, telephone, etc.) bearing the requestor's name (or family name if residing at same address) and address; or</li> <li>• Receipts or letters from companies showing the dates during which the requestor received service.</li> </ul>

Continued on next page



## C. Determining if Guidelines are Met, Continued

Continuous  
Residence (CR)  
(continued)

Evidence	Acceptable Documentation
School Records	<ul style="list-style-type: none"> <li>• Transcripts, letters, report cards, etc., from the school(s) that the requestor attended in the United States showing;</li> <li>• Dated bank transactions;</li> <li>• Correspondence between the name of school(s) and the period(s) of school attendance.</li> </ul>
Medical Records	Hospital or medical records showing medical treatment or hospitalization of the requestor. Such records are to show the name of the medical facility or physician, as well as the date(s) of the treatment or hospitalization.
Memberships	<ul style="list-style-type: none"> <li>• Official records from a religious entity in the United States confirming the requestor's membership or attendance in the entity, attendance at entity events, or participation in a religious ceremony, rite, or passage (e.g., baptism, first communion, wedding, etc.).</li> <li>• Documentation showing membership in community organizations (e.g. Scouts).</li> </ul>
Military Records	Military records (e.g., Form DD-214, Certificate of Release or Discharge from Active Duty; NGB Form 22, National Guard Report of Separation and Record of Service; military personnel records; or military health records).
Additional Documents	<p>Additional documents to support the requestor's claim may include:</p> <ul style="list-style-type: none"> <li>• Money order receipts for money sent in or out of the country;</li> <li>• Passport entries;</li> <li>• Birth certificates of children born in the United States;</li> <li>• Dated bank transactions;</li> <li>• Correspondence between the DACA requestor and other persons or organizations;</li> <li>• U.S. Social Security card;</li> <li>• Selective Service card;</li> <li>• Automobile license receipts, title, vehicle registration, etc.;</li> <li>• Deeds, mortgages, contracts to which the DACA requestor has been a party;</li> <li>• Tax receipts;</li> <li>• Insurance policies, receipts, or postmarked letters; and/or</li> <li>• Any other relevant document.</li> </ul>

Continued on next page

## C. Determining if Guidelines are Met, Continued

### Brief, Casual and Innocent (BCI) Absence on CR

A brief, casual, and innocent absence from the United States will not interrupt the DACA requestor's continuous residence. A departure made before August 15, 2012, will not be disqualifying if the departure was "brief, casual, and innocent." Travel occurring after August 15, 2012, will not be considered brief, casual, and innocent, unless removal has been deferred under DACA and advance parole have been granted.

If the requestor indicated in Part 2 of the Form I-821D that he/she has been absent before August 15, 2012, review the reason for the absence and any evidence submitted to show that it was brief, casual, and innocent.

Examples of evidence establishing that an absence was brief, casual, and innocent and therefore did not interrupt the requestor's continuous residence include, but are not limited to:

- Plane or other transportation tickets or itinerary showing the travel dates;
- Passport entries;
- Hotel receipts showing the dates the requestor was abroad;
- Evidence of the purpose of the travel (e.g., the requestor attended a wedding or funeral);
- Copy of any advance parole documents; or
- Any other relevant/probative evidence that could support a brief, casual, and innocent absence, as that term is defined in the definitions section of this SOP.

**Note that a departure made while under an order of voluntary departure or deportation, exclusion, or removal is not brief, casual, and innocent.**

*Continued on next page*

## C. Determining if Guidelines are Met, Continued

### Effect of Travel Outside of the United States After August 15, 2012

- Travel outside the United States after August 15, 2012 and before the DACA request is filed:
  - The departure interrupts a requestor's continuous residence in the United States. The requestor cannot meet the continuous residence guideline for DACA and removal action should not be deferred.
- Travel outside the United States while the DACA request is pending:
  - The departure shall be deemed an abandonment of the DACA request; therefore, the request will be denied for abandonment.
- Travel outside the United States after removal action has been deferred under DACA, but without advance parole:
  - Deferred action under DACA is terminated automatically.

### CR/BCI Not Met

If CR is not met, issue the following RFE DACA 101 call up from Appendix D.

If no documentation is submitted to show that a departure was brief, casual, and innocent, or the documentation is not sufficient, issue the following RFE DACA 102 call up from Appendix D.

If routine systems checks, documentation submitted with the DACA request, or evidence in the A-file indicate that a departure was made while under an order of voluntary departure or deportation, exclusion, or removal, issue a Notice of Intent to Deny (NOID) with the opportunity for the requestor to rebut the derogatory information. See Appendix E for NOID Template.

*Continued on next page*



## C. Determining if Guidelines are Met, Continued

### Education

To meet the educational guideline for DACA consideration, a DACA requestor may show that he/she is currently in school, has graduated or obtained a certificate of completion from high school, or has obtained a General Educational Development (GED) certificate. Note that evidence of enrollment in on-line courses is acceptable. When reviewing such evidence, the completeness, credibility, relevance, and sufficiency are germane and take precedence over the electronic medium over which the education was received.

Each component of this guideline is discussed in more detail below.

### Currently In School

To be considered "currently in school," a requestor is to be enrolled in:

- a public or private elementary school, junior high or middle school, high school, or secondary school;
- an education, literacy, or career training program (including vocational training or an English as a Second Language (ESL) course) that is designed to lead to placement in post-secondary education, job training, or employment;
- an education program assisting students either in obtaining a regular high school diploma or its recognized equivalent under State law (including a certificate of completion, certificate of attendance, or alternate award), or in passing a GED exam or other equivalent State-authorized exam; or
- a public or private college or university or a community college;

For ease of reading, education, literacy, and career training programs will be referenced collectively as "alternative educational programs." When the DACA requestor seeks to meet the "currently in school" component of the educational guideline based on enrollment in an alternative educational program, the requestor's current enrollment in that program is to be in preparation for the requestor's anticipated subsequent placement in post-secondary education, job training, or employment (new employment or advancement within existing employment). Evidence of such subsequent placement is not required.

*Continued on next page*

## C. Determining if Guidelines are Met, Continued

### Currently In School (continued)

A DACA requestor who is enrolled in a personal enrichment class (such as arts and crafts) or who is enrolled in a recreational class (such as canoeing) is not in an alternative educational program and thus not considered to be "currently in school" for DACA purposes.

In determining whether enrollment in an alternative educational program meets the "currently in school" component of the educational guideline for DACA consideration, first, review the documentary evidence provided to see whether the alternative educational program is an education, literacy, or career training program (including vocational training and ESL) and whether it is publicly funded in whole or in part (State, Federal, county, or municipal funds.) If it is an alternative educational program and it receives public funding, no further evaluation is required. As long as the information is provided by the school/program, it is not necessary to RFE for copies of the actual funding documents. If this information is not provided, the RFE should request the information, but not require copies of the actual funding documents. If it is a literacy program that is run by a non-profit entity, no further evaluation is required with respect to the first part of the analysis. If, however, it is an alternative educational program that does not receive any public funding and it is not a non-profit literacy program, then officers are also to assess whether the program is of demonstrated effectiveness and are to look for such evidence, as described in more detail below.

Some of the ways a DACA requestor can meet the "currently in school" component of the educational guideline for DACA consideration and the different types of evidence that can be submitted, depending on the type of program in which he/she is enrolled, are discussed separately below. The examples and types of evidence listed here are illustrative, and not exhaustive.

*Continued on next page*

## C. Determining if Guidelines are Met, Continued

Public or Private  
Elementary,  
Junior  
High/Middle  
School, or High  
School/Secondary  
School

### Currently in School

Public or Private Elementary, Junior High/Middle School, or High School/Secondary School

Evidence of enrollment in a public or private elementary, junior high/middle school, or high school/secondary school may include, but are not limited to, copies of:

- **Accepted for Enrollment:** Evidence of acceptance for enrollment may include, but is not limited to:
  - An acceptance letter on school letterhead from the school's authorized representative, if the requestor was accepted for enrollment, but the classes have not yet commenced. Such acceptance letter is to include the name and address of the school, the requestor's grade level, and the date that the classes are scheduled to commence. The letter is to be accompanied by evidence that the student has registered for classes, or other evidence showing the student has accepted the offer and has committed to start classes on a certain date;
  - A current individualized education program (IEP), as required under the Individuals with Disabilities Education Act, for a student with a disability, would also be acceptable evidence of enrollment;
  - A copy of the current tuition bill;
  - A current class schedule containing the student's name, the list of courses, and the day and time of each class; or
  - Any other relevant evidence.
- **Already Attending Classes:** For DACA requestors already enrolled and attending classes, evidence may include, but is not limited to, current school registration cards, current transcripts, report cards, and progress reports. The document(s) presented are to show the name of the student, the name of the school, the time period or semester covered by the document, and the current grade level. A current IEP showing the student's progress to date would also be acceptable evidence that the DACA requestor has been accepted for enrollment and is attending classes.

A claim of homeschooling is not necessarily an indicator of fraud; however, because homeschool programs and their requirements vary widely from state to state, refer the case to CFDO for further research and evaluation. Even if the file contains documents including transcripts, a diploma or a certificate of completion as a result of homeschooling, the case must be referred to CFDO for further research and evaluation prior to final adjudication.

*Continued on next page*



## C. Determining if Guidelines are Met, Continued

Public or Private  
College or  
University, or  
Community  
College

### Currently in School

#### **Public or Private College or University, or Community College**

Evidence of enrollment in a public or private college or university or a community college may include, but is not limited to, copies of:

- **Accepted for Enrollment:** Evidence of acceptance for enrollment may include, but is not limited to:
  - An acceptance package or other related material on school letterhead from the school's authorized representative, if the requestor was accepted for enrollment, but the classes have not yet commenced. Such acceptance package or other related material is to include the name and address of the school, the requestor's grade level or class year, and the date or term when the classes are scheduled to commence, and is to be accompanied by evidence that the student has registered for class. In addition, the acceptance package or other related material is to be accompanied by evidence that the student has registered for classes, or other evidence showing the student has accepted the offer and has committed to start classes on a certain date;
  - A current individualized education program (IEP), as required under the Individuals with Disabilities Education Act, for a student with a disability, would also be acceptable evidence of enrollment;
  - A copy of the student's current tuition bill;
  - The student's current class schedule containing the list of courses, and the day and time of each class; or
  - Any other relevant evidence.
- **Already Attending Classes:** For DACA requestors already enrolled and attending classes, evidence may include, but is not limited to, current school registration cards, current transcripts, report cards, and progress reports. The submitted document(s) are to show the name of the student; the name of the school, the time period or semester covered by the document, and the current grade level or class year. A current IEP showing the student's progress to date would also be acceptable evidence that the DACA requestor has been accepted for enrollment and is attending classes.

It is not necessary to RFE for a copy of the high school diploma or GED, unless there are articulable reasons to question the evidence of acceptance and enrollment or attendance in a public or private college or university, or community college.

*Continued on next page*

## C. Determining if Guidelines are Met, Continued

General  
Education  
Development  
(GED)

### Currently in School

#### GED

If a DACA requestor claims that he/she is enrolled in a course of study to pass a GED exam or other equivalent State-authorized exam, the DACA request is to include a letter or other documentation from an authorized representative of the program, that includes information such as:

- The requestor's name and date of enrollment;
- The duration of the program and expected completion date;
- Whether the course of study is for a GED exam or other equivalent State-authorized exam;
- The program's source of public funding (Federal, State, county, or municipal), if any; and
- The program's authorized representative's contact information.

If the GED/Equivalency program is not publicly funded in whole or in part, documentation from the program should also provide information about the program's demonstrated effectiveness. Such information could include, but is not limited to, information relating to:

- The duration of the program's existence;
- The program's track record in assisting students in obtaining a GED, or a recognized equivalent certificate;
- Receipt of awards or special achievement or recognition that indicate the program's overall quality; and/or
- Any other information indicating the program's overall quality.

*Continued on next page*

## C. Determining if Guidelines are Met, Continued

Educational or  
Career Training  
Program  
(Including  
Vocational  
Training)

### Currently in School

#### **Educational or Career Training Program (Including Vocational Training)**

The documentary evidence submitted in support of the "currently in school" guideline based on enrollment in an educational or career training program (including vocational training) may include, but is not limited to:

- **Accepted for Enrollment:** An acceptance letter on school letterhead from the school registrar/authorized school representative, if the requestor was accepted for enrollment, but the classes have not yet commenced. Such acceptance letter is to include the name and address of the program, a brief description of the program, the duration of the program, and state the date the classes are scheduled to commence, and is to be accompanied by evidence that the student has registered for the program. Evidence of the requestor's acceptance for enrollment may also include a copy of his/her current year registration (intake form/enrollment form), or any other relevant documentation. The DACA request is also to be supported by evidence of the school or program's public funding or its demonstrated effectiveness, as described below.
- **Already Attending Classes:**
  - Current attendance records, transcripts, report cards, test reports, progress reports showing the name of the school, the name of the requestor, the time period or semester covered by the document, and, if relevant, the current educational or grade level;
  - A letter from the school registrar/authorized school representative, with contact information, providing information related to the program's public funding or its demonstrated excellence:

*Continued on next page*



## C. Determining if Guidelines are Met, Continued

### Educational or Career Training Program (Including Vocational Training) (continued)

- **Public Funding:** If the educational or career training program is publicly funded in whole, or in part, the above-referenced letter from the school registrar/authorized school representative is to provide basic details about the funding, such as the source(s) of the funding; or
- **Demonstrated Effectiveness:** If the educational or career training program is not publicly funded in whole, or in part, the school registrar/authorized school representative is to provide information about the program's demonstrated effectiveness, with supporting documentation, if available. Such information could include, but is not limited to: information relating to:
  - The duration of the program's existence;
  - The program's track record in placing students in employment, job training, or post-secondary education; Receipt of awards or special achievement or recognition that indicate the program's overall quality; and/or
  - Any other information indicating the program's overall quality.

### Literacy Training

#### Currently in School

The documentary evidence submitted in support of the "currently in school" guideline based on enrollment in a literacy program is to include, but is not limited to:

- A letter from the literacy program administrator or authorized representative providing information such as:
  - The requestor's name;
  - The date of the requestor's enrollment;
  - The duration of the literacy program and the expected completion date;
  - The program administrator or authorized representative's contact information;
  - Information about the literacy program's non-profit status, if applicable, and evidence of such status:
    - Evidence of the literacy program's non-profit status is to include a copy of a valid letter from the Internal Revenue Service confirming exemption from taxation under section 501(c)(3) of the Internal Revenue Service Code of 1986, as amended, or equivalent section of prior code; or
- If the literacy program is not administered by a non-profit organization, information related to the literacy program's source of public funding or its demonstrated effectiveness:

*Continued on next page*

## C. Determining if Guidelines are Met, Continued

### Literacy Training (continued)

- **Public Funding:** If the literacy program is publicly funded in whole, or in part, the letter from the literacy program administrator or authorized representative is to provide basic details about the funding, such as the source(s) of the funding; or
- **Demonstrated Effectiveness:** If the literacy program is not publicly funded in whole or in part, or not administered by a non-profit entity, the literacy program administrator or authorized representative is to provide information about the program's demonstrated effectiveness. Such information could include, but is not limited to:
  - The duration of the program's existence;
  - The program's track record in placing students in employment, job training, or post-secondary education;
  - Receipt of awards or special achievement or recognition that indicate the program's overall quality; and/or
  - Any other information indicating the program's overall quality.

It should be noted that many literacy programs may not track statistics on placement rates following completion of the program. Therefore, the lack of such data, standing alone, does not diminish the literacy program's record. Evaluate all of the information and evidence provided in its totality for credibility and sufficiency.

A claim of enrollment in a literacy class run by a for-profit entity that does not receive any public funding is not necessarily an indicator of fraud; however, a vast number of literacy programs are offered for free or at a minimal cost. Therefore, if the literacy program is a **for-profit** entity and does not receive any public funds, refer the case to CFDO for further research and evaluation.

*Continued on next page*

## C. Determining if Guidelines are Met, Continued

English as a  
Second Language  
(ESL)

### Currently in School

#### **English as a Second Language (ESL)**

The documentary evidence submitted in support of the "currently in school" guideline based on enrollment in an ESL class is to include, but is not limited to:

- A letter from the ESL program administrator or authorized representative providing information such as:
  - The requestor's name;
  - The date of the requestor's enrollment;
  - The duration of the ESL program and the expected completion date;
  - The program administrator or authorized representative's contact information;
  - Information/documentation related to the ESL program's public funding or its demonstrated effectiveness:
    - **Public Funding:** If the ESL program is publicly funded in whole, or in part, the letter from the ESL program administrator or authorized representative is also to provide specific details about the funding, such as the source(s) of the funding; or
    - **Demonstrated Effectiveness:** If the ESL program is not publicly funded in whole or in part, the ESL program administrator or authorized representative is to provide information about the program's demonstrated effectiveness. Such information could include, but is not limited to:
      - The duration of the program's existence;
      - The program's track record in placing students in post-secondary education, job training, or employment; Receipt of awards or special achievement or recognition that indicate the program's overall quality; and/or
      - Any other information indicating the program's overall quality.

It should be noted that many ESL programs may not track statistics on placement rates following completion of the program. Therefore, the lack of such data, standing alone, does not diminish the school's record. Evaluate all of the information and evidence provided in its totality for credibility and sufficiency.

*Continued on next page*



## C. Determining if Guidelines are Met, Continued

### School Breaks and Medical Leave

At the time of filing, it is possible that school may not be in session due to a holiday or a semester (or quarter or trimester) break. A break may occur during a course, for example spring break, or it may occur between semesters, for example summer break. If a DACA request is filed between semesters, the requestor is considered to be currently in school if he/she is enrolled for the next semester and submits evidence of such enrollment. Note that a requestor on temporary medical leave from school is considered to be currently in school. Evidence of the medical leave and the expected return date to school are to be provided.

### Graduated From School

A DACA requestor can also meet the educational guideline if he/she has graduated from school. To meet the "graduated from school" component of the educational guideline, the DACA requestor may show that he/she has graduated or received a certificate of completion from a public or private secondary or high school, or obtained a GED certificate. Evidence of graduation may include copies of:

- A diploma;
- Transcripts showing the date of graduation; or
- A GED Certificate, certificate of completion, certificate of attendance, or alternate award from a public or private high school or secondary school.
  - Documentation sufficient to demonstrate that the DACA requestor obtained a GED includes, but is not limited to, evidence the he/she passed a GED exam, or other comparable State-authorized exam, and, as a result, he/she received the recognized equivalent of a regular high school diploma under State law.

A claim of homeschooling is not necessarily an indicator of fraud; however, because homeschool programs and their requirements vary widely from state to state, refer the case to CFDO for further research and evaluation.

**Comment [SCOPS2]:** Waiting for decision on whether graduation from college or vo-tech or completion of ESL or literacy class is OK.

## C. Determining if Guidelines are Met, Continued

**Military Service** The Secretary's memorandum states that, in lieu of being currently in school, or having graduated from school (including a GED), the requestor may be an honorably discharged veteran of the U.S. Coast Guard or U.S. Armed Forces. This may include reservists who were honorably discharged.

Examples of acceptable evidence include, but is not limited to the following:

- Form DD-214, Certificate of Release or Discharge from Active Duty;
- NGB Form 22, National Guard Report of Separation and Record of Service;
- Military personnel records;
- Military health records; or
- Any other relevant document.

If the requestor indicated in question 24 of Part 1 that he/she was a member of the U. S. Armed Forces or Coast Guard, but did not submit evidence of an honorable discharge and does not otherwise meet the educational guidelines, issue RFE DACA 107 call up from Appendix D.

The Form DD-214 and NGB Form 22 both contain a section, "Character of Service" listing the type of discharge a service member obtained. The main types of discharges include the following:

- (1) Honorable;
- (2) General (Under Honorable Conditions);
- (3) Under Other Than Honorable Conditions;
- (4) Bad Conduct;
- (5) Dishonorable; or
- (6) Uncharacterized.

For purposes of DACA, if Character of Service is Honorable or General (Under Honorable Conditions) the requestor has satisfied the military service guideline.

Currently serving in the U.S. Coast Guard or U.S. Armed Forces does not qualify.

## D. Economic Necessity

### Reviewing Economic Necessity

An EAD based on a grant of deferred action requires a showing of economic necessity. To facilitate this economic necessity review, a separate worksheet was created, Form I-765WS. To streamline adjudication of the DACA request and the I-765, officers will review the I-765WS during the adjudication of Form I-821D. During file set-up, the I-765WS will be put in ROP order immediately behind the Form I-821D.

If Form I-765WS is completely blank or is missing, issue an RFE on the I-765 (not the Form I-821D) using DACA 180 call up from Appendix D, but only if the requestor does not include evidence that a fee exemption was granted. The fee exemption will be indicated in C3 as "Fee Waiver Granted." If an officer issues an RFE on the I-765, he/she should proceed with adjudication of the I-821D. When the response to the I-765 RFE is received and the I-765 is approved, the expiration date of the EAD should not exceed the end date of the deferred removal under DACA.

If the requestor does not respond to the I-765 RFE, the I-765 should be denied for abandonment; however, the Form I-821D can be approved for DACA if the guidelines have been met. When denying the Form I-765 for abandonment, an officer should use the standard abandonment denial used at his/her center.

If/when Form I-765WS has been completed, review the information provided regarding current income, assets, and expenses to determine whether economic necessity has been established. The requestor may, but need not, include supporting documents with Form I-765WS.

There is a general presumption that DACA requestors will need to work given their undocumented circumstances and the fact that they are not generally anticipated to have independent means. Absent evidence of sufficient independent financial resources, the Form I-765WS is sufficient to establish economic need, without any further economic analysis.



## E. Removal Proceedings

### Removal Proceedings

Individuals in removal proceedings may file a DACA request, even if they are under age 15, as long as they were not born after June 15, 1981. As explained more fully below, removal proceedings commence with the filing of Form I-862, Notice to Appear, with the Immigration Court and terminate in one of several ways. See 8 C.F.R. §245.1(c)(8)

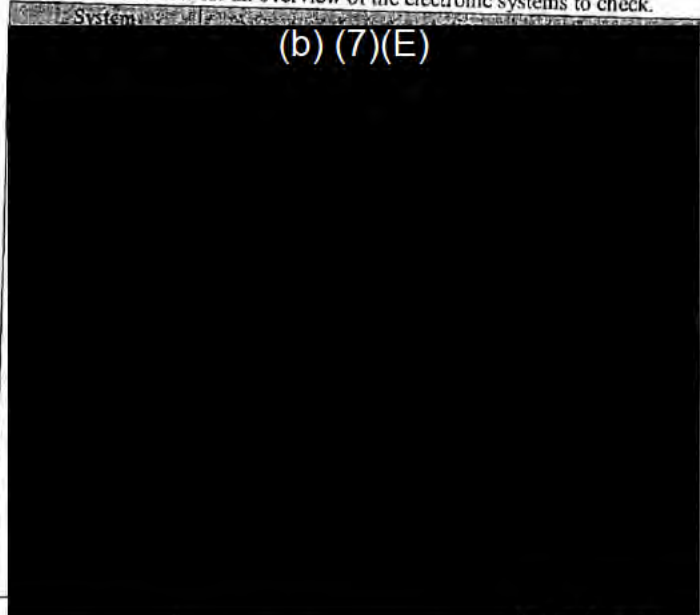
If a DACA requestor has been or is currently in deportation, exclusion, or removal proceedings, he/she may have another A-file, which should have been discovered by the officer during the initial review of the I-821D and/or Record of Arrest and Prosecution (RAP) sheet (if any). Please see the "A-File" section.

There are several ways to determine if the DACA requestor:

- Was or is in proceedings;
- What the outcome of the proceeding was; and
- If he/she was previously removed.

(b) (7)(E)

See the charts below for an overview of the electronic systems to check.



Continued on next page

## E. Removal Proceedings, Continued

Removal  
Proceedings  
(continued)

(b) (7)(E)

Effects of  
Deportation or  
Removal  
Proceedings

The existence of deportation, exclusion, or removal proceedings may have an effect on the exercise of prosecutorial discretion for DACA. If the DACA requestor is in proceedings, the A-file is likely with the ICE office. Before a DACA request may be adjudicated by the Center, the Center should make every attempt to obtain all A-File(s).

Determining  
Whether an  
Individual is in  
Removal  
Proceedings

Deportation, exclusion, and removal proceedings begin with the filing of the charging document with the Immigration Court. Currently, the charging document used is Form I-862, Notice to Appear. Over the years, proceedings commenced in other ways, including:

1. With the issuance of Form I-221, Order to Show Cause and Notice of Hearing, prior to June 20, 1991;
2. With the filing of Form I-221, Order to Show Cause and Notice of Hearing, issued on or after June 20, 1991, with the immigration court;
3. With the issuance of Form I-122, Notice to Applicant for Admission Detained for Hearing Before Immigration Judge, prior to April 1, 1997; and
4. With the issuance and service of Form I-860, Notice and Order of Expedited Removal.

It is possible for an individual to have voluntary departure and be in removal proceedings. See Voluntary Departure section below for more information.

*Continued on next page*



## E. Removal Proceedings, Continued

### Determining Removal Proceedings have been Terminated

Deportation, exclusion, or removal proceedings terminate when one of the following occurs:

1. The individual leaves the United States under an outstanding order of deportation, exclusion, or removal;
2. The individual is found not to be inadmissible or deportable from the United States;
3. The individual leaves the United States before the expiration of his/her voluntary departure, which was granted in connection with an alternate order of deportation or removal;
4. The charging document is canceled (Form I-122, I-221, I-860, or I-862);
5. The immigration judge or the Board of Immigration Appeals terminates the proceedings; or
6. A Federal court grants a petition for review or an action for habeas corpus.

See 8 C.F.R. §245.1(c)(8)

### Voluntary Departure

An individual with voluntary departure may or may not be in removal proceedings. Voluntary departure may be issued before the commencement of proceedings, during proceedings, or at the conclusion of proceedings. When voluntary departure is issued during or at the conclusion of proceedings, it is normally issued as an alternate order of voluntary departure/removal or deportation. An alternate order of voluntary departure converts automatically to an order of removal/deportation when the individual does not leave the United States voluntarily by the specified date.

### Administratively Closed

Administratively closed proceedings means that proceedings have commenced, but the parties subsequently agreed to remove the matter from the immigration court's docket. Administratively closed does not mean terminated, and thus the individual remains in proceedings. Either party may file a motion to place the case on the court's active docket at any time.

*Continued on next page*



## E. Removal Proceedings, Continued

Use the chart below to assist in determining if a DACA requestor is in removal proceedings:

If...	Then...	And...
If the requestor submits a copy of the voluntary departure and/or EARM indicates that voluntary departure was granted <u>before the commencement of proceedings</u> and there is no indication in EARM or in other systems that the individual was placed in proceedings,	The individual is not in removal proceedings,	The requestor must be at least age 15 at the time of filing. If there is evidence that the individual was not at least age 15 on the date of filing, issue a NOID.
If the requestor submits a copy of the voluntary departure and EARM indicates that an alternate order of voluntary departure/removal or deportation was issued and the individual did not depart by the specified date,	The individual is in removal proceedings, but has a final removal order,	The requestor may be under or over age 15 at the time of filing.
If the requestor submits a copy of the voluntary departure and EARM indicates that an alternate order of voluntary departure/removal or deportation was issued and the voluntary departure date has not yet expired,	The individual is in removal proceedings.	
If the requestor submits a document showing that removal proceedings have been administratively closed or EARM shows the administrative closure,	The individual is in removal proceedings.	
If the individual submits a document showing a final removal order that has not been executed,	The individual is in removal proceedings, but has a final removal order.	

Note: The guideline that the individual is under age 31 on June 15, 2012 applies to all DACA requestors regardless of whether they are in deportation, exclusion, or removal proceedings. If the individual was age 31 or older on June 15, 2012, issue a NOID.

### Individuals With Final Removal Orders (FRO)

An individual with an unexecuted final removal order is still in removal proceedings. See 8 C.F.R. § 245.1(c)(8). Although the final removal order may have been issued before, on, or after June 15, 2012, the volume of individuals that could be considered for DACA with a post-June 15<sup>th</sup> final removal order should be small, because ICE began applying the DACA guidelines upon publication of the Secretary's memorandum. Final removal orders issued after June 15, 2012 should be reviewed carefully to examine the underlying grounds for removal.

If the requestor is the subject of an FRO, then determine the requestor's age on June 15, 2012. Review the answer provided to question #9 in Part 1 of Form I-821D and review the requestor's birth certificate or other acceptable secondary evidence submitted to show the date of birth. If the evidence submitted does not show that the requestor satisfies the upper age limit, issue RFE DACA 140 call up from Appendix D.

Continued on next page

## E. Removal Proceedings, Continued

### Subject to the Reinstatement of a Prior Removal Order

When an individual reenters the United States illegally after having been removed or after leaving voluntarily under an order of removal, the individual is subject to reinstatement of the prior removal order from its original date. See INA § 241 (a)(5).

An individual who is subject to reinstatement of their prior removal order under the provisions of § 241 (a)(5) of the Act may file a DACA request; however, the removal and the illegal reentry must have occurred before June 15, 2007. This is because a DACA requestor must have resided continuously in the United States for at least five years before June 15, 2012, the date of Secretary's memorandum. Additionally, a removal is not deemed to be a brief, casual, and innocent departure and, therefore, it interrupts the period of continuous residence.

### Underlying Removal Ground Adversely Impacts Prosecutorial Discretion

If the DACA requestor indicates in Question #3.a. in Part 1 of Form I-821D that he/she has been in removal proceedings, and/or routine systems, background, and fingerprint checks indicate that the requestor is in removal proceedings, proceed as follows:

- Review the underlying removal charges; and
- Review the derogatory information obtained through routine checks.

Do not rely solely on the grounds listed in the charging document and/or EARM, as not all issues may have necessarily been captured, or new issues may have arisen since the charging document was issued. It is necessary to review all derogatory information in its totality and then make an informed assessment regarding the appropriate exercise of prosecutorial discretion for DACA.

### Underlying Removal Ground Does Not Adversely Impact Prosecutorial Discretion

If a DACA requestor has been placed in proceedings on a ground that does not adversely impact the exercise of prosecutorial discretion, review the results of all routine, systems, background, and fingerprint checks. If those routine checks did not reveal any additional derogatory information that impacts the exercise of prosecutorial discretion, the case may proceed for adjudication.

Do not rely solely on the grounds listed in the charging document and/or EARM, as not all issues may have necessarily been captured, or new issues may have arisen since the charging document was issued. It is necessary to review all derogatory information in its totality and then make an informed assessment regarding the appropriate exercise of prosecutorial discretion for DACA.

## E. Removal Proceedings, Continued

**Removal  
During  
Continuous  
Residence  
Period**

A departure from the United States pursuant to an order of deportation, exclusion, or removal that occurred during the required continuous residence period is not "brief, casual, and innocent." Therefore any absence caused by such a departure meaningfully interrupts such continuous residence. This also includes a departure made "voluntarily," for example, the individual leaves the United States on his/her own volition while under an order of deportation, exclusion, or removal.

In these instances, issue a NOID.



## F. Fingerprints and RAP Sheets

### Fingerprint Requirements

Fingerprints (ten print) are required for every DACA requestor 14 years of age and older to determine if they have a criminal history. Submissions of prior fingerprint results will not be accepted.

### FBI Fingerprint Response

At the time of adjudication, the file should contain a (b) (7)(F)

(b) (7)(E)

A definitive response from the FBI regarding fingerprint clearances is required before any DACA request for an individual 14 years of age and older may be approved.

Fingerprint results for the requestor obtained as a result of a previous filing with USCIS within the last 15 months are not valid for DACA purposes. Each DACA requestor must obtain a new fingerprint check upon the filing of a DACA request. Officers should utilize FD-258 to verify that the fingerprint check was completed for the DACA request.

### Performing an FBI Query

The fingerprint clearance should be complete before the case is sent for adjudication. If there is no fingerprint result printout in the file, officers must perform a query of FBI Fingerprint Tracking in CLAIMS Mainframe and also check SNAP to see if the requestor has been scheduled for an appointment at an ASC.

(b) (7)(E)

*Continued on next page*

## F. Fingerprints and RAP Sheets, Continued

### Introduction

There are four possible results of a fingerprint query:

(b) (7)(E)

This section instructs officers on how to proceed based on the fingerprint results.

(b) (7)(E)

*Continued on next page*



## F. Fingerprints and RAP Sheets, Continued

(b) (7)(E)

### A-numbers

(b) (7)(E)

If any other A-numbers are found on (b) (7)(E) the files must be requested, reviewed, and consolidated prior to any final action.

### Updated (b) (7)(E)

(b) (7)(E)

Although biometrics will not be cloned from other filings, if the requestor has a criminal history (b) (7)(E) the file, request updated (b) (7)(E) through the (b) (7)(E) (b) (7)(E)



## G. Evaluating Issues of Criminality, Public Safety, and National Security

### Criminal Ineligibilities

The Secretary's memorandum provides as one of the guidelines that should be met before an individual is considered for DACA that the individual not have been convicted of a felony offense, a significant misdemeanor offense, three or more non-significant misdemeanor offenses, or otherwise pose a threat to national security or public safety. If the evidence establishes that an individual has a conviction for one of the above or may be a national security or public safety threat, USCIS will deny the request for deferred action, unless exceptional circumstances are found. The requestor must specifically ask to be evaluated under this exception and must fully document the exceptional circumstances.

The decision whether to defer action in a particular case is individualized and discretionary, taking into account the nature and severity of the underlying criminal, national security, or public safety concerns. By their very nature, felonies, significant misdemeanors, a history of other misdemeanors, and activities compromising national security and public safety are particularly serious and carry considerable weight in the totality of the circumstances analysis. As a result, it would take a truly exceptional circumstance to overcome the underlying criminal, national security, and public safety grounds that would otherwise result in not considering an individual for DACA, which would be rare. Deferring removal under DACA shall not be considered under this very limited exception without concurrence from HQSCOPS. In these instances the case shall come to HQSCOPS from the Service Center Director, through the appropriate chain of command.

### Felony

A felony is a federal, state, or local criminal offense punishable by imprisonment for a term exceeding one year.

*Continued on next page*

## G. Evaluating Issues of Criminality, Public Safety, and National Security, Continued

### Misdemeanors

#### Significant Misdemeanor:

For DACA only, a significant misdemeanor is a misdemeanor as defined by federal law (specifically, one for which the maximum term of imprisonment authorized is one year or less but greater than five days) and that meets the following criteria:

1. Regardless of the sentence imposed, is an offense of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or, driving under the influence; or,
2. If not an offense listed above, is one for which the individual was sentenced to time in custody of more than 90 days.

The sentence must involve time to be served in custody, and therefore does not include a suspended sentence. The time to be served in custody does not include any time served beyond the sentence for the criminal offense based on a state or local law enforcement agency honoring a detainer issued by U.S. Immigration and Customs Enforcement (ICE). Notwithstanding whether the offense is categorized as a significant or non-significant misdemeanor, the decision whether to defer action in a particular case is an individualized, discretionary one that is made taking into account the totality of the circumstances. Therefore, the absence or presence of a criminal history, is not necessarily determinative, but is a factor to be considered in the unreviewable exercise of discretion. DHS retains the discretion to determine that an individual does not warrant deferred action on the basis of a single criminal offense for which the individual was sentenced to time in custody of 90 days or less.

#### Non-Significant Misdemeanor:

For DACA only, a non-significant misdemeanor is any misdemeanor as defined by federal law (specifically, one for which the maximum term of imprisonment authorized is one year or less but greater than five days) and that meets the following criteria:

1. Is not an offense of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or, driving under the influence; and
2. Is one for which the individual was sentenced to time in custody of 90 days or less.

The time in custody does not include any time served beyond the sentence for the criminal offense based on a state or local law enforcement agency honoring a detainer issued by ICE. Notwithstanding whether the offense is categorized as a significant or non-significant misdemeanor, the decision whether to defer action in a particular case is an individualized, discretionary one that is made taking into account the totality of the circumstances. Therefore, the absence of the criminal history outlined above, or its presence, is not necessarily determinative, but is a factor to be considered in the unreviewable exercise of discretion.

*Continued on next page*

## G. Evaluating Issues of Criminality, Public Safety, and National Security, Continued

### Misdemeanors (continued)

#### Multiple Misdemeanors:

Absent exceptional circumstances, a person is not eligible for consideration of DACA if he/she has been convicted of three or more non-significant misdemeanors that did not occur on the same day and did not arise out of the same act, omission, or scheme of misconduct.

A minor traffic offense, such as driving without a license, will not be considered a misdemeanor for purposes of this process.

### State Law Immigration Offenses

Immigration-related offenses characterized as felonies or misdemeanors by state immigration laws will not be treated as disqualifying felonies or misdemeanors for the purpose of considering a request for consideration of deferred action pursuant to this process.

### Foreign Convictions

When evaluating a request for consideration of deferred action for childhood arrival, a foreign conviction, standing alone, will generally not be treated as a disqualifying felony or misdemeanor. Such convictions, however, may be considered when addressing whether the person poses a threat to public safety and whether, under the particular circumstances, the exercise of prosecutorial discretion is warranted. Cases involving foreign convictions should be elevated for supervisory review.



## Court Dispositions

### Requesting Certified Court Dispositions

Using RFE DACA 151 call up from Appendix D, request a certified court disposition for each arrest shown on the RAP sheet, with the exception of immigration violations (see Arrests & Convictions section). The RFE should clearly list each arrest by date, arresting office, charge, and name used when arrested so that the DACA requestor will know that USCIS is requesting dispositions for specific arrests that have become known to USCIS. It is not necessary for the officer to issue an RFE if he/she is able to readily obtain the dispositions on line.

### Free Online Court Dispositions

There are many online sites that can be searched and the disposition printed for a file copy. These sites are open to the public; therefore, USCIS can gain the final disposition without doing an RFE or ITD if all the charges in question are found, or if enough evidence can be gathered to deny without the remaining charges.

The AAO has upheld prior decisions made using these court dispositions, even though these dispositions are not "certified" by the court, since the information is made available to the public.

### Reading Court Dispositions

Court dispositions take as many different forms as there are courts in the United States. There is no way to give specific instructions on how to read such dispositions. Usually the state criminal statutes cite is used to indicate which charge the applicant was actually convicted of. Adjudicators should consult with their supervisor if they have any questions about how to read a court disposition.

### Convictions

Pursuant to INA § 101(a)(48)(A), a conviction is a formal judgment of guilt entered by a court or, if adjudication of guilt has been withheld, where:

- 1) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt; and
- 2) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Nolo contendere means the individual is unwilling to contend. This subjects the individual to some form of punishment, penalty, or restraint as if he/she was found guilty.

An adjudication of juvenile delinquency is not a conviction.

*Continued on next page*

## Court Dispositions, Continued

### Formal Adjudication of Guilt Withheld

Court orders in criminal proceedings sometimes include, as part of the disposition, terms such as: Continued without a finding (CWOFF); adjudication withheld; deferred adjudication, etc. Different jurisdictions use different terminology.

Where there is no formal adjudication of guilt, officers must determine whether:

1. A judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt; AND
2. the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty, such as jail, a fine, parole, probation, community service, etc.

The officer must dissect the law, the statute, court order, and conviction, and put all the pieces together to determine whether these requirements for a conviction are met in the absence of a formal adjudication of guilt.

### Imposition of Costs as Punishment

Imposition of costs (such as fines, court costs, etc.) in a criminal case constitutes a form of punishment, and therefore satisfies the second prong of the conviction definition.

*Continued on next page*

## Court Dispositions, Continued

<b>Deferred Prosecution</b>	Deferred prosecution or pretrial diversion programs that do not require the defendant to plead guilty or nolo contendere or require the court to make any finding of guilt do not constitute a conviction for immigration purposes.
<b>Dismissals, Dropped, Set Aside</b>	<p>In many cases, the charges may be dropped or set aside in exchange for the DACA requestor agreeing to attend various self-help courses and programs, or if the person who filed the complaint against him/her fails to appear or chooses to drop the case.</p> <p>These are not considered convictions for immigration purposes.</p>
<b>Nolle Prosequi</b>	<p>A decision of "nolle prosequi" is a Latin legal term for "declined to prosecute".</p> <p>This is not considered a conviction for immigration purposes.</p>
<b>Convictions on Appeal</b>	A conviction is effective for immigration purposes, including DACA, while it is on direct appeal. See <i>Plane v. Holder</i> , 652 F.3d 991 (9th Cir. 2011), rehearing en banc denied, 2012 WL 1994862 (2012). If the conviction is ultimately reversed on appeal, the DACA requestor is free to file a new request for DACA if otherwise eligible.
<b>Expunged or Vacated Convictions</b>	Expunged convictions will not be treated as disqualifying felonies or misdemeanors for the purpose of considering a request for consideration of deferred action pursuant to this process. The request for deferred action will be assessed on a case-by-case basis to determine whether the person poses a threat to public safety and whether, under the particular circumstances, the exercise of prosecutorial discretion is warranted. Cases involving expunged convictions should be elevated for supervisory review.
<b>STET</b>	<p>The entry of "STET" in a criminal case simply means that the state (Maryland and West Virginia) will NOT proceed against an accused on that indictment at that time. As long as the STET order is still in place and the individual is in compliance, the STET is not a conviction for immigration purposes.</p> <p>NOTE: Carefully review the file for J&amp;Cs, orders, etc., to determine if a subsequent decision on the offense has been made.</p>



## Handling Procedures

### General

The evaluation of criminal issues with respect to a DACA request is done after BCU vetting of the TECS check and the FD 258 fingerprint results from the FBI. If the up-front TECS check reveals a hit, the DACA request goes to BCU/Triage. If the hit relates, BCU triage routes the DACA request to the BCU. BCU documents the TECS hit and the resolution in the ROIQ. While the DACA request is undergoing the up-front TECS check, the DACA requestor is placed in the scheduling queue for an ASC appointment to have his/her biometrics captured. If the FD 258 fingerprint results return an IDENT, the BCU reviews the results to determine whether they are germane to the DACA request and the exercise of prosecutorial discretion. The officer may issue an RFE at any point along the way, if necessary to establish whether the issues of criminality relate to a misdemeanor, a significant misdemeanor, a felony, or whether the criminal issues pose a public safety threat. When a DACA request is denied, the denial shall be issued using the standard denial template, which provides a list of checkboxes. The standard denial template is found at Appendix F. Select the box or boxes that apply. For guidance on when to seek supervisory review of a denial involving issues of criminality, see Chapter 9, Section D.

### Categorization

If the BCU determines that the case presents issues of criminality, processing of the DACA request must be categorized as either EPS or non-EPS, as defined in the November 7, 2011 NTA memorandum.

### Non-EPS Cases

A DACA request posing issues of criminality that are based on IDENT non-EPS, as per the NTA policy memorandum, is handled by the BCU DACA Team as follows:

- The BCU DACA Team will adjudicate Form I-821D, taking into account all issues of criminality.
- If the case is approvable, the BCU DACA Team will approve the I-821D for DACA and adjudicate the I-765 for employment authorization.
- If an approval is not warranted, a denial for Form I-821D and Form I-765 will be issued, pending supervisory review.
- After the decisions have been rendered on Forms I-821D and I-765, the A-file shall be routed to the NRC.

*Continued on next page*

## Handling Procedures, Continued

### EPS Cases

A DACA request presenting issues of criminality that are deemed to be EPS, as per the NTA policy memorandum, is handled by the BCU DACA Team. The BCU DACA Team shall refer the case to ICE prior to adjudicating the case, even if USCIS can deny the DACA request on its merits. The BCU DACA Team will refer the DACA request to ICE using the RTI process. The BCU DACA Team will suspend adjudication of the DACA request for 60 days, or until ICE provides notification of its action on the case, whichever is earlier.

- **ICE Takes No Action or Does Not Respond:** If ICE does not accept the referral request or otherwise provide any notification of its action within 60 days of the RTI:
  - The BCU DACA Team will adjudicate Form I-821D, taking into account all issues of criminality, and in particular, the issues presenting an EPS concern.
  - If the disposition of the criminal charges against the DACA requestor is pending, the BCU DACA Team will deny the DACA request on public safety grounds, because the underlying issues of criminality are deemed to pose an EPS concern, pursuant to the November 7, 2011 NTA memorandum. The BCU DACA Team will also deny Form I-765, requesting employment authorization.
  - If the disposition of the criminal charges against the DACA requestor are final, the BCU DACA Team will deny Form I-821D based on the issues of criminality and the conviction. The BCU DACA Team will also deny Form I-765, requesting employment authorization.
  - Upon denial, the BCU DACA Team shall refer the DACA request to ERO, in accordance with the agreed upon method, and update FDNS-DS.

*Continued on next page*

## Handling Procedures, Continued

### EPS Cases (continued)

- **ICE Accepts the Referral:** If ICE accepts the case, the BCU DACA Team will follow the standard protocols outlined in the November 7, 2011 NTA memorandum.

**Note:** Requests involving issues of criminality that normally would not meet the guidelines for consideration of deferred action will be denied, unless the requestor is claiming that consideration is warranted due to exceptional circumstances and fully documents such claim. Removal shall not be deferred under DACA pursuant to this very limited exception without concurrence from HQSCOPS. In these instances the case shall come to HQSCOPS from the Service Center Director, through the appropriate chain of command.



## H. Adjudicating Form I-821D, Part 3, Criminal, National Security, and Public Safety Information

### Introduction

When adjudicating Part 3 of Form I-821D, it is necessary to ensure that clear information and evidence are present to make a final determination. Refer to Chapter 6 for Background and Security Checks and Chapter 8, Section H, for evaluating and handling criminality, public safety, and national security issues.

### Questions 1 and 2:

Arrested for, charged with, or convicted of a felony or misdemeanor, or significant misdemeanor in the United States (includes drug offenses and driving under the influence of drugs or alcohol)

OR

arrested for, charged with, or convicted of a crime in any country other than the United States

### If the requestor answers "No":

If...	And...	Then...
There is no derogatory information in the A-File(s), IDENT, TECS, EARM, etc.,		Case stays in regular workflow. Continue to adjudicate.
There is derogatory information in the A-File(s), IDENT, TECS, EARM, etc.,	The derogatory information clearly shows that the requestor does not meet the DACA guidelines,	Case is handled by the BCU DACA Team.
There is derogatory information in the A-File(s), IDENT, TECS, EARM, etc.,	The derogatory information is unclear,	
There is derogatory information in the A-File(s), IDENT, TECS, EARM, etc.,	There are clear charges or clear derogatory information, but no clear judgment or conviction,	

### If the requestor answers "Yes":

If...	Then...
There is clear derogatory information provided by the requestor and/or in our records,	Case is handled by the BCU DACA Team.
No derogatory information can be found in our records or it is unclear, and the requestor did not provide any additional information or documentation,	

Continued on next page

## H. Adjudicating Form I-821D, Part 3, Criminal, National Security, and Public Safety Information, Continued

Questions 3 and 5: Security and Related Issues – Engaging in Terrorist Activities; or Engaging in Ordering, Inciting, Assisting, or Otherwise Participating in Genocide, Human Trafficking, and Other Violent Crimes Involving the persecution of Others

If the requestor answers “No”:

If...	And...	Then...
There is no derogatory information in the A-File(s), IDENT, TECS, EARM, etc.,		Case stays in regular workflow. Continue to adjudicate.
There is derogatory information in the A-File(s), IDENT, TECS, EARM, etc.,	The derogatory information clearly shows that the requestor did or may have engaged in terrorist activities or human rights violations,	Put the case through the CARRP process per standard protocols.  <b>NOTE:</b> For cases involving Terrorism-Related Inadmissibility Grounds (TRIG), refer to the November 2, 2011 memorandum entitled, <u>Revised Guidance on the Adjudication of Cases Involving Terrorism-Related Inadmissibility Grounds (TRIG) and Further Amendment to the Hold Policy for Such Cases</u> . The other two TRIG related memoranda are, February 13, 2009 memorandum entitled <u>Revised Guidance on the Adjudication of Cases Involving Terrorism-Related Inadmissibility Grounds and Amendment to the Hold Policy for Such Cases</u> , and the March 26, 2008 memorandum entitled, <u>Withholding Adjudication and Review of Prior Denials of Certain Categories of Cases Involving Association with, or Provision of Material Support to, Certain Terrorist Organizations or Other Groups</u> .
There is derogatory information in the A-File(s), IDENT, TECS, EARM, etc.,	The derogatory information is unclear,	

If the requestor answers “Yes”:

If...	Then...
There is clear derogatory information provided by the requestor and/or in our records,	Put the case through the CARRP process per standard protocols.
No derogatory information can be found in our records or it is unclear and the requestor did not provide information,	

Continued on next page

## H. Adjudicating Form I-821D, Part 3, Criminal, National Security, and Public Safety Information, Continued

### Question 4: Current and Past Gang Membership

#### If the requestor answers "No":

If:	And:	Then:
There is no derogatory information in the A-File(s), IDENT, TECS, EARM, etc.,		Case stays in regular workflow. Continue to adjudicate.
There is derogatory information in the A-File(s), IDENT, TECS, EARM, etc.,	The derogatory information clearly shows that the requestor is or may be a gang member,	Case is handled by the BCU DACA Team.
There is derogatory information in the A-File(s), IDENT, TECS, EARM, etc.,	The derogatory information is unclear,	

#### If the requestor answers "Yes":

If:	Then:
There is clear derogatory information provided by the requestor and/or in our records,	Case is handled by the BCU DACA Team.
No derogatory information can be found in our records or it is unclear and the requestor did not provide information,	



## I. Fraud Review and Fraud Referrals

### Immigration Fraud

In the normal course of adjudication, officers should be aware of fraud indicators. Fraud related concerns that arise during the course of background and security checks should be addressed according to the March 2011 Fraud Detection SOP and the 2008 ICE/USCIS Investigation of Immigration Benefit Fraud MOA.

Fraud encompasses any material representation or omission, accompanied by an intent to deceive. Establishing the elements of fraud is at the core of the work performed during a fraud investigation. In the immigration context, fraud is a willful misrepresentation of a material fact. An omission of a material fact can also constitute a willful misrepresentation, rising to the level of fraud. When reviewing an immigration request, a finding of fraud is generally supported by the presence of the following three elements.

- There must have been a **misrepresentation** or concealment of a fact;
- The misrepresentation or concealment must have been **willful**; and
- The fact must be **material**. See *Kungys v. U.S.*, 485 U.S. 759 (1988) which indicates that a fact is considered material if it had a tendency to influence the decision for the application or petition or shut off a relevant line of inquiry.

A finding of fraud is also supported when the immigration filing contains fraudulent documents that are germane.

The Fraud Detection and National Security (FDNS) Directorate administratively investigates allegations of immigration benefit fraud and produces a Statement of Findings (SOF) that adjudicators use to render their decisions. Most fraud investigations are conducted under the authority of § 212(a)(6)(C)(i) of the Act. In the DACA context, the SOF will document all fraud findings and underlying issues impacting the favorable exercise of prosecutorial discretion.

*Continued on next page*

## I. Fraud Review and Fraud Referrals, Continued

### Immigration Fraud (continued)

Individuals requesting DACA are not subject to the 212 inadmissibility grounds, because they are neither applying for a visa nor seeking admission to the United States. They are, instead, seeking the administrative exercise of prosecutorial discretion. Nevertheless, the presence of confirmed or suspected fraud issues are germane in deciding whether the DACA requestor merits the exercise of prosecutorial discretion. As a result, when an individual is found to have committed fraud in connection with a DACA request, the DACA request is denied not because the individual is inadmissible due to fraud, but rather, because the fraud negates the exercise of prosecutorial discretion to defer removal. Denials based on confirmed fraud findings will be supported by a properly documented SOF generated by CFDO. FDNS-DS must be updated to show that the DACA request was actually denied for confirmed fraud. The officer must provide information on the final outcome of a DACA request (e.g., approved, denied, NTA) to the BCU/CFDO so they may update FDNS-DS, accordingly.

When adjudicating Forms I-821D and I-765 for DACA, officers will complete a fraud referral sheet when there are articulable elements of fraud found within the filing. When articulable fraud indicators exist, the officer should refer the filing with a fraud referral sheet prior to taking any adjudication action even if there are other issues which negate the exercise of prosecutorial discretion to defer removal.

*Continued on next page*

## I. Fraud Review and Fraud Referrals, Continued

Immigration  
Fraud  
(continued)

(b) (7)(E)

If the CFDO is unable to resolve the articulated fraud after exhausting all reasonable efforts and resources, the CFDO may refer the cases to appropriate field office for interview, if an interview may resolve outstanding concerns.

The findings of the administrative or criminal investigation will be recorded in FDNS-DS and reported in an SOF and placed in the A-file to enable officers to make accurate and informed decisions on the DACA requests.

The CFDO will adhere to the Fraud Detection Standard Operating Procedures for referring fraud cases filed under the DACA program to ICE.

DACA cases denied due to a confirmed finding of fraud shall be updated in C3 as "Denial Notice with a Finding of Fraud Ordered" [EC] for tracking purposes. In addition, DACA cases denied due to a confirmed finding of fraud shall be referred for NTA issuance in accordance with the NTA memorandum dated November 7, 2011. The appropriate NTA charge will be determined on a case-by-case basis in consultation with local counsel.

*Continued on next page*



## I. Fraud Review and Fraud Referrals, Continued

### System Updates for DACA File Movement Into and Out of CFDO

For reporting purposes, DACA file movement into and out of the CFDO will require the following updates in C3:

- "Sent to the Fraud Detection Unit (FDU) for Analysis" [FF1] when sending a DACA request to the CFDO; and
- "Return from Fraud Detection Unit (FDU) with Results" [HCC1] when receiving a DACA request from CFDO for final processing.

## Chapter 9: Decisions

### A. Requests for Evidence

#### Request for Evidence (RFE)

For DACA requests, when requesting additional evidence, an RFE will be used. A NOID will rarely be used. Appendix D has a list of DACA RFE call ups to be used when processing a DACA request.

Follow the steps below to process an RFE.

Step	Call Up
1	(b) (7)(E)
2	
3	
4	
5	
6	
7	
8	

## B. Notice of Intent to Deny

Notice of  
Intent to  
Deny (NOID)

Follow the steps below to process a NOID:

Step	Action
1	(b) (7)(E)
2	
3	
4	
5	
6	
7	
8	

FOR OFFICIAL USE ONLY (FOUO) - LAW ENFORCEMENT SENSITIVE (LES)  
This document is FOR OFFICIAL USE ONLY. It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. § 552). This document is to be controlled, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to Sensitive But Unclassified (SBU) information, and is not to be released to the public or other personnel who do not have a valid "need to know" basis without prior approval from the originator.



## C. Approvals

### Approvals: CLAIMS Verification

Follow the steps below to verify information in C3 prior to processing an approval.

Step	Action
1	(b) (7)(E)
2	
4	
5	
6	
7	
8	
9	
10	
9	Check the fee payment information for Form I-765. See Chapter 5 regarding NSF processing and handling procedures.
10	(b) (7)(E)

*Continued on next page*

## C. Approvals, Continued

Approval  
Processing for  
Initial I-821D

Follow the steps below to process an approval for a DACA request.

Step	Action
1	(b) (7)(E)
2	
3	
4	
5	
6	
7	
8	
9	Put in ROP order and place a pink coversheet on the left-hand side of the file.

## D. Denials – Supervisory Review

### Denials

When the denial involves one of the grounds listed below, obtain supervisory review before issuing the denial when the requestor:

- Has a conviction for any crime committed before reaching age 18, and was tried as an adult; or
- Has been convicted of a "significant misdemeanor;" or
- Has no criminal convictions and outwardly appears to meet the guidelines in the Secretary's June 15, 2012 memorandum; however, based on other derogatory information obtained through routine systems and background/security checks, there are credible reasons to believe that the requestor poses a threat to national security or public safety. If the requestor poses a threat to national security, the officer should refer the proposed denial for supervisory review after the case has been processed through the CARRP process; or
- Has one or more departures which he/she claims were "brief, casual, and innocent" and therefore are not disruptive of the continuous residence requirement; or
- Has not met the educational guideline.

If the convictions and/or arrests occurred before the requestor filed the Form I-821D and the requestor did not disclose this derogatory information, include the withholding of the material fact(s) as one of the reasons for not exercising prosecutorial discretion in the case.

In novel, complex, or sensitive cases, supervisors will refer the case to HQSCOPS, through the normal chain of command.

Before routing the A-file to a supervisor, the officer should place a supervisory hold on the case in C3. After the supervisor concurs with the issuance of a denial, the officer shall check the appropriate box on the denial template and process the cases in the system for denial. See Appendix F for the DACA Denial Template. If the supervisor determines that the case should be approved, process for approval and document the file as appropriate.

*Continued on next page*



## D. Denials, Continued

Denial  
(continued)

When the denial falls under one of the categories that requires supervisory review, ensure that concurrence has been obtained before processing the DACA request for denial.

Step	
1	(b) (7)(E)
2	
3	
4	
5	
6	
7	
8	Prepare and send the denial.
9	Put in ROP order and place a pink coversheet on the left-hand side of the file over the denial letter.
10	Process Form I-765 for denial. See Chapter 12.

*Continued on next page*

## D. Denials, Continued

**Abandonment Denial Letters** Abandonment denials are initiated on Form I-821D in the following instances:

- The requestor fails to respond to an RFE or NOID;
- The requestor fails to appear at an ASC for biometrics collection within the specified time frame, after failure to respond to an RFE. Refer to Chapter 5 of this SOP.

**Abandonment Denials** After ALL A-files have been retrieved when processing an I-821D (unless adjudicating in a T-file if unable to obtain the A-file), follow the steps below to process an abandonment denial.

Step	Action
1	Ensure that no other addresses exist: <ol style="list-style-type: none"><li>1. Review the file for any correspondence received;</li><li>2. Review the returned envelope for any changes from the post office;</li><li>3. Check C3, National Claims, and AR11 for an alternate address or an address change;</li><li>4. Check the systems to see if a more recent DACA request was submitted with updated address; and</li><li>5. Check Forms I-821D and I-765 to ensure that there is no different address provided between the two forms.</li></ol>
2	(b) (7)(E)
3	
4	
5	

Continued on next page



## D. Denials, Continued

### Abandonment Denials (continued)

Step	Action
6	(b) (7)(E)
7	
8	
9	Prepare and send the denial.
10	Put in ROP order and place a pink coversheet on the left-hand side of the file over the denial letter.
11	Process the Form I-765 for denial. See Chapter 12.

**NOTE:** If the RFE/NOID was not stamped as a "No Response," the officer should write it on the document. A "No Response" will **ALWAYS** remain on top of the application for proper ROP and the officer will place the denial/withdrawal letter on top of the "No Response."

### Denial for NSF

When Form I-765 has been "rejected" for NSF, for the \$380 I-765 fee and/or the \$85 biometrics fee, Form I-821D shall be denied as the DACA filing did not include a concurrently filed I-765 and I-821D. The officer shall select the appropriate denial box on the denial template and update C3 to reflect the denial. After processing the case for denial and updating the system, hold the A-file for 45 days and then forward to the NRC, if a request to review is not received through SRMT.



## Chapter 10: Post Denial Process

### Determining Appropriate Action After Denial

1. Review the grounds for denial.
2. If the denial grounds do not involve criminal, national security, or public safety issues, hold the A-file for 45 days and then forward to the NRC, if a request to review is not received through SRMT.
3. If the denial involves criminal, national security, or public safety issues, refer to the November 7, 2011, memorandum entitled, Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens. Confirmed fraud denials also warrant NTA issuance. See Appendix B.
4. The NTA unit will determine whether NTA issuance is appropriate under the NTA memorandum referenced above.

## Chapter 11: Returned Mail

### Check for Address Changes

When notices are returned as undeliverable, the officer should:

1. Review the file for any correspondence received;
2. Review the returned envelope for any changes from the post office, Check C3, National Claims, and AR11 for an alternate address or an address change;
3. Check the systems to see if a more recent DACA request was submitted with an updated address; and
4. Check both Form I-821D and the I-765 to ensure that there is no different address provided between the two forms.

### RFE, NOID, Intent to Terminate

When an RFE, NOID, or Intent to Terminate is returned to the Service Center as undeliverable, follow all procedures above to locate a new address and re-mail the RFE, NOIT or Intent to Terminate after updating C3.

If there is no other address to use and the response time indicated has not passed, the file should be placed on hold in accordance with local procedures for the remainder of the response time.

If there is no other address found and the response time has passed on the...	Then...
RFE	Deny as an abandonment denial.
NOID (with NO criminal content),	Deny for cause.
Intent to Terminate,	Terminate DACA.

### Denial Notice

When a denial is returned to the Service Center as undeliverable, follow all procedures above to locate a new address and re-mail the denial.

If there is no new address and the 45 days...	Then...
Have NOT passed,	Hold file
Have passed,	Send to the NRC if no further communication is received

## Chapter 12: Employment Authorization

### A. General Information

(c)(33) Eligibility Category	The eligibility category for employment authorization based on a grant of deferred action is 8 C.F.R. § 274a.12(c)(14). To distinguish DACA-related EADs from other deferred action EADs, the (c)(33) code will be used.
Evidentiary Requirements	<p>For a (c)(33) EAD, the individual must be approved for DACA.</p> <p>The information needed to assess economic necessity is collected on the Form I-765WS. This worksheet should have been reviewed during the adjudication of Form I-821D.</p> <p>Before proceeding with the adjudication of the Form I-765, review C3 to ensure that there is no outstanding RFE, as the RFE would have been issued during the adjudication of Form I-821D.</p>
Validity Period of (c)(33) EAD	The "valid from" date is the date of approval and the "valid to" date is 2 years minus one day from the date of approval or to the end date of the deferred removal date under DACA, whichever is earlier.
8 C.F.R. § 274a.13(d) – 90 Day Time Period to Issue an EAD	Pursuant to 8 C.F.R. § 274.12(c)(14), the EAD is predicated on a grant of deferred action. Since Forms I-821D and I-765 are filed concurrently for DACA, Form I-821D will be adjudicated first. If Form I-821D is approved, then Form I-765 would be approved under the (c)(33) code to distinguish the DACA related EADs from other deferred action EADs. Since approval of the Form I-821D is a prerequisite, and since the EAD is based upon a grant of DACA, the 90-day EAD clock begins after Form I-821D is approved for DACA.

*Continued on next page*



## A. General Information, Continued

### Reasons for Filing

The DACA requestor should indicate one of the following reasons for filing:

- Permission to accept employment: The initial request for employment authorization under an eligibility category; or
- Replacement (of lost or stolen employment authorization document): A request to replace a lost, stolen, mutilated, or incorrect EAD.

If neither of these boxes is checked, verify the Form I-821D approval in C3 to ensure that removal has been deferred under DACA and then check the Form I-765 history in C3 to see if a prior EAD has been issued under the (c)(33) eligibility category. If yes, process the Form I-765 EAD as a replacement. If no, process the Form I-765 EAD as an initial EAD. If a prior replacement EAD under the (c)(33) eligibility category has been issued, refer the case to CFDO.

## B. Adjudication

Verification of  
Forms I-821D  
and I-765

Access C3 and follow the steps below to verify the information:

Step	Action
1	Verify that the requestor has a pending or an approved initial I-821D on file. (If no, see the denial section for processing instructions.)
3	<ul style="list-style-type: none"><li>• Check the signatures on Form I-765.</li><li>• Verify that the biometrics are present.</li></ul>

### Biometrics

Officers must check the (b) (7)(E) to determine if the requestor's biometrics (photograph, fingerprints, signature) have been received. (b) (7)(E)  
(b) (7)(E)

If...	Then...
(b) (7)(E)	the biometrics have been received.
	the biometric(s) have been waived.
	then the data was not captured and a card will not print.

If the requestor is a child less than 14 years of age, there should be a **Waiver (W)** for fingerprint and signature.

*Continued on next page*



## B. Adjudication, Continued

### Approvals

All corrections made to the information contained on Form I-765 must be made on the face of the application in red.

### Application Annotations

When approving Form I-765, follow the steps below for proper annotation of the form:

Step	Annotation
1	(b) (7)(E)
2	
3	
4	
5	

*Continued on next page*



## B. Adjudication, Continued

### CLAIMS Updating for Approvals

Follow the steps below to update C3 for I-765 approval.

Step	Action
1	(b) (7)(E)
2	
3	
4	
5	
6	
7	
8	
9	Place a pink coversheet on the left-hand side of the file.
10	In the alternative, the approval may be updated using I-765 Express per existing protocols.

**NOTE:** If you go back into the approval screen to view the data before exiting the form after approving, then you must press the "save" button again to retain the approval. If the information is not saved, then a card will not be generated.

*Continued on next page*

## B. Adjudication, Continued

**Notice of Intent to Deny (NOID)** Officers will prepare the intent to deny letter, annotate the worksheet, and update CLAIMS as follows:

Step	Action
1	(b) (7)(E)
2	
3	
4	
5	
6	Prepare and send the NOID.  <b>NOTE:</b> Make certain all letters are spell checked and previewed prior to sending.

*Continued on next page*



## B. Adjudication, Continued

### Denials

Follow the steps below when denying a case.

Step	Action
1	(b) (7)(E)
2	
3	
4	
5	
6	
7	
8	
9	

**NOTE:** The date on the denial stamp should be date of adjudication.

Continued on next page



## B. Adjudication, Continued

### Denials (continued)

Step	Action
10	<p>For cases NOT going to the NTA team:</p> <ul style="list-style-type: none"><li>• The denial for the Form I-765 is included in the DACA Denial Template. See Appendix F.</li><li>• Place a pink coversheet on the left-hand side of the file over the denial letter.</li></ul> <p><b>NOTE:</b> When denying only the Form I-765 for abandonment, an officer should use the standard abandonment denial used at his/her center.</p>
11	Charge out the file using local procedure.

## C. Replacement Cards

### Evidence Required

The following evidence is required for replacement cards:

- Biometrics from the applicant's most recent ASC visit.
- Original signature. All applicants age 14 and over must sign their own application. The contractor can obtain the signature from Form I-765 and waive the fingerprint when scanning and producing an EAD.
- Current card issued with validity dates that have NOT expired.
- Valid fingerprints are not required in order to issue a replacement EAD.

### Validity Dates

When issuing a replacement card the validity period should mirror the dates authorized under the previous card.

### Biometrics

Upon receipt, the contractor will clone from biometrics from the applicant's most recent ASC visit.

## Chapter 13: Use of Service Request Management Tool (SRMT) to Respond to Request to Review Certain Denials

### Introduction

USCIS will accept SRMTs from DACA denials based on a claim that the denial is incorrect and the denial is based on an administrative error. Specifically, USCIS will accept SRMTs where the requestor believes that USCIS incorrectly denied his/her DACA request for one or more of the reasons listed in this chapter of the DACA SOP.

### History Action Codes (HAC)

When responding to a request to review a denied DACA request, C3 must be updated with the appropriate History Action Code (HAC) created to track the specific action taken and to denote that the SRMT involved a denied DACA request. The following HACs will be used:

(b) (7)(E)

### Templates

When providing an interim response to review a denied DACA request, standard response templates must be used for the interim response and when the denial is affirmed. When the denied DACA request is approved on Service Motion, the standard approval notice will be generated from C3. Appendix G contains the following templates:

- DACA SRMT call-ups for interim SRMT responses.
- DACA SRMT call-ups to respond that the denial was correct and is affirmed.

*Continued on next page*



## Use of SRMT to Respond to Request to Review Certain Denials, Continued

### Administrative Errors related to Material Facts

Follow the steps below when an SRMT is filed due to a claimed administrative error related to:

- The denial of the DACA request on the grounds that the requestor did not come to the United States prior to reaching his/her 16<sup>th</sup> birthday, but the evidence submitted at the time of filing shows that the requestor did, in fact, arrive before the required age; or
- The denial of the DACA request on the grounds that the requestor was under age 15 at the time of filing, but not in removal proceedings, but the evidence submitted at the time of filing and/or systems checks show that the requestor was, in fact, in removal proceedings when the DACA request was filed; or
- The denial of the DACA request on the grounds that the requestor was not under the age of 31 on June 15, 2012, but the evidence submitted at the time of filing shows that the requestor did not exceed the upper age limit on June 15, 2012; or
- The denial of the DACA request on the grounds that the requestor was not in an unlawful immigration status as of June 15, 2012, but the evidence submitted at the time of filing shows that the requestor was, in fact, in an lawful status on June 15, 2012; or
- The denial of the DACA request on the grounds that the requestor was not physically present in the United States on June 15, 2012, up through the date of filing, but the evidence submitted at the time of filing establishes that the requestor was, in fact, present.

Step	Action
1	Request the file.
2	Respond to the SRMT with an interim response.
3	Update C3 (with HAC code) (b) (7)(E)
4	(b) (7)(E)
5	Route the file to the reviewing ISO.

Continued on next page

## Use of SRMT to Respond to Request to Review Certain Denials, Continued

Administrative  
Errors Related  
to Material  
Facts  
(continued)

Step	Action								
6	The ISO will review the claimed administrative error.								
	<table> <tr> <th>If the denial...</th><th>Then...</th></tr> <tr> <td>Was correct,</td><td> <ul style="list-style-type: none"> <li>The ISO will route the filing to the SISO for concurrence.</li> <li>The SISO will concur or not concur and route back to the ISO for appropriate systems updating.</li> <li>If SISO concurs, the ISO updates C3 with HAC code <i>SRMT DACA Denial Affirmed</i> and respond to the DACA requestor using the appropriate DACA SRMT call-up found in Appendix G.</li> <li>If SISO does not concur, follow the instructions below (Was Not Correct).</li> </ul> </td></tr> <tr> <td>Was not correct,</td><td> <ul style="list-style-type: none"> <li>The SISO routes the filing to the ISO for review.</li> <li>The ISO approves Forms I-821D and I-765.</li> <li>The ISO updates C3 with the HAC code (b) (7)(E) for each form to show that the case was approved on Service Motion.</li> </ul> </td></tr> <tr> <td>Was not correct, but other reasons for denial still exist,</td><td> <ul style="list-style-type: none"> <li>The ISO will route the filing to the SISO for concurrence.</li> <li>If the SISO concurs, the ISO will re-deny the case.</li> <li>The ISO updates C3 with the HAC code (b) (7)(E) <i>DACA Denial Affirmed</i> for each form.</li> <li>The ISO produces a new denial using (b) (7)(E) denial template found in Appendix H.</li> </ul> </td></tr> </table>	If the denial...	Then...	Was correct,	<ul style="list-style-type: none"> <li>The ISO will route the filing to the SISO for concurrence.</li> <li>The SISO will concur or not concur and route back to the ISO for appropriate systems updating.</li> <li>If SISO concurs, the ISO updates C3 with HAC code <i>SRMT DACA Denial Affirmed</i> and respond to the DACA requestor using the appropriate DACA SRMT call-up found in Appendix G.</li> <li>If SISO does not concur, follow the instructions below (Was Not Correct).</li> </ul>	Was not correct,	<ul style="list-style-type: none"> <li>The SISO routes the filing to the ISO for review.</li> <li>The ISO approves Forms I-821D and I-765.</li> <li>The ISO updates C3 with the HAC code (b) (7)(E) for each form to show that the case was approved on Service Motion.</li> </ul>	Was not correct, but other reasons for denial still exist,	<ul style="list-style-type: none"> <li>The ISO will route the filing to the SISO for concurrence.</li> <li>If the SISO concurs, the ISO will re-deny the case.</li> <li>The ISO updates C3 with the HAC code (b) (7)(E) <i>DACA Denial Affirmed</i> for each form.</li> <li>The ISO produces a new denial using (b) (7)(E) denial template found in Appendix H.</li> </ul>
If the denial...	Then...								
Was correct,	<ul style="list-style-type: none"> <li>The ISO will route the filing to the SISO for concurrence.</li> <li>The SISO will concur or not concur and route back to the ISO for appropriate systems updating.</li> <li>If SISO concurs, the ISO updates C3 with HAC code <i>SRMT DACA Denial Affirmed</i> and respond to the DACA requestor using the appropriate DACA SRMT call-up found in Appendix G.</li> <li>If SISO does not concur, follow the instructions below (Was Not Correct).</li> </ul>								
Was not correct,	<ul style="list-style-type: none"> <li>The SISO routes the filing to the ISO for review.</li> <li>The ISO approves Forms I-821D and I-765.</li> <li>The ISO updates C3 with the HAC code (b) (7)(E) for each form to show that the case was approved on Service Motion.</li> </ul>								
Was not correct, but other reasons for denial still exist,	<ul style="list-style-type: none"> <li>The ISO will route the filing to the SISO for concurrence.</li> <li>If the SISO concurs, the ISO will re-deny the case.</li> <li>The ISO updates C3 with the HAC code (b) (7)(E) <i>DACA Denial Affirmed</i> for each form.</li> <li>The ISO produces a new denial using (b) (7)(E) denial template found in Appendix H.</li> </ul>								

Continued on next page



## Use of SRMT to Respond to Request to Review Certain Denials, Continued

Requestor did  
Appear to Have  
Biometrics  
Collected at a  
USCIS ASC

Follow the steps below when an SRMT is filed due to a claimed administrative error related to the requestor's biometrics collection.

Step	Action
1	Review the electronic systems to see whether the requestor had his/her biometrics taken. Request the A-file (if needed).
2	Reopen Forms I-821D and I-765 on Service Motion.
3	Update C3 with HAC codes (b) (7)(E) for both forms.
4	Send an interim (b) (7)(E) response using (b) (7)(E)

Continued on next page



## Use of SRMT to Respond to Request to Review Certain Denials, Continued

Requestor did  
Appear to Have  
Biometrics  
Collected at a  
USCIS ASC  
(continued)

If the Requestor...	Then...						
Did not have his/her biometrics taken,	<p>The reviewing officer should check:</p> <ul style="list-style-type: none"> <li>Returned Mail</li> <li>Address Changes</li> <li>Rescheduling Requests</li> <li>The BPU ASC Reschedule Spreadsheet</li> </ul>						
<table border="1"> <tr> <th>If you:</th><th>Then:</th></tr> <tr> <td>Locate returned mail, an address change, or a rescheduling request,</td><td> <ul style="list-style-type: none"> <li>Initiate ASC appointment rescheduling.</li> <li>After the biometrics results are received, adjudicate the case.</li> <li>If Form I-821D is approved, approve Form I-765.</li> <li>Update C3 with HAC (b) (7)(E) (b) (7)(E) for each form.</li> <li>If denied, issue a denial using the (b) (7)(E) denial template.</li> <li>Update C3 with HAC (b) (7)(E) Denial Affirmed for each form.</li> </ul> </td></tr> <tr> <td>Do not locate any returned mail, address change, or rescheduling request,</td><td> <ul style="list-style-type: none"> <li>Respond to the SRMT that the denial stands, using the SRMT denial template.</li> </ul> </td></tr> </table>	If you:	Then:	Locate returned mail, an address change, or a rescheduling request,	<ul style="list-style-type: none"> <li>Initiate ASC appointment rescheduling.</li> <li>After the biometrics results are received, adjudicate the case.</li> <li>If Form I-821D is approved, approve Form I-765.</li> <li>Update C3 with HAC (b) (7)(E) (b) (7)(E) for each form.</li> <li>If denied, issue a denial using the (b) (7)(E) denial template.</li> <li>Update C3 with HAC (b) (7)(E) Denial Affirmed for each form.</li> </ul>	Do not locate any returned mail, address change, or rescheduling request,	<ul style="list-style-type: none"> <li>Respond to the SRMT that the denial stands, using the SRMT denial template.</li> </ul>	
If you:	Then:						
Locate returned mail, an address change, or a rescheduling request,	<ul style="list-style-type: none"> <li>Initiate ASC appointment rescheduling.</li> <li>After the biometrics results are received, adjudicate the case.</li> <li>If Form I-821D is approved, approve Form I-765.</li> <li>Update C3 with HAC (b) (7)(E) (b) (7)(E) for each form.</li> <li>If denied, issue a denial using the (b) (7)(E) denial template.</li> <li>Update C3 with HAC (b) (7)(E) Denial Affirmed for each form.</li> </ul>						
Do not locate any returned mail, address change, or rescheduling request,	<ul style="list-style-type: none"> <li>Respond to the SRMT that the denial stands, using the SRMT denial template.</li> </ul>						

Continued on next page

## Use of SRMT to Respond to Request to Review Certain Denials, Continued

Requestor did  
Appear to Have  
Biometrics  
Collected at a  
USCIS ASC  
(continued)

If the requestor...	Then...
Did have his/her biometrics taken,	<ul style="list-style-type: none"> <li>The ISO will adjudicate Forms I-821D and I-765.</li> <li>If Form I-821D is approved, ISO approves Form I-765.</li> <li>ISO updates C3 with HAC (b) (7)(E) for each form.</li> <li>If denied, ISO issues a denial using the SRMT denial template.</li> <li>ISO updates C3 with HAC (b) (7)(E) for each form.</li> </ul>

Requestor  
requested that  
His/Her  
Biometrics  
Appointment  
at a USCIS  
ASC be  
Rescheduled  
Prior to the  
Scheduled  
Date

Follow the steps below when an SRMT is filed due to a claimed administrative error related to the request to reschedule the ASC appointment.

Step	Action
1	Request the A-file.
2	Reopen Forms I-821D and I-765 on Service Motion.
3	Update C3 with HAC code (b) (7)(E) for both forms.
4	Send an interim SRMT response using (b) (7)(E)

Continued on next page



## Use of SRMT to Respond to Request to Review Certain Denials, Continued

Requestor requested that His/Her Biometrics Appointment at a USCIS ASC be Rescheduled Prior to the Scheduled Date  
(continued)

Step	Action
5	Review the filing and SRMT to determine if a request was received to reschedule the ASC Appointment.
<b>Initial Requestor</b>	<p>Requested to have his/her biometrics appointment rescheduled, prior to the scheduled date,</p> <ul style="list-style-type: none"> <li>The ISO will schedule a new ASC appointment and route the A-file to the appropriate holding shelf to await the biometrics results.</li> <li>Adjudicate the case after the biometrics results are received.</li> <li>If Form I-821D is approved, approve Form I-765.</li> <li>Update C3 with HAC [REDACTED] Approved on Service Motion for each form.</li> <li>If denied, issue a denial using the SRMT denial template.</li> <li>Update C3 with HAC [REDACTED] for each form.</li> </ul>
	<p>Did not request to have his/ her biometrics appointment rescheduled, prior to the scheduled date.</p> <ul style="list-style-type: none"> <li>Respond to the SRMT that the denial stands, using the SRMT denial template.</li> </ul>

Continued on next page



## Use of SRMT to Respond to Request to Review Certain Denials, Continued

**Requestor Paid the Filing and Biometric fees for the I-765**

Follow the steps below when an SRMT is filed due to a claimed administrative error related to Non-Sufficient Funds.

Review the electronic systems to see whether the requestor paid the associated fees with the filing.

Step	Action
1	Records Division reviews electronic systems to determine if the fee was paid timely and properly (if necessary, Request the A-file)
2	Reopen Forms I-821D and I-765 on Service motion
3	Update C3 with HAC code (b) (7)(E) for both forms.
4	Send an interim SRMT response using (b) (7)(E)

If the Records Division determines	Then
The appropriate fees were not paid,	<ul style="list-style-type: none"> <li>Respond to the SRMT that the denial stands, using the SRMT denial template.</li> </ul>
The appropriate fees were paid,	<ul style="list-style-type: none"> <li>The ISO obtains the file and schedules a new ASC appointment and routes the A-file to the appropriate holding shelf to await the biometrics results.</li> <li>Adjudicate the case after the biometrics results are received.</li> <li>If Form I-821D is approved, approve Form I-765.</li> <li>Update C3 with HAC code (b) (7)(E) for each form.</li> <li>If denied, issue a denial using the SRMT denial template.</li> <li>Update C3 with HAC code (b) (7)(E) for each form.</li> </ul>

Continued on next page

## Use of SRMT to Respond to Request to Review Certain Denials, Continued

USCIS Denied the Request for DACA Based on Abandonment and the Requestor Claims He/She did Respond to a RFE Within the Prescribed Time

Follow the steps below when an SRMT is filed due to a claimed administrative error related to the requestor's response to a RFE.

Step	Action						
1	Request the A-file.						
2	Reopen Forms I-821D and I-765 on Service motion.						
3	Update C3 with HAC code (b) (7)(E) for both forms.						
4	Send an interim SRMT response using (b) (7)(E)						
5	Review A-file and local systems to determine if a response to the RFE was received before the due date.						
<table border="1"> <thead> <tr> <th>If the requestor...</th><th>Then...</th></tr> </thead> <tbody> <tr> <td>Responded to the RFE within the prescribed time,</td><td> <ul style="list-style-type: none"> <li>Route the filing to the reviewing officer.</li> <li>Adjudicate based on the evidence submitted initially and the RFE response.</li> <li>If Form I-821D is approved, approve Form I-765.</li> <li>Update C3 with HAC code (b) (7)(E) for each form.</li> <li>If denied, issue a denial using the SRMT denial template.</li> <li>Route to SISO for denial concurrence</li> <li>Update C3 with HAC code (b) (7)(E) for each form.</li> </ul> </td></tr> <tr> <td>Did not respond within the required time, or no response was received.</td><td> <ul style="list-style-type: none"> <li>Respond to the SRMT that the denial stands, using the SRMT denial template.</li> </ul> </td></tr> </tbody> </table>		If the requestor...	Then...	Responded to the RFE within the prescribed time,	<ul style="list-style-type: none"> <li>Route the filing to the reviewing officer.</li> <li>Adjudicate based on the evidence submitted initially and the RFE response.</li> <li>If Form I-821D is approved, approve Form I-765.</li> <li>Update C3 with HAC code (b) (7)(E) for each form.</li> <li>If denied, issue a denial using the SRMT denial template.</li> <li>Route to SISO for denial concurrence</li> <li>Update C3 with HAC code (b) (7)(E) for each form.</li> </ul>	Did not respond within the required time, or no response was received.	<ul style="list-style-type: none"> <li>Respond to the SRMT that the denial stands, using the SRMT denial template.</li> </ul>
If the requestor...	Then...						
Responded to the RFE within the prescribed time,	<ul style="list-style-type: none"> <li>Route the filing to the reviewing officer.</li> <li>Adjudicate based on the evidence submitted initially and the RFE response.</li> <li>If Form I-821D is approved, approve Form I-765.</li> <li>Update C3 with HAC code (b) (7)(E) for each form.</li> <li>If denied, issue a denial using the SRMT denial template.</li> <li>Route to SISO for denial concurrence</li> <li>Update C3 with HAC code (b) (7)(E) for each form.</li> </ul>						
Did not respond within the required time, or no response was received.	<ul style="list-style-type: none"> <li>Respond to the SRMT that the denial stands, using the SRMT denial template.</li> </ul>						

Continued on next page



## Use of SRMT to Respond to Request to Review Certain Denials, Continued

USCIS Mailed the RFE to the Wrong Address and the Requestor Submitted a COA Prior to the RFE Issuance

Follow the steps below when an SRMT is filed due to a claimed administrative error related to the requestor's change of address.

Step	Action
1	Request the A-file.
2	Reopen Forms I-821D and I-765 on Service Motion
3	Update C3 with HAC code (b) (7)(E) for both forms.
4	Send an interim SRMT response using (b) (7)(E)
5	Verify the requestor's address.

If the requestor:	Then:
Filed a change of address, prior to the issuance of an RFE,	<ul style="list-style-type: none"> <li>Re-issue the RFE with a new 87-day response time to the correct address and route the A-file to the RFE hold shelf.</li> <li>After the RFE response is received, adjudicate Forms I-821D and I-765 based on the evidence submitted initially and the RFE response.</li> <li>If Form I-821D is approved, approve Form I-765.</li> <li>Update C3 with HAC code (b) (7)(E) for each form.</li> <li>If denied, issue a denial using the SRMT denial template.</li> <li>Update C3 with HAC code (b) (7)(E) for each form.</li> </ul>

Continued on next page



## Use of SRMT to Respond to Request to Review Certain Denials, Continued

USCIS Mailed the RFE to the Wrong address and the Requestor Submitted a COA Prior to the RFE Issuance (continued)

If the requestor...	Then...						
Did not file a COA prior to the issuance of an RFE,	Review that the RFE was sent to the correct address.						
	<table> <tr> <th>If the RFE was sent to:</th><th>Then:</th></tr> <tr> <td>The correct address,</td><td> <ul style="list-style-type: none"> <li>Respond to the SRMT stating that the denial stands, using the SRMT denial template.</li> </ul> </td></tr> <tr> <td>An incorrect address,</td><td> <ul style="list-style-type: none"> <li>Route the filing to the SISO.</li> <li>The ISO shall re-issue the RFE with a new 87-day response time to the correct address and route the A-file to the RFE hold shelf.</li> <li>After the RFE response is received, adjudicate Forms I-821D and I-765 based on the evidence submitted initially and the RFE response.</li> <li>If Form I-821D is approved, approve Form I-765.</li> <li>Update C3 with HAC code (b) (7)(E) for each form.</li> <li>If denied, issue a denial using the SRMT denial template.</li> <li>Update C3 with HAC code (b) (7)(E) for each form.</li> </ul> </td></tr> </table>	If the RFE was sent to:	Then:	The correct address,	<ul style="list-style-type: none"> <li>Respond to the SRMT stating that the denial stands, using the SRMT denial template.</li> </ul>	An incorrect address,	<ul style="list-style-type: none"> <li>Route the filing to the SISO.</li> <li>The ISO shall re-issue the RFE with a new 87-day response time to the correct address and route the A-file to the RFE hold shelf.</li> <li>After the RFE response is received, adjudicate Forms I-821D and I-765 based on the evidence submitted initially and the RFE response.</li> <li>If Form I-821D is approved, approve Form I-765.</li> <li>Update C3 with HAC code (b) (7)(E) for each form.</li> <li>If denied, issue a denial using the SRMT denial template.</li> <li>Update C3 with HAC code (b) (7)(E) for each form.</li> </ul>
If the RFE was sent to:	Then:						
The correct address,	<ul style="list-style-type: none"> <li>Respond to the SRMT stating that the denial stands, using the SRMT denial template.</li> </ul>						
An incorrect address,	<ul style="list-style-type: none"> <li>Route the filing to the SISO.</li> <li>The ISO shall re-issue the RFE with a new 87-day response time to the correct address and route the A-file to the RFE hold shelf.</li> <li>After the RFE response is received, adjudicate Forms I-821D and I-765 based on the evidence submitted initially and the RFE response.</li> <li>If Form I-821D is approved, approve Form I-765.</li> <li>Update C3 with HAC code (b) (7)(E) for each form.</li> <li>If denied, issue a denial using the SRMT denial template.</li> <li>Update C3 with HAC code (b) (7)(E) for each form.</li> </ul>						

## Chapter 14: DACA Termination

### Removal Deferred Under DACA in Error

If it comes to the attention of an officer that removal was deferred under DACA in error, the officer should reopen the case on Service motion and issue a Notice of Intent to Terminate, unless there are criminal, national security, or public safety concerns (see below). The individual should be allowed 33 days to file a brief or statement contesting the grounds cited in the Notice of Intent to Terminate. The Notice of Intent to Terminate should include a statement that if deferred action for childhood arrivals is terminated, any associated employment authorization granted during the period of deferred action will be terminated for cause.

If the adverse grounds are not overcome, or no response is received to the Notice of Intent to Terminate, the officer should prepare a Termination Notice and seek supervisory review of the draft Termination Notice, prior to issuance. The Termination Notice should indicate that the individual's employment authorization is terminated for cause as of the date of the notice.

### Fraud

If it comes to the attention of an officer that an individual committed fraud in seeking deferral of removal under DACA, the officer should reopen the case on Service motion and issue a Notice of Intent to Terminate. The individual should be allowed 33 days to file a brief or statement contesting the grounds cited in the Notice of Intent to Terminate. The Notice of Intent to Terminate should include a statement that if deferred action for childhood arrivals is terminated, any associated employment authorization granted during the period of deferred action will be terminated for cause.

If the adverse grounds are not overcome, or no response is received to the Notice of Intent to Terminate, the officer should prepare a Termination Notice and seek supervisory review of the draft Termination Notice prior to issuance. The Termination Notice should indicate that the individual's employment authorization is terminated for cause as of the date of the notice.

The decision to issue a Notice of Intent to Terminate based on fraud should be supported by a fully documented SOF and any other relevant documents/information. The terminated DACA case must also be appropriately recorded in FDNS-DS.

*Continued on next page*

## DACA Termination, Continued

### Criminal, National Security, or Public Safety Issues

If disqualifying criminal offenses or public safety concerns, which are deemed to be EPS, arise after removal has been deferred under DACA, the officer should forward the case to the BCU DACA Team who, in turn, will refer the case to ICE and follow the handling procedures outlined in the November 7, 2011 NTA memorandum for EPS cases. If ICE accepts the case, the issuance of the NTA will result in the termination of DACA. Upon the filing of the NTA with EOIR, the individual's employment authorization terminates automatically.

If ICE does not accept the case or if the disqualifying criminal offense is non-EPS per the November 7, 2011 NTA memorandum, the BCU DACA Team should reopen the case on Service motion and issue a Notice of Intent to Terminate. The individual should be allowed 33 days to file a brief or statement contesting the grounds cited in the Notice of Intent to Terminate. The Notice of Intent to Terminate should include a statement that if deferred action for childhood arrivals is terminated, any associated employment authorization granted during the period of deferred action will be terminated for cause.

If the adverse grounds are not overcome, or no response is received to the Notice of Intent to Terminate, the officer should prepare a Termination Notice and seek supervisory review of the draft Termination Notice prior to issuance. The Termination Notice should indicate that the individual's employment authorization is terminated for cause as of the date of the notice. Consequently, the Class of Admission (COA) code in CIS should be changed to DAT (Deferred Action Terminated) for employment verification purposes. Additionally, the BCU DACA Team should forward the individual's name to ERO.

If national security concerns arise after removal has been deferred under DACA, the case should go through the CARRP process, per established CARRP protocols.

*Continued on next page*



## DACA Termination, Continued

### System Updates

The following new HACs must be used as appropriate when updating a Notice of Intent to Terminate DACA and a DACA Termination Notice in C3:

- Intent to Terminate DACA Notice Ordered
- Intent to Terminate DACA Notice Sent
- DACA Termination Notice Ordered
- DACA Termination Notice Sent

After terminating DACA, the Class of Admission (COA) code in CIS should be changed to DAT (Deferred Action Terminated) for employment verification purposes.

See Appendix I for Notice of Intent to Terminate and Termination Notice.

## Chapter 15: Processing Form I-131, Application for Travel Document for Individuals With Approved Form I-821D, Consideration of Deferred Action for Childhood Arrivals (DACA)

### Introduction

Parole is the authorization to allow an otherwise inadmissible person to physically proceed into the United States under certain safeguards and controls. Parole is not an admission. The legal authority for parole is found in § 212(d)(5)(A) of the Act. Under this statutory authority, DHS may, as a matter of discretion, parole an individual into the United States under prescribed conditions. Parole is granted on a case-by-case basis for urgent humanitarian reasons or significant public benefit. Advance parole is generally granted prior to the individual's departure from the United States. Form I-512L evidencing such a grant is generally the document accepted by a transportation company to allow individuals travelling without a visa to return to the United States.

### Prescribed Conditions for Advance Parole

In accordance with the discretionary authority provided in § 212(d)(5)(A) of the Act, grants of advance parole to DACA recipients may be made based on the need to travel abroad for educational, employment, or humanitarian purposes. These categories are to be construed broadly, but must be supported with evidence demonstrating the need to travel.

### Advance Parole Requested for Educational Purposes

For educational purposes the applicant must show that the travel will be undertaken for educational pursuits.

- Examples include semester abroad programs or travel necessary to conduct academic research.
- Travel during an academic year unrelated to academics (e.g., a vacation) is insufficient to qualify as an educational purpose.
- Evidence to demonstrate this purpose includes, but is not limited to:
  - A letter from the educational institution, or from an employee of the institution acting in his/her official capacity, describing the purpose of the travel, or
  - A document showing enrollment in a specific program or class coupled with documentary evidence showing that the applicant will benefit from, or is required to travel for the specific program or class

*Continued on next page*

## Processing Form I-131, Application for Travel Document for Individuals With Approved Form I-821D, Continued

### Advance Parole Requested for Employment

For employment purposes the applicant must show that the travel relates to fulfilling job requirements.

- These purposes will also include the pursuit of a position in the United States with a foreign employer.
- Examples include an overseas assignment, an interview, a conference, training, or a meeting with overseas clients.
- Evidence to demonstrate employment purposes includes, but is not limited to:
  - A letter from the applicant's employer describing the need for travel; or
  - A document showing a specific employment need, such as a conference program, that also shows the applicant's participation.

### Advance Parole Requested for Humanitarian Purposes

Humanitarian purposes involve travel for emergent, compelling, or sympathetic circumstances.

- Examples include medical reasons, to visit an ailing family member, to attend funeral services for a family member, or for any other urgent familial purpose.
- Travel for vacation is insufficient.
  - Evidence for medical travel should include an explanation from a medical professional why travel outside of the United States is necessary to resolve the medical issue.

### Expedites

As a general matter of course, expedite requests will not be granted, because USCIS will make every effort to process the advance parole request quickly; however, in a dire emergency, and if properly documented, if an individual were to appear at a local office and the local office were to deem the need for an expedite to be compelling such that an expedite would be warranted, the local office has the option of processing the advance parole or working through established POCs at the Service Center under normal protocols.

*Continued on next page*



# Appendix A

Secretary  
U.S. Department of Homeland Security  
Washington, DC 20528



## Homeland Security

June 15, 2012

**MEMORANDUM FOR:**

David V. Aguilar  
Acting Commissioner, U.S. Customs and Border Protection

Alejandro Mayorkas  
Director, U.S. Citizenship and Immigration Services

John Morton  
Director, U.S. Immigration and Customs Enforcement

**FROM:**

Janet Napolitano  
Secretary of Homeland Security

**SUBJECT:**

Exercising Prosecutorial Discretion with Respect to Individuals  
Who Came to the United States as Children

By this memorandum, I am setting forth how, in the exercise of our prosecutorial discretion, the Department of Homeland Security (DHS) should enforce the Nation's immigration laws against certain young people who were brought to this country as children and know only this country as home. As a general matter, these individuals lacked the intent to violate the law and our ongoing review of pending removal cases is already offering administrative closure to many of them. However, additional measures are necessary to ensure that our enforcement resources are not expended on these low priority cases but are instead appropriately focused on people who meet our enforcement priorities.

The following criteria should be satisfied before an individual is considered for an exercise of prosecutorial discretion pursuant to this memorandum:

- came to the United States under the age of sixteen;
- has continuously resided in the United States for a least five years preceding the date of this memorandum and is present in the United States on the date of this memorandum;
- is currently in school, has graduated from high school, has obtained a general education development certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States;
- has not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety; and
- is not above the age of thirty.

Our Nation's immigration laws must be enforced in a strong and sensible manner. They are not designed to be blindly enforced without consideration given to the individual circumstances of each case. Nor are they designed to remove productive young people to countries where they may not have lived or even speak the language. Indeed, many of these young people have already contributed to our country in significant ways. Prosecutorial discretion, which is used in so many other areas, is especially justified here.

As part of this exercise of prosecutorial discretion, the above criteria are to be considered whether or not an individual is already in removal proceedings or subject to a final order of removal. No individual should receive deferred action under this memorandum unless they first pass a background check and requests for relief pursuant to this memorandum are to be decided on a case by case basis. DHS cannot provide any assurance that relief will be granted in all cases.

1. With respect to individuals who are encountered by U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), or U.S. Citizenship and Immigration Services (USCIS):

- With respect to individuals who meet the above criteria, ICE and CBP should immediately exercise their discretion, on an individual basis, in order to prevent low priority individuals from being placed into removal proceedings or removed from the United States.
- USCIS is instructed to implement this memorandum consistent with its existing guidance regarding the issuance of notices to appear.

2. With respect to individuals who are in removal proceedings but not yet subject to a final order of removal, and who meet the above criteria:

- ICE should exercise prosecutorial discretion, on an individual basis, for individuals who meet the above criteria by deferring action for a period of two years, subject to renewal, in order to prevent low priority individuals from being removed from the United States.
- ICE is instructed to use its Office of the Public Advocate to permit individuals who believe they meet the above criteria to identify themselves through a clear and efficient process.
- ICE is directed to begin implementing this process within 60 days of the date of this memorandum.
- ICE is also instructed to immediately begin the process of deferring action against individuals who meet the above criteria whose cases have already been identified through the ongoing review of pending cases before the Executive Office for Immigration Review.

3. With respect to the individuals who are not currently in removal proceedings and meet the above criteria, and pass a background check:

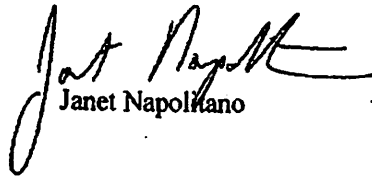
- USCIS should establish a clear and efficient process for exercising prosecutorial discretion, on an individual basis, by deferring action against individuals who meet the

above criteria and are at least 15 years old, for a period of two years, subject to renewal, in order to prevent low priority individuals from being placed into removal proceedings or removed from the United States.

- The USCIS process shall also be available to individuals subject to a final order of removal regardless of their age.
- USCIS is directed to begin implementing this process within 60 days of the date of this memorandum.

For individuals who are granted deferred action by either ICE or USCIS, USCIS shall accept applications to determine whether these individuals qualify for work authorization during this period of deferred action.

This memorandum confers no substantive right, immigration status or pathway to citizenship. Only the Congress, acting through its legislative authority, can confer these rights. It remains for the executive branch, however, to set forth policy for the exercise of discretion within the framework of the existing law. I have done so here.

  
Janet Napolitano



## Appendix B

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of the Director (MS 2000)  
Washington, DC 20529-2000



**U.S. Citizenship  
and Immigration  
Services**

November 7, 2011

PM-602-0050

### Policy Memorandum

**SUBJECT:** Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens

#### **Purpose**

This Policy Memorandum (PM) establishes new USCIS guidelines for referring cases and issuing Notices to Appear (NTAs) in a manner that promotes the sound use of the resources of the Department of Homeland Security and the Department of Justice to enhance national security, public safety, and the integrity of the immigration system. This PM supersedes Policy Memorandum No. 110, *Disposition of Cases Involving Removable Aliens*, dated July 11, 2006.

#### **Scope**

This PM applies to and is binding on all USCIS employees unless otherwise specifically provided in this PM.

#### **Authority**

Immigration and Nationality Act (INA) sections 101(a)(43), 103(a), 239, 240 and 318; Title 8, Code of Federal Regulations (8 CFR) parts/sections 2.1, 103, 204, 207.9, 208, 216.3(a), 216.6(a)(5), 236.14(c), and 239; Adjudicator's Field Manual Chapter 10.11(a).

#### **Background**

U.S. Citizenship and Immigration Services (USCIS) has authority, under the immigration laws, *see, e.g.*, INA §§ 103(a), 239; 8 CFR §§ 2.1, 239.1, to issue Form I-862, Notice to Appear, to initiate removal proceedings.<sup>1</sup> U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) also have authority to issue NTAs. Accordingly, USCIS must ensure that its issuance of NTAs fits within and supports the Government's overall removal priorities, while also ensuring that its NTA policies promote national security and the integrity of the nation's immigration system.

To those ends, this PM identifies the circumstances under which USCIS will issue an NTA, or will refer the case to ICE for NTA issuance, in order to effectively handle cases that involve public safety threats, criminals, and aliens engaged in fraud.

<sup>1</sup> Delegation by the Secretary of the Department of Homeland Security to the Bureau of Citizenship and Immigration Services, Delegation Number 0150.1; Paragraph 2(N). However, international District Directors and officers are not authorized to issue NTAs.

PM-602-0050: Revised Guidance for the Referral of Cases and Issuance of NTAs in Cases Involving Inadmissible and Removable Aliens

Page 2

**Policy**

**I. National Security Cases**

This PM does not affect the handling of cases involving national security concerns.<sup>2</sup> Guidance from the Fraud Detection and National Security Directorate (FDNS)<sup>3</sup> will continue to govern the definition of these cases and the procedures for resolution and NTA issuance.

**II. NTA Issuance Required by Statute or Regulation**

USCIS will issue an NTA in the following circumstances:<sup>4</sup>

- A. Termination of Conditional Permanent Resident Status and Denials of Form I-751, Petition to Remove the Conditions of Residence (8 CFR 216.3, 216.4, 216.5)<sup>5</sup>
- B. Denials of Form I-829, Petition by Entrepreneur to Remove Conditions (8 CFR 216.6)
- C. Termination of refugee status by the District Director (8 CFR 207.9)
- D. Denials of NACARA 202 and HRIFA adjustments
  - 1. NACARA 202 adjustment denials (8 CFR 245.13(m));
  - 2. HRIFA adjustment denials (8 CFR 245.15(r)(2)(i)).
- E. Asylum<sup>6</sup>, NACARA 203, and Credible Fear cases:
  - 1. Asylum referrals (8 CFR 208.14(c)(1));
  - 2. Termination of asylum or termination of withholding of removal or deportation (8 CFR 208.24(e));<sup>8</sup>
  - 3. Positive credible fear findings (8 CFR 208.30(f));
  - 4. NACARA 203 cases where suspension of deportation or cancellation of removal is not granted, and the applicant does not have asylum status, or lawful immigrant or non-immigrant status (8 CFR 240.70(d)).

This PM does not apply to, or change, NTA or notification procedures for Temporary Protected Status cases.<sup>9</sup> Further, Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, processed under the Violence Against Women Act (VAWA), should continue to

<sup>2</sup> National Security Cases include cases involving Terrorist Related Grounds of Inadmissibility (TRIG) pursuant to sections 212(a)(3)(B) and 212(a)(3)(F) of the INA.

<sup>3</sup> See, e.g., *Policy for Vetting and Adjudicating Cases with National Security Concerns* (April 11, 2008).

<sup>4</sup> If any Form I-751 or I-829 cases are also Egregious Public Safety cases, they will be referred to ICE in accordance with Section IV.A.1 of this PM.

<sup>5</sup> See the October 9, 2009 internal memo, *Adjudication of Form I-751, Petition to Remove Conditions on Residence Where the CPR Has a Final Order of Removal, Is in Removal Proceedings, or Has Filed an Unexcused Untimely Petition or Multiple Petitions*. See also the April 3, 2009 memo, *I-751 Filed Prior to Termination of Marriage*.

<sup>6</sup> USCIS may issue an NTA when an asylum applicant withdraws his or her asylum application.

<sup>7</sup> This memo does not apply to the Asylum Division's issuance of Form I-863, Notice of Referral to Immigration Judge, to certain stowaways, crewmembers, and VWP individuals who are requesting asylum or withholding of removal; reasonable fear screenings and negative credible fear screenings.

<sup>8</sup> See also section 208(c)(3) of the INA describing removal when asylum is terminated.

<sup>9</sup> See the September 12, 2003 internal memo, *Service Center Issuance of Notice to Appear (Form I-862)*.

be processed under existing protocols. If the VAWA applicant's Form I-485 is denied, this memorandum is applicable in terms of NTA issuance.<sup>10</sup>

### III. Fraud Cases with a Statement of Findings Substantiating Fraud

To protect the integrity of the immigration system and address fraud, USCIS will issue NTAs when a Statement of Findings (SOF) substantiating fraud is part of the record.<sup>11</sup> An NTA will be issued upon final adjudicative action on the petition and/or application or other appropriate eligibility determination.<sup>12</sup> NTAs will be issued even if the petition and/or application is denied for a ground other than fraud, such as lack of prosecution or abandonment, is terminated based on a withdrawal by the petitioner/applicant, or where an approval is revoked, so long as an SOF substantiating fraud is in the record.

The NTA should include the charge of fraud or misrepresentation, if possible. The appropriate charge(s) will be determined on a case-by-case basis. Consultation with local USCIS counsel to determine the appropriate charge(s) is recommended.

### IV. Cases to be Referred to ICE for a Decision on NTA Issuance

A. **Criminal Cases:** Criminal aliens are a top immigration enforcement priority for the government. The following guidance recognizes the prioritization and requires USCIS to refer criminals to ICE for action or issue an NTA in accordance with this PM.

#### 1. Egregious Public Safety (EPS) Cases

USCIS will refer all EPS cases, including cases with pending N-400s, to ICE prior to adjudicating the case even if USCIS can deny the petition and/or application on its merits. An EPS case is defined by USCIS and ICE as a case where information indicates the alien is under investigation for, has been arrested for (without disposition), or has been convicted of, any of the following:

- a. Murder, rape, or sexual abuse of a minor as defined in section 101(a)(43)(A) of the INA.
- b. Illicit trafficking in firearms or destructive devices as defined in section 101(a)(43)(C) of the INA.
- c. Offenses relating to explosive materials or firearms as defined in section 101(a)(43)(E) of the INA.

<sup>10</sup> When making determinations, employees must keep in mind USCIS's obligations under 8 USC § 1367, which prohibits the release of any information, outside of DHS, relating to aliens who are seeking or have been approved for immigration benefit(s) under the provisions for battered spouses, children, and parents in the Violence Against Women Act.

<sup>11</sup> Alternatively, ICE will determine whether to issue the NTA if a criminal investigation is conducted, fraud is found, and the investigation results in criminal prosecution.

<sup>12</sup> This includes, but is not limited to, aliens that were granted asylum status by USCIS, adjusted to Lawful Permanent Resident status, presented fraud indicators, were subject to the Post Adjustment Eligibility Review (PAER) process in an Asylum Office, and met the PAER criteria for NTA issuance.



- d. Crimes of violence for which the term of imprisonment imposed, or where the penalty for a pending case, is at least one year as defined in section 101(a)(43)(F) of the INA.
- e. An offense relating to the demand for, or receipt of, ransom as defined in section 101(a)(43)(H) of the INA.
- f. An offense relating to child pornography as defined in section 101(a)(43)(I) of the INA.
- g. An offense relating to peonage, slavery, involuntary servitude, and trafficking in persons as defined in section 101(a)(43)(K)(iii) of the INA.
- h. An offense relating to alien smuggling as described in section 101(a)(43)(N) of the INA.
- i. Human Rights Violators, known or suspected street gang members, or Interpol hits.
- j. Re-entry after an order of exclusion, deportation or removal subsequent to conviction for a felony where a Form I-212, Application for Permission to Reapply for Admission into the U.S. after Deportation or Removal, has not been approved.

All EPS cases must be referred to ICE using the procedures outlined below. The case will be referred as soon as it is identified. ICE will have an opportunity to decide if, when, and how to issue an NTA and/or detain the alien. USCIS will not issue an NTA in these cases if ICE declines to issue an NTA. If some other basis unrelated to the EPS concern becomes apparent during the course of adjudication, an NTA may be issued in accordance with this memo.

#### Referral Process

This referral process is utilized in order to give ICE the opportunity to determine the appropriate course of action before USCIS adjudicates the case. A decision to issue an NTA may directly affect the processing of the pending petition and/or application. Upon issuing the Referral to Immigration and Customs Enforcement (RTI), USCIS will suspend adjudication for 60 days, or until ICE provides notification of its action on the case, whichever is earlier.

In response to the RTI –

1. ICE may issue an NTA. ICE's issuance of an NTA allows USCIS to proceed with adjudication (unless jurisdiction transfers to EOIR or the pending application is an N-400), taking into account the basis for the NTA.
2. If ICE does not issue an NTA or otherwise provide notification of its action on the case within 60 days of the RTI, USCIS may resume its adjudication of the case, taking into account the referral grounds.

- a. If the case is approvable, USCIS will consult with ICE prior to adjudication.
- b. Once adjudicated, regardless of the decision, USCIS will notify ICE of the result by sending a copy of the original RTI to ICE with a cover memorandum advising of the outcome of the case.

EPS cases referred to ICE prior to adjudication should be called up and reviewed no later than 60 days after referral. Normally, the case should be adjudicated by USCIS. However, USCIS retains discretion to place the case on hold for more than 60 days if ICE requests additional time to conduct an investigation.<sup>13</sup>

#### Office-Specific Processes

1. Cases to be adjudicated by Service Centers and the National Benefits Center. Adjudication will be suspended and the case will immediately be sent to the appropriate Service Center Background Check Unit (BCU). The BCU will refer the case to the ICE Benefit Fraud Unit (BFU) via an RTI. A hard copy of the RTI will be placed in the A-file and/or receipt file. The BCU will retain the file unless ICE requests it or the 60 days expire.
2. Cases to be adjudicated by Field Offices. The Immigration Services Officer (ISO) will suspend adjudication and the case will immediately be referred to the local ICE Special Agent in Charge (SAC) via an RTI. A hard copy of the RTI will be placed in the A-file and/or receipt file. A copy of the RTI must also be sent to the ICE BFU. USCIS will retain the file unless ICE requests the file for their review.

An RTI should include any relevant attachments that USCIS has at the time, such as a copy of the RAP sheet and a copy of the petition and/or application.

#### 2. Non-Egregious Public Safety Criminal Cases

If it appears that the alien is inadmissible or removable for a criminal offense not included on the EPS list, USCIS will complete the adjudication and then refer the case to ICE. This section applies to N-400 cases if the N-400 has been denied on good moral character (GMC) grounds based on the criminal offense.<sup>14</sup> ICE will decide if, and how, it will institute removal proceedings and whether or not it will detain the alien. USCIS will not issue an NTA if ICE declines to issue an NTA.

<sup>13</sup> Pursuant to 8 CFR 274a.13(d), USCIS must complete processing of an Employment Authorization Document (EAD) within 90 days or issue an interim EAD card valid up to 240 days. Officers should be mindful of this regulatory timeframe when cases with a pending Form I-765, Application for Employment Authorization, are referred to ICE.

<sup>14</sup> See Section V of this memo addressing N-400 cases.

If some other basis unrelated to the criminal offense becomes apparent upon return of the case to USCIS, an NTA may be issued in accordance with this memo.

#### Referral Process

The referral process is used to allow ICE to make a determination whether to issue an NTA, based on the totality of circumstances and its priorities. ICE will determine the appropriate grounds for removal if an NTA is issued.

Once adjudication is complete, USCIS will send an RTI to ICE. USCIS will concurrently transmit a copy of the RTI to ICE Headquarters (HQ) Enforcement and Removal Operations (ERO) Criminal Alien Division for statistical monitoring purposes. If there is any confusion or uncertainty about classifying a case as egregious versus non-egregious, the USCIS ISO should refer the matter as an EPS case using the process described above.

The accompanying A-file will be referred to ICE with the RTI, if the file is in the possession of the referring USCIS office or center. If the file is not at the referring USCIS office or center, the RTI should include any relevant attachments that USCIS has, such as a copy of the RAP sheet and a copy of the petition and/or application. Where USCIS obtained certified conviction records through normal processing of the case, USCIS will include the records with the RTI, but it will not hold the RTI on a completed case solely to obtain disposition records. Instead ICE will decide whether, and how, it will obtain such records as part of its decision to issue an NTA.

#### Office-Specific Processes

1. Cases adjudicated by Service Centers and the National Benefits Center. Once adjudication is completed, if the alien is removable on a criminal charge, regardless of the reason for the denial, the file will be referred to the BCU. The BCU will refer the case, along with the A-file and/or receipt file, to the appropriate ERO Field Office Director (FOD) via an RTI.
2. Cases adjudicated by Field Offices. Once adjudication is completed, if the alien is removable on a criminal charge, regardless of the reason for the denial, USCIS will prepare an RTI and refer the case, along with the A-file and/or receipt file, to the local ERO FOD.

#### **B. National Security Entry Exit Registration System (NSEERS) Violator Cases**

USCIS will refer all cases in which an application is denied based on an NSEERS violation to ICE for possible NTA issuance.



V. Cases Involving Form N-400, Application for Naturalization

The following guidance applies to the issuance of NTAs in cases in which applicants for naturalization are removable. There are two primary situations in which NTAs may be issued in connection with a filed Form N-400. If the N-400 case involves fraud (documented in the SOF) the procedures found in this section must be followed, rather than the procedures found in Section III (Fraud Cases with a Statement of Findings Substantiating Fraud). However, the below guidance does not apply to EPS cases. EPS cases must be referred in accordance with Section IV.A.1 (Egregious Public Safety Cases) of this memo. Additionally, the below guidance does not apply to non-EPS criminal cases when the N-400 can be denied on GMC grounds based on the criminal act. These cases must be denied and referred in accordance with Section IV.A.2 (Non-Egregious Public Safety Criminal Cases).

- A. The first situation occurs when the applicant may be eligible to naturalize but is also deportable under section 237 of the INA. Examples include applicants convicted of aggravated felonies prior to November 29, 1990, or applicants convicted of deportable offenses after obtaining Lawful Permanent Resident (LPR) status that do not fall within the GMC period. The ISO should:
  1. Make a written recommendation on the issuance of an NTA through a review of the totality of the circumstances to include factors such as: severity of crime, time since crime committed, other criminal conduct, reformation, immigration history including method of entry, length of presence in the U.S., and prior immigration violations, and contributions to society to include the pursuit of education and military service.<sup>15</sup>
  2. Once the ISO has made a recommendation on whether or not to issue an NTA, the case should be forwarded to the N-400 NTA Review Panel (Review Panel), along with the written recommendation. A Review Panel must be formed in each Field Office and include a local Supervisory Immigration Services Officer (SISO), a local USCIS Office of Chief Counsel attorney, and a district representative. An attorney from ICE's local Office of Chief Counsel will be invited to participate and will have an advisory role on the panel. The Review Panel will make the final determination on NTA issuance. If consensus cannot be reached by the Review Panel, the case will be elevated to the District Director, through the district representative, for a final decision.
  3. If the Review Panel decides to issue an NTA, place the N-400 on hold until removal proceedings have concluded. Once proceedings have concluded, or if the Review Panel declines to issue an NTA, adjudicate the case appropriately.

<sup>15</sup> Additional factors to be taken under consideration can be found in the June 17, 2011 ICE memo, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens*.

B. The second situation occurs when it is determined that the applicant was inadmissible at the time of adjustment or admission to the United States, thus deportable under section 237 of the INA and not eligible for naturalization under section 318 of the INA.<sup>16</sup> The ISO should:

1. Make a written recommendation on the issuance of an NTA through a review of the totality of the circumstances to include factors such as: willfulness of actions, fraud factors, length of LPR status, criminal history, and officer error at time of adjustment.
2. Once the ISO has made a recommendation on the issuance of the NTA, the case should be forwarded to the Review Panel (see Section V.A.2), along with the written recommendation. The Review Panel will make the final determination on NTA issuance. If consensus cannot be reached by the Review Panel, the case will be elevated to the District Director, through the district representative, for a final decision.
3. If the Review Panel decides to issue an NTA, place the N-400 on hold until removal proceedings have concluded. Once removal proceedings have concluded, adjudicate the case appropriately. If the Review Panel declines to issue an NTA, deny the case under section 318 of the INA.

#### VI. Other Cases

- A. An alien may request NTA issuance to renew an application for adjustment or in certain cases with a denied N-400. The request must be made in writing.<sup>17</sup>
- B. An asylum applicant issued an NTA may request NTA issuance for family members not included on the asylum application as dependents for family unification purposes. The request must be made in writing.<sup>18</sup>

#### VII. Exceptions

Exceptions to the guidance in this PM require concurrence from Regional or Center Directors, who will consult with ICE before issuing an NTA.

<sup>16</sup> In the Third Circuit *only* (Pennsylvania, New Jersey, Delaware, and the U.S. Virgin Islands), based on the holding in *Garcia v. Att'y Gen.*, 553 F.3d 724 (3d Cir. 2009), if the alien has been an LPR for at least five years, the alien cannot be placed in removal proceedings for fraud or willful misrepresentation of a material fact at time of adjustment, if USCIS could have learned of the fraud or misrepresentation through reasonable diligence before the five year rescission period expired. Please consult with USCIS counsel if there are questions regarding the applicability of this precedent.

<sup>17</sup> USCIS retains discretion to deny a request. USCIS should consider ICE actions and determinations when making an NTA issuance decision under this section.

<sup>18</sup> USCIS retains discretion to deny a request.

#### VIII. Coordination with ICE

According to the June 2011 ICE memo regarding the exercise of prosecutorial discretion consistent with priorities,<sup>19</sup> USCIS will receive notice before an ICE attorney exercises prosecutorial discretion and dismisses, suspends, or closes a case. The local N-400 NTA Review Panel will work with ICE to come to a resolution if USCIS does not agree with ICE's use of prosecutorial discretion in a particular case. If concurrence cannot be reached, the case should be elevated to the USCIS Office of Chief Counsel in headquarters.

#### **Implementation**

Each field office must form an N-400 NTA Review Panel and create a process to complete RTIs and refer EPS and non-EPS criminal cases to ICE. A written list enumerating the members of the Review Panel and a document outlining the process of referral must be sent to the appropriate district office within 30 days of the issuance of this memorandum.

#### **Use**

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law, or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

#### **Contact Information**

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Field Operations Directorate, Service Center Operations Directorate, or the Refugee, Asylum, and International Operations Directorate.

---


<sup>19</sup> *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens*, signed June 17, 2011.



## Appendix C

### Overview of the Background Check Process

(b) (7)(E)





U.S. Citizenship  
and Immigration  
Services

# Deferred Action for Childhood Arrivals

SCOPS-HQ, August 2012

## Objectives and Key Elements

At the end of this workshop, officers will understand deferred action and how to apply the Secretary's discretionary authority in the specific context of DACA. Officers will:

- Understand what DACA is;
- Understand the basic authority for deferred action in general;
- Understand the Secretary's specific guidelines for DACA;
- Learn to evaluate and weigh the evidence submitted for DACA consideration;
- Learn how to resolve potential inconsistencies;
- Know when to consult with their supervisor; and
- Know when to refer cases to CFDO for additional research.



FOUO – Law Enforcement Sensitive



# Key Resources

Officers will have a number of key resources at their disposal. These include:

- The Secretary's memorandum;
- The national DACA SOP; and
- The AFM.

Officers should work through their supervisory chain of command to elevate complex issues.

HQ will also be a resource for vetting complex issues.



FOUO – Law Enforcement Sensitive

# I. DACA Overview



FOUO – Law Enforcement Sensitive

## Module Objectives

The objective of this section is to provide a basic understanding of:

- The authority for exercising prosecutorial discretion;
- The authority and intent behind DACA;
- DACA terms;
- How DACA will be implemented; and
- Challenges.



FOUO – Law Enforcement Sensitive



# Authority for Deferred Action

Under INA 103, the Secretary has the authority to administer the immigration laws.

- Includes the authority for the Secretary to exercise her discretion in deciding when and how to remove individuals from the United States.

There are no specific deferred action provisions in the statute or the regulations.

- Deferred action is not a benefit and does not confer any status.
- Deferred action does not lead to any status.
- Deferred action simply means that action to remove someone is deferred and that the decision to pursue removal may be revisited at some point in the future.



## Authority and Intent for DACA

### DACA is Delayed Action for Childhood Arrivals

On June 15, 2012, the Secretary issued a memo to CBP, USCIS, and ICE, describing the guidelines for exercising prosecutorial discretion in cases involving certain young people who arrived in the United States as children.

The intent behind the Secretary's memorandum is to prioritize resources on high priority removal cases.

There is a basic recognition that individuals brought to the United States as young children lacked the intent to violate the law.



FOUO – Law Enforcement Sensitive

## DACA Terms

Since deferred action is not a benefit, different terms are used for DACA.

Instead of:

- *Application*, use **request**.
- *Applicant*, use **requestor (or DACA requestor)**.
- *Approve or grant*, use **defer removal, defer action under DACA, etc.**
- *Must, should, or shall*, use **is to be**.



FOUO – Law Enforcement Sensitive



## DACA Implementation

Deferred action requests under standard protocols (i.e., non-DACA) do not require a form or fee.

For DACA, USCIS:

- Is conducting extensive stakeholder outreach;
- Has created a DACA video, a DACA website, and has published a series of FAQs; and
- Created a new Form I-821D, Consideration of Deferred Action for Childhood Arrivals.



FOUO – Law Enforcement Sensitive

## DACA Implementation (Continued)

Form I-821D allows USCIS to:

- Collect the information and documents needed to determine whether the Secretary's DACA guidelines have been met;
- Track the intake and workflow of DACA requests;
- Perform background and security checks on DACA requests;
- Request additional information when needed;
- Enter the adjudicative actions in the system;
- Track the status of the DACA request and respond to customer inquiries;
- Track statistics; and
- Position the Agency for potential renewal in 2 years.



FOUO – Law Enforcement Sensitive

## DACA Implementation (Continued)

The Secretary's memorandum allows DACA requestors to obtain work authorization based on economic necessity.

- Existing regulations are at 8 CFR 274a.12(c)(14) – based on a grant of deferred action.
- The (c)(33) code will be used to distinguish DACA-related EADs.

DACA requestors are required to concurrently file Form I-765, Application for Employment Authorization, with the new I-765WS, together with their Form I-821D. This allows USCIS to:

- Streamline the process by adjudicating the EAD request concurrently with the DACA request; and
- Collect biometrics at Application Support Centers (ASCs).

The Lockbox will reject Form I-821D if it is not filed concurrently with Form I-765.





## DACA Challenges

- Since deferred action is not a benefit, it does not fit squarely within the regulations.
  - This makes DACA requests different from benefit applications that officers are accustomed to adjudicating.
- Although the regulations are useful resources, the guiding principles derive from the overarching discretionary authority to defer someone's removal and the Secretary's DACA guidelines.



# DACA Challenges (Continued)

DACA requestors arrived in the United States as children.

- Depending on their age, they may or may not have documentation of their own.
- Officers may see documents from the DACA requestor's parents, for example, rent receipts or utility bills.
- One piece of evidence might satisfy more than one guideline. For example, school transcripts can also show residence, age, and arrival before age 16.
- Because some DACA requestors may have been working under assumed names, name discrepancies, standing alone, will not necessarily be a fraud indicator.
- Look at the documents in their totality to see how they add up.
- If necessary, issue an RFE to resolve discrepancies.
- If the DACA requestor's attempts to explain the discrepancies still don't add up, officers can refer the case to CFDO for further research.



FOUO – Law Enforcement Sensitive

## II. Initial Intake, File Preparation, and Workflow



FOUO – Law Enforcement Sensitive



# Module Objectives

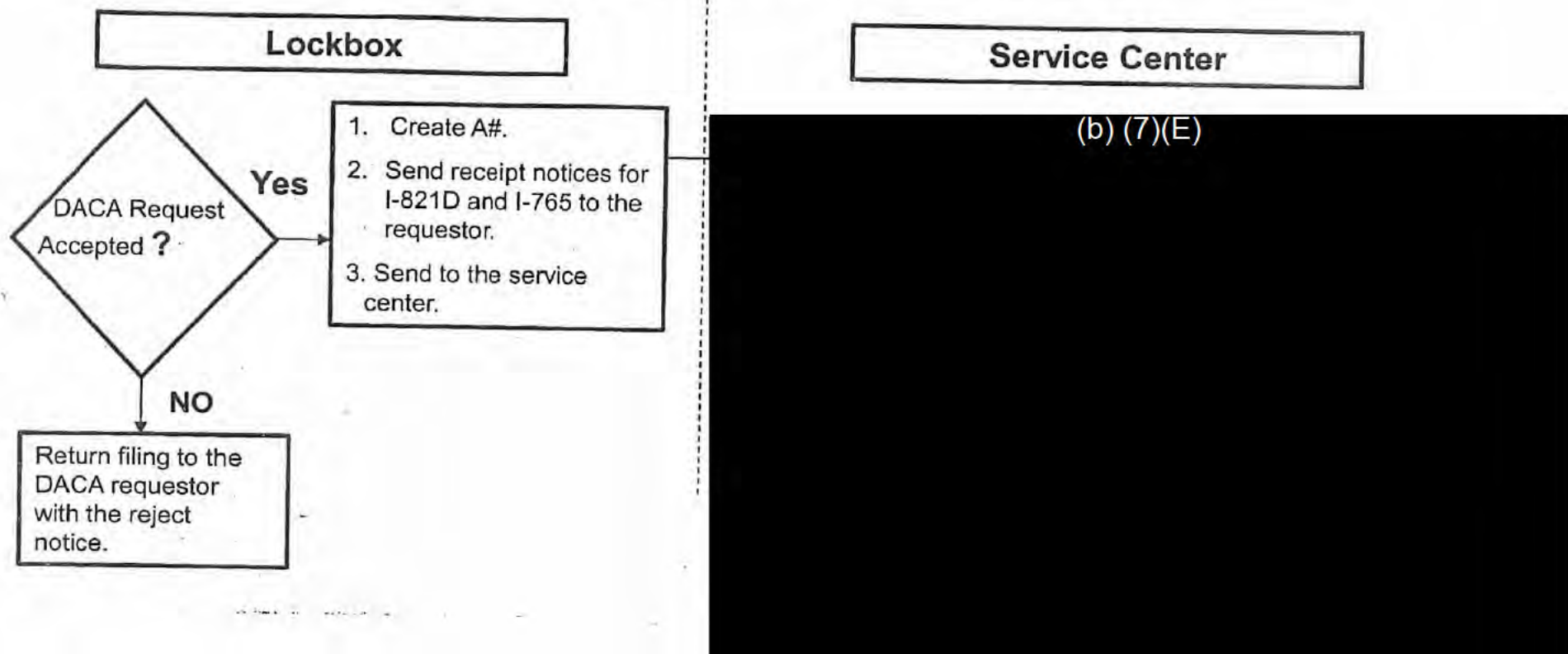
Officers will gain a basic understanding of:

- Lockbox intake
- Overall process flow; and
- Case preparation.



FOUO – Law Enforcement Sensitive

## Key Steps in DACA Process Flow



U.S. Citizenship  
and Immigration  
Services

FOUO – Law Enforcement Sensitive

# Case Preparation and Workflow

## Step 1:

Intake occurs at the Lockbox per the agreed upon Lockbox/SCOPS business rules.

## Step 2:

Service Center Records performs the A-number look-up and validation process.

## Step 3:

Data is populated into C3 via the Lockbox-Service Center interface.

## Step 4:

Lockbox creates and ships A-Files/T-Files to the appropriate Service Center based on the agreed upon routing.

## Step 5:

Service Centers receive the files and perform file intake functions.



FOUO – Law Enforcement Sensitive



## Case Preparation and Workflow (Continued)

### Step 6:

ASC appointments are scheduled via SNAP by the Service Center pursuant to local procedures.

### Step 7:

In parallel to the SNAP scheduling process, background and security checks are initiated (b) (7)(E)

### Step 8:

The Service Center must look for the following to determine the next steps:

- Whether the DACA requestor appeared at the ASC for biometrics capture and whether the FBI returned the fingerprint results (fingerprint results are required only for those 14 years and older); and
- Whether (b) (7)(E) fingerprint results returned derogatory information impacting the exercise of discretion for DACA.



U.S. Citizenship  
and Immigration  
Services

FOUO – Law Enforcement Sensitive

## Case Preparation and Workflow (Continued)

### Step 9:

The Service Center will take adjudicative action.

### Step 10:

The process flow splits off here, depending on the results (b) (7)(E) and the (b) (7)(E) on whether a supervisory hold should be placed on the request.



FOUO – Law Enforcement Sensitive

## How Form I-821D Will be Displayed in C3

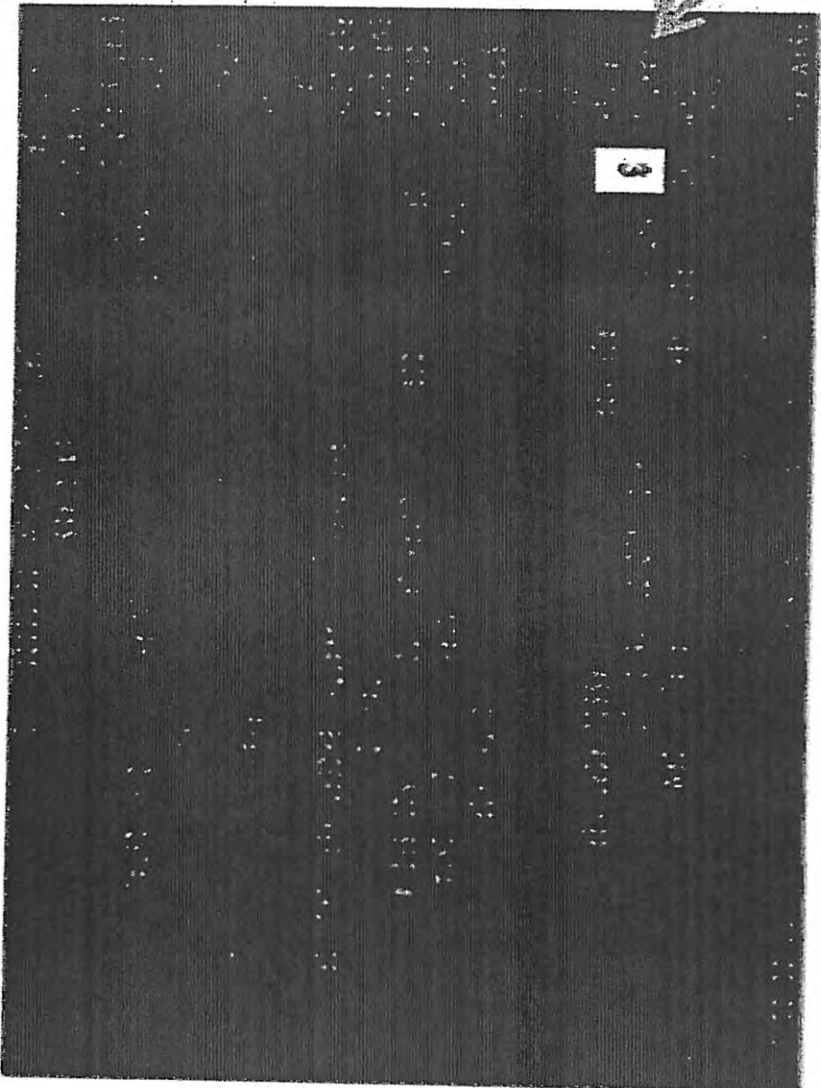
For DACA requests, all pertinent fields will be populated in CLAIMS 3 (C3) into the Form I-821 screen, but with a new category "3" to show it is actually a DACA request, not TPS.

While Forms I-821 for TPS, and I-821D for DACA are very similar, when Form I-821 appears in CLAIMS with category "3" (to denote that it is actually an I-821D for DACA), only those fields pertaining to the DACA request will be active.





# A View of Form I-821D in C3



FOUO - Law Enforcement Sensitive

### III. Required Forms and Fees



FOUO – Law Enforcement Sensitive

## Module Objective

The objective of this section is to provide a basic understanding of:

- The Forms required to file a DACA request.



FOUO – Law Enforcement Sensitive



# The DACA Request

## Each DACA request must include:

- Form I-821D, *Consideration of Deferred Action for Childhood Arrivals*;
  - There is no fee for Form I-821D.
- Form I-765, *Application for Employment Authorization* with I-765 WS;
- Basic I-765 filing fee and the biometrics services fee; and
  - Total fee of \$465 (or proof of fee exemption approval).
  - Fee exemption will appear as fee waived in C3.
- Documentary evidence to meet the DACA guidelines.



FOUO – Law Enforcement Sensitive

## The DACA Request (Continued)

There is no derivative DACA.

- Requestors must file requests individually.
- Requestors must meet the DACA guidelines in their own right.

Form I-821D is a discrete form for DACA designed to address each guideline and should not be confused with Form I-821 used for TPS.

Some data elements that are not germane to DACA are not on the I-821D. For example:

- Nationality;
- Inadmissibility; and
- Information about relatives.



FOUO – Law Enforcement Sensitive

## The DACA Request (Continued)

- A new worksheet, Form I-765WS, has been created to capture the information needed to determine economic necessity for the EAD.
- Form I-765WS asks the requestor to provide basic information about his/her current income, annual expenses, and total value of assets.



FOUO – Law Enforcement Sensitive



## IV. DACA Guidelines and Adjudicating the Request



FOUO – Law Enforcement Sensitive

## Module Objectives

The objective of this section is to provide a basic understanding of:

- The basic DACA guidelines.
- The discretionary nature of deferred action;
- Examples of evidence that a requestor may submit to show he/she meets the DACA guidelines; and,
- The effect of criminality, egregious public safety and national security concerns.



FOUO – Law Enforcement Sensitive

## Basic DACA Guidelines

An individual meeting the following guidelines may be favorably considered for DACA if, under the totality of the circumstances, he/she:

- Was in unlawful status as of June 15, 2012;
- Is at least 15 years of age on the date of filing;
  - If in removal proceedings, can be under 15.
- Arrived in the United States prior to reaching his/her 16th birthday;
- Has continuously resided in the United States since June 15, 2007, up to the time the request for consideration of deferred action for childhood arrivals is submitted;





## Basic DACA Guidelines (Continued)

- Was present in the United States on June 15, 2012;
- Is currently in school, graduated from high school, obtained a general educational certificate (GED), is currently enrolled in an accredited GED program, or is an honorably discharged veteran of the Coast Guard or U.S. Armed Forces;
- Was born after June 15, 1981 (i.e., was not age 31 or older on June 15, 2012);
- Has not been convicted of a felony offense, a significant misdemeanor offense, or three or more non-significant misdemeanor offenses; and
- Does not otherwise pose a threat to national security or public safety.



FOUO – Law Enforcement Sensitive

## Basic DACA Guidelines (Continued)

Deferred action is discretionary. In setting the guidelines, the Secretary has determined how this discretion is to be applied for individuals who arrived in the United States as children.

Although discretion to defer removal is applied on a case-by-case basis, according to the facts and circumstances of a particular case, discretion should be applied consistently.

- Absent unusual or extenuating circumstances, similar fact patterns should yield similar results.
- To facilitate consistent review and adjudication, a series of RFE and NOID templates have been developed and must be used. They are included in the SOP appendices.
- A standard denial template in checkbox format will be used by officers.



FOUO – Law Enforcement Sensitive

## Interim Review

### Fact Pattern :

The requestor indicated that he is 14½ years old and entered the United States without inspection in 2007.

### Questions:

1. Considering the requestor's age, date of entry, and immigration status, can he satisfy the guidelines for DACA?
2. Is additional information needed?



FOUO – Law Enforcement Sensitive



# Applying the DACA Guidelines -- Identity

Each DACA requestor is to establish his/her identity

Examples of acceptable evidence include:

- Passport;
- Birth certificate, accompanied by some form of photo identification;
- National ID document from the requestor's country of origin bearing the requestor's photo and/or fingerprint;
  - Includes a Matricular consular document issued by the consulate or embassy in the United States.
- U.S. Government immigration or other document bearing the requestor's name and photo;
- School-issued ID with photo;
- Military ID with photo; or
- Any other relevant document.



FOUO – Law Enforcement Sensitive

## Applying the DACA Guidelines -- Identity (Continued)

Any aliases, name discrepancies, or date of birth discrepancies identified while reviewing the evidence require a TECS query.

While these types of discrepancies may come up while reviewing identity, they could also come up while reviewing other guidelines.

Requestors may submit employment records to satisfy other guidelines. During the review process, you may find that a requestor worked under an assumed name. This type of discrepancy, in and of itself, would not result in declining to defer removal under DACA.



# Applying the DACA Guidelines -- Age at Time of Filing

To determine the requestor's age at the time of filing, review the requestor's birth certificate or other acceptable secondary evidence establishing the requestor's date of birth.

- The requestor's date of birth will be on several documents, and possibly in our systems.
- Officers should be mindful and run the required TECS queries.
- Age is a fundamental guideline. Officers should work closely with their supervisor and with CFDO to reconcile discrepancies.



FOUO – Law Enforcement Sensitive



## Applying the DACA Guidelines -- Age at Time of Filing (Continued)

### **Requestors NOT in Removal Proceedings**

- The DACA requestor is to be age 15 or older at the time.

### **Requestors IN Removal Proceedings**

- A DACA requestor in removal proceedings may be under age 15 at the time of filing the DACA request.
- In removal proceedings includes:
  - Administratively closed cases;
  - Having an order of voluntary departure after proceedings were initiated (which can be an alternate order of VD/removal); or
  - A final removal order.
- The requestor should be noting this on the Form I-821D.
- The requestor should already have an A-file, with documents relating to the removal proceedings.
- Systems checks should also indicate that the requestor is in removal proceedings.



FOUO – Law Enforcement Sensitive

## Applying the DACA Guidelines -- Age on June 15, 2012

The DACA requestor is to establish that he/she was not age 31 or older on June 15, 2012.

- In other words, the DACA requestor was born after June 15, 1981.

To determine whether the requestor was born after June 15, 1981, review the requestor's birth certificate or other acceptable secondary evidence establishing the requestor's date of birth.



FOUO – Law Enforcement Sensitive

# Applying the DACA Guidelines -- Unlawful Status as of June 15, 2012

Unlawful status means:

- Lawful immigration status expired as of June 15, 2012;
- The requestor EWI'd before June 15, 2012; or
- If paroled into the United States, the requestor's parole expired as of June 15, 2012 and the requestor did not obtain an extension or any other lawful status by that date.

Review Part 1 of I-821D for date of entry and status at entry.

- If needed, conduct a systems check to help in establishing the requestor's immigration status on June 15, 2012.



FOUO – Law Enforcement Sensitive



# Applying the DACA Guidelines -- Unlawful Status as of June 15, 2012 (Continued)

Examples of documents that may show the requestor's immigration status on June 15, 2012 include, but are not limited to the following:

- I-94/I-95/I-94W Arrival/Departure Record showing the date the requestor's authorized stay expired;
- If the requestor has a final order of exclusion, deportation, or removal issued on or before June 15, 2012, a copy of that order and related charging documents, if available;
- An INS or DHS charging document placing the requestor into deportation, exclusion, or removal proceedings;
- Any other document that is relevant to show that the requestor lacked lawful immigration status on June 15, 2012; or
- Any document relating to parole.



FOUO - Law Enforcement Sensitive

## Interim Review

### Fact Pattern:

The requestor was born on December 12, 1989, and states that he entered the United States in December 2005 on a B-2 Visitors Visa. He lost his I-94 and submitted a photocopy of the photo page of his passport.

### Questions for discussion:

- Can the requestor be considered for DACA?
- Is additional information needed?



FOUO – Law Enforcement Sensitive

## Applying the DACA Guidelines -- Arrived Before Age 16

The DACA requestor is to establish that he/she arrived in the United States before his/her 16th birthday.

- To determine the date of arrival, review the response to Part 1, questions 13 through 17 of Form I-821D for the date of initial entry into the United States.
- In addition, review question 6 in Part 1 and the requestor's birth certificate or other acceptable evidence establishing the requestor's date of birth.
- The answers to these 2 questions on Form I-821D, combined with evidence of the requestor's date of birth, will establish this guideline.



FOUO – Law Enforcement Sensitive



## Applying the DACA Guidelines -- Continuous Residence (CR)

The DACA requestor is to submit evidence that he/she has resided continuously in the United States since June 15, 2007, or earlier, and up to the present time.

- Present time means the date of filing the DACA request.

A DACA requestor can establish continuous residence even if he/she had a brief absence from the United States.

- The absence must be brief, casual, and innocent and have occurred before August 15, 2012.
- Travel occurring after August 15, 2012, will not be considered brief, casual, and innocent, unless removal has been deferred under DACA and advance parole has been granted.



FOUO – Law Enforcement Sensitive

## Applying the DACA Guidelines -- CR (Continued)

Examples of evidence establishing that an absence was brief, casual, and innocent and therefore did not interrupt the requestor's continuous residence include, but are not limited to:

- Plane or other transportation tickets or itinerary showing the travel dates;
- Passport entries;
- Hotel receipts showing the dates the requestor was abroad;
- Evidence of the purpose of the travel (e.g., the requestor attended a wedding or funeral);
- Copy of any advance parole documents; or
- Any other relevant/probative evidence that could support a brief, casual, and innocent absence.

Note that a departure made while under an order of voluntary departure or deportation, exclusion, or removal is not brief, casual, and innocent.



FOUO – Law Enforcement Sensitive

## Effect of Travel Outside the U.S. After 8/15/12

Travel outside the United States after August 15, 2012 and before the DACA request is filed:

- The departure interrupts CR; CR not met.

Travel outside the United States while the DACA request is pending:

- The requestor abandons the DACA request; deny for abandonment.

Travel outside the United States after removal has been deferred, but without advance parole:

- Deferred action under DACA is terminated automatically.



FOUO – Law Enforcement Sensitive



# Applying the DACA Guidelines -- Present in the U.S. on 6/15/12

The DACA requestor is to establish that he/she was present in the United States on June 15, 2012.

- To determine if the requestor was present in the United States on June 15, 2012, review the responses to Part 1 regarding the date of entry, status at entry, and date the authorized stay expired; and
- The responses to the questions in Part 2 regarding all absences from the United States since June 15, 2007.
- The responses to these 2 questions, together with the evidence submitted, will show that this guideline is met.

Review the totality of the evidence submitted. If a given document does not specifically refer to June 15, 2012, review the dates on all the documentation submitted in its totality. If the requestor arrived before June 15, 2007, and there is no indication of any departure and continuous presence is well documented, then this guideline has been met.



FOUO – Law Enforcement Sensitive

# Examples of Acceptable Evidence for CR and Presence in U.S. on 6/15/12

Evidence	Acceptable Documentation
Employment Records	<ul style="list-style-type: none"> <li>• Pay stubs;</li> <li>• W-2 Forms;</li> <li>• Federal, State, or local income tax returns; or</li> <li>• Letters from employer(s) or, if the DACA requestor has been self-employed, letters from banks, and other firms with whom he/she has done business.</li> </ul>
Receipts, Bills, Letters	<ul style="list-style-type: none"> <li>• Rent receipts;</li> <li>• Utility bills bearing the requestor's name and address; or</li> <li>• Receipts or letters from companies showing the dates during which the requestor received service.</li> </ul>
School Records	Transcripts, letters, report cards, etc., from the school(s) requestor attended in the United States showing the name of school(s) and the period(s) of school attendance.
Medical Records	Hospital or medical records showing medical treatment or hospitalization of the requestor. Such records should show the name of the medical facility or physician, as well as the date(s) of the treatment or hospitalization.



U.S. Citizenship  
and Immigration  
Services

FOUO – Law Enforcement Sensitive

# Evidence of CR and Presence on 6/15/12 (Continued)

Evidence	Acceptable Documentation
Memberships	<ul style="list-style-type: none"> <li>• Official records from a religious entity in the United States confirming the requestor's participation in or attendance at a religious ceremony, rite, or passage (e.g., baptism, first communion, wedding, etc.).</li> <li>• Documentation showing membership in community org. (e.g. Scouts).</li> </ul>
Military Records	Military records (e.g., certificate of discharge, military personnel records; or military health records).
Additional Documents	<p>Additional documents to support the requestor's claim may include:</p> <ul style="list-style-type: none"> <li>• Money order receipts for money sent in or out of the country;</li> <li>• Passport entries;</li> <li>• Birth certificates of children born in the United States;</li> <li>• Bank books with dated transactions;</li> <li>• Correspondence between the requestor and other persons/org.;</li> <li>• Social Security card;</li> <li>• Selective Service card;</li> <li>• Automobile license receipts, title, vehicle registration, etc;</li> <li>• Deeds, mortgages, contracts to which requestor has been a party;</li> <li>• Tax receipts;</li> <li>• Insurance policies, receipts, or postmarked letters; and/or</li> </ul> <p>Any other relevant document.</p>



U.S. Citizenship  
and Immigration  
Services

FOUO – Law Enforcement Sensitive



# Applying the DACA Guidelines - Education

## Basic Educational Guidelines

The educational guideline for DACA can be met in a number of different ways. The requestor can show that he/she:

- Is currently in school;
- Has graduated from high school; or
- Has obtained a certificate of completion from high school or a General Educational Development (GED) certificate.



FOUO – Law Enforcement Sensitive

# Applying the DACA Guidelines – Education (Continued)

## Homeschooling

A claim of homeschooling is not, in and of itself, an indicator of fraud; however, because homeschool programs and their requirements vary widely from state to state, refer the case to CFDO for further research and evaluation.

- Even if the file contains evidence including transcripts, diplomas, or certificates of completion received as a result of homeschooling, the case must be referred to CFDO for further research and evaluation, prior to final adjudication.



# Applying the DACA Guidelines – Education (Continued)

## Currently in School

The DACA requestor can be enrolled in:

- A public/private elementary school, junior high or middle school, high school, or secondary school;
- An education, literacy, or career training program (including vocational training or an English as a Second Language (ESL) course);
- An education program assisting students either in obtaining a regular high school diploma or its recognized equivalent under State law (including a certificate of completion, certificate of attendance, or alternate award), or in passing a GED exam or other equivalent State-authorized exam; or
- A public or private college or university or a community college.



FOUO – Law Enforcement Sensitive



# Applying the DACA Guidelines – Education (Continued)

## School Breaks and Medical Leave

**School Breaks:** When the DACA requestor files the DACA request, it is possible that school may not be in session due to a holiday or a semester (or quarter or trimester) break.

- A break may occur during a course, for example spring break, or it may occur between semesters, for example summer break.
- If a DACA request is filed between semesters, the requestor is considered to be currently in school if he/she is enrolled for the next semester and submits evidence of such enrollment.

**Medical Leave:** Note that a DACA requestor on temporary medical leave from school is considered to be currently in school. Evidence of the medical leave and the expected return date to school are to be provided.



FOUO – Law Enforcement Sensitive

## Applying the DACA Guidelines – Education (Continued)

### **Enrollment in Personal Enrichment or Recreational Classes**

A DACA requestor who is enrolled in a personal enrichment class (such as arts and crafts) or who is enrolled in a recreational class (such as canoeing) is not in an alternative educational program and thus not considered to be “currently in school” for DACA purposes.



FOUO – Law Enforcement Sensitive

## Applying the DACA Guidelines – Education (Continued)

### **Enrollment in On-Line Classes**

- Evidence of enrollment in on-line courses is acceptable.
- Officers should focus on the school, not the medium.
- It is not uncommon for students to be enrolled in online courses.
- Officers should focus on the completeness, credibility, relevance, and sufficiency of the evidence to see if it is germane.



FOUO – Law Enforcement Sensitive



# Applying the DACA Guidelines – Education (Continued)

## Primary/Middle/Secondary School – Accepted for Enrollment

Evidence of acceptance for enrollment may include, but is not limited to:

- An acceptance letter on school letterhead from the school's authorized representative, if the requestor was accepted for enrollment, but the classes have not yet commenced.
- Such acceptance letter is to include the name and address of the school, the requestor's grade level, and the date that the classes are scheduled to commence.
- Such acceptance letter is to be accompanied by evidence that the student has registered for classes, or other evidence showing the student has accepted the offer and has committed to start classes on a certain date.
- If the requestor has been accepted for enrollment at a private school, evidence of enrollment, such as paid tuition receipts, is to be included.



FOUO – Law Enforcement Sensitive

# Applying the DACA Guidelines – Education (Continued)

## Primary/Middle/Secondary School – Accepted for Enrollment (Continued)

- A current individualized education program (IEP), as required under the Individuals with Disabilities Education Act, for a student with a disability, would also be acceptable evidence of enrollment;
- A current class schedule containing the student's name, the list of courses, and the day and time of each class; or
- Any other relevant evidence.



FOUO – Law Enforcement Sensitive

# Applying the DACA Guidelines – Education (Continued)

## Primary/Middle/Secondary School – Attending Classes

DACA requestors already enrolled and attending classes may submit:

- Current school registration cards,
- Current transcripts;
- Report cards; or
- Progress reports.

The document(s) presented are to show the name of the student, the name of the school, the time period or semester covered by the document, and the current grade level.

A current IEP showing the student's progress to date would also be acceptable evidence that the DACA requestor has been accepted for enrollment and is attending classes.



FOUO – Law Enforcement Sensitive



# Applying the DACA Guidelines – Education (Continued)

## GED

To show “currently in school” based on enrollment in a class for a GED or other equivalent State-authorized exam, look for a letter or other document from an authorized representative of the program, that includes information such as:

- The requestor’s name and date of enrollment;
- The duration of the program and expected completion date;
- Whether the course of study is for or a GED exam or other equivalent State-authorized exam;
- The program’s source of public funding (Federal, State, county, or municipal), if any; and
- The program’s authorized representative’s contact information.



FOUO – Law Enforcement Sensitive

# Applying the DACA Guidelines – Education (Continued)

## GED (Continued)

If the GED/Equivalency program is not publicly funded in whole or in part, documentation from the program is also to provide information about its demonstrated effectiveness. Such information could include, but is not limited to:

- The duration of the program's existence;
- The program's track record in assisting students in obtaining a GED, or a recognized equivalent certificate;
- Receipt of awards or special achievement or recognition that indicate the program's overall quality; and/or
- Any other information indicating the program's overall quality.



FOUO – Law Enforcement Sensitive

# Applying the DACA Guidelines – Education (Continued)

## **Public or Private College or University, or Community College – Accepted for Enrollment**

Evidence of enrollment in a public or private college or university or a community college may include, but is not limited to:

- An acceptance package and related materials on school letterhead from the school's authorized representative, if the requestor was accepted for enrollment, but the classes have not yet commenced.
- Such acceptance package is to include the name and address of the school, the requestor's grade level or class year, and the date or term when the classes are scheduled to commence.
- Such acceptance package is to be accompanied by evidence that the student has registered for classes, or other evidence showing the student has accepted the offer and has committed to start classes on a certain date.



FOUO – Law Enforcement Sensitive



# Applying the DACA Guidelines – Education (Continued)

## **Public or Private College or University, or Community College – Accepted for Enrollment (Continued)**

Evidence of acceptance for enrollment can also include:

- A current individualized education program (IEP), as required under the Individuals with Disabilities Education Act, for a student with a disability;
- A copy of the student's current tuition bill;
- The student's current class schedule containing the list of courses, and the day and time of each class; or
- Any other relevant evidence.



FOUO – Law Enforcement Sensitive

# Applying the DACA Guidelines – Education (Continued)

## **Public or Private College or University, or Community College – Attending Classes:**

For DACA requestors already enrolled and attending classes, evidence may include, but is not limited to:

- Current school registration cards;
- Current transcripts;
- Report cards; or
- Progress reports.

The document(s) presented are to show the name of the student, the name of the school, the time period or semester covered by the document, and the current grade level or class year.



FOUO – Law Enforcement Sensitive

# Applying the DACA Guidelines – Education (Continued)

## Public or Private College or University, or Community College – Attending Classes (Continued):

A current IEP showing the student's progress to date would also be acceptable evidence of enrollment and attending classes.

It is not necessary to RFE for a copy of the high school diploma or GED, unless there are articulable reasons to question the evidence of acceptance and enrollment or attendance in a public or private college or university, or community college.



FOUO – Law Enforcement Sensitive

# Applying the DACA Guidelines – Education (Continued)

## Alternative Educational Programs

DACA requestors can show they are currently in school by enrolling in/attending an alternative education program.

Different guidelines apply, depending on the type of program and whether the program is publicly or privately funded.

Public funding can be in whole or in part and can be:

- Federal;
- State;
- County; and/or
- Municipal.

If the program is not publicly funded, it must show its demonstrated effectiveness.

- Doesn't apply to non-profit literacy programs.



FOUO – Law Enforcement Sensitive



# Applying the DACA Guidelines – Education (Continued)

## Alternative Educational Programs (Continued)

Alternative Educational Programs – Funding/Effectiveness			
Type of Program	Non-Profit Status	Public Funding (in whole or in part)	Demonstrated Effectiveness – Required for each program that is not publicly funded. (Does not apply to non-profit literacy programs).
ESL	N/A	Letter from the ESL program administrator or authorized representative providing basic details about the source(s) of funding.	<p>The program administrator or authorized representative is to provide information about the program's demonstrated effectiveness. Such information could include, but is not limited to:</p> <ul style="list-style-type: none"> <li>• The duration of the program's existence;</li> <li>• The program's track record in placing students in post-secondary education, job training, or employment;</li> <li>• Receipt of awards or special achievement or recognition that indicate the program's overall quality; and/or</li> <li>• Any other information indicating the program's overall quality.</li> </ul> <p><b>**</b> Refer the case to CFDO if enrolled in a literacy program run by a <b>for-profit</b> entity.</p>
<b>**Literacy</b>	A copy of the IRS letter confirming tax exempt status under 501(c)(3)	If, not tax exempt, but publicly funded, a letter from the program administrator providing basic details about the source(s) of funding.	
Career Training and Vo-Tech	N/A	Letter from the school registrar or authorized school representative providing basic details about the source(s) of public funding.	



U.S. Citizenship  
and Immigration  
Services

FOUO – Law Enforcement Sensitive

# Applying the DACA Guidelines – Education (Continued)

Alternative Educational Programs – Evidence of Acceptance for Enrollment or Attending Classes		
Enrolled in/Attending Literacy or ESL Program		
ESL	<p>A letter from the program administrator or authorized representative providing information such as:</p> <ul style="list-style-type: none"> <li>• The requestor's name;</li> <li>• Date of enrollment;</li> <li>• Duration of the ESL program and expected end date;</li> <li>• The program admin/auth. Rep's contact info.</li> </ul>	
Career Training and Vo-Tech	<p><b>Accepted for Enrollment</b></p> <p>An acceptance letter on school letterhead from the school registrar/authorized school representative. Letter is to include: name and address of the program, a brief description of the program, the duration of the program, the date classes will begin, with evidence of registration.</p> <p>Evidence of acceptance for enrollment may also include a copy of the current year registration (intake form/enrollment form), or any other relevant documentation.</p>	<p><b>Attending Classes</b></p> <ul style="list-style-type: none"> <li>• Current attendance records</li> <li>• Transcripts</li> <li>• Report cards</li> <li>• Test reports</li> <li>• Progress reports</li> </ul> <p>Documents are to show the name of the school, the name of the requestor, the time period or semester covered by the document, and, if relevant, the current educational or grade level.</p>



FOUO – Law Enforcement Sensitive

# Applying the DACA Guidelines – Education (Continued)

## Graduated from School

Evidence of “graduated from school” may include copies of:

- A diploma;
- Transcripts showing the date of graduation; or
- A GED Certificate, certificate of completion, certificate of attendance, or alternate award from a public or private high school/secondary school.

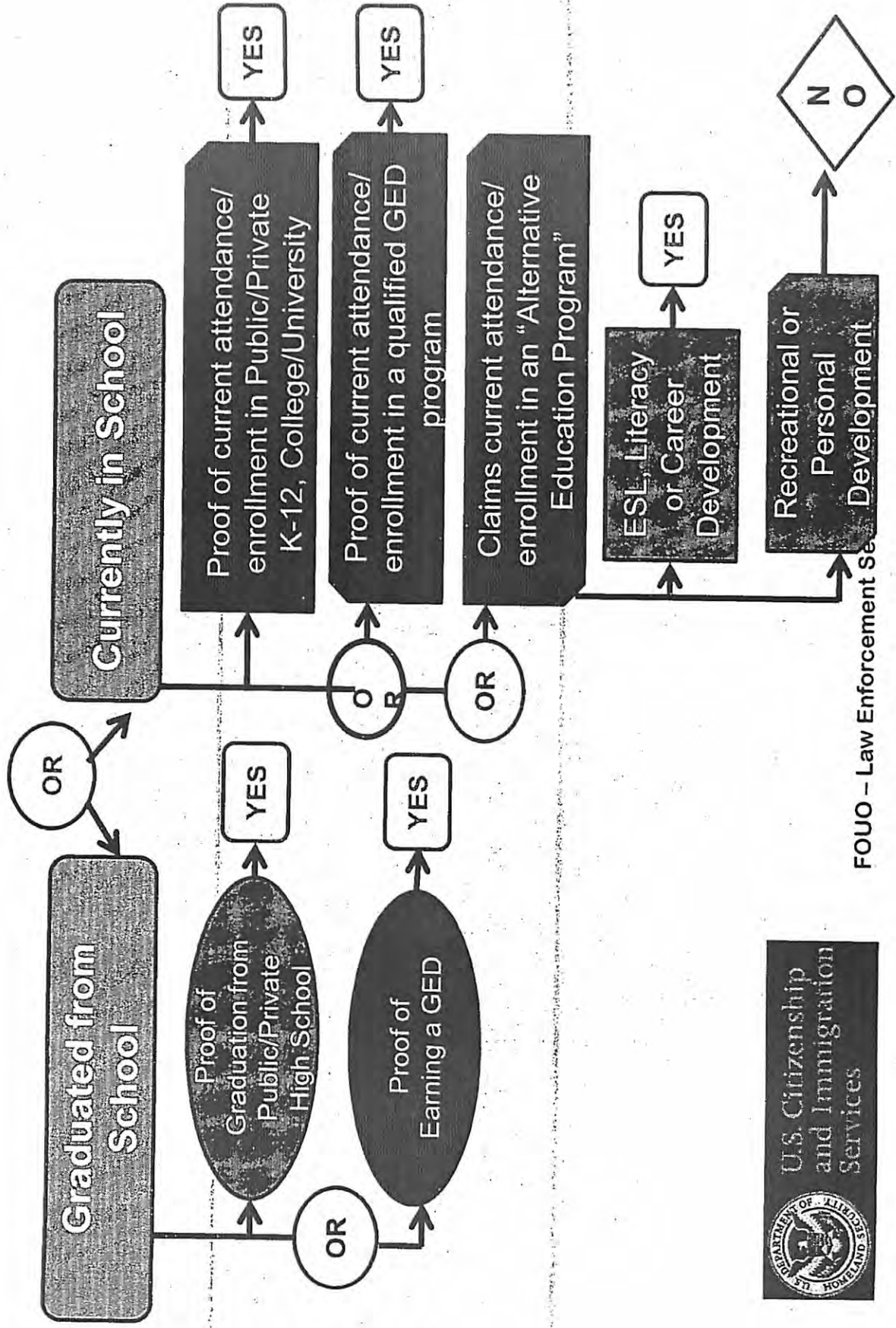
Evidence of GED or equivalent certificate includes, but is not limited to:

- Passed a GED exam; or
- Other comparable State-authorized exam resulting in the issuance of a recognized equivalent of a regular high school diploma under State law.



FOUO – Law Enforcement Sensitive

# Applying the DACA Educational Guidelines – Recap



FOUO – Law Enforcement Seal





# Interim Review

## Fact Pattern:

The requestor is 19 years old and indicated that she went to a U.S. high school for 2 years and was then homeschooled. She submitted:

- Copies of high school transcripts showing attendance for her freshman and sophomore years (2007-2009)
- 2 affidavits indicating she was homeschooled until last year
- A receipt indicating enrollment in an ESL course to start next week

## Questions for Discussion:

- Did the requestor meet the “education” guideline? Explain.
- Does this case require a referral to CFDO?



# Applying the DACA Guidelines – Honorable Military Discharge

As an alternative to showing that he/she is currently in school or has graduated from school, a DACA requestor can meet the Secretary's guidelines by showing that he/she is an honorably discharged veteran of the U.S. armed forces or U.S. Coast Guard.

Examples of acceptable evidence of honorable military/Coast Guard discharge include:

- Form DD-214, Certificate of Release or Discharge from Active Duty;
- NGB Form 22, National Guard Report of Separation and Record of Service;
- Military personnel records;
- Military health records; or
  - A military health record will indicate branch of service, but not the character of the service member's discharge;
- Any other relevant document.



FOUO – Law Enforcement Sensitive

# Applying the DACA Guidelines – Honorable Military Discharge (Continued)

The Form DD-214 and NGB Form 22 both contain a section, “Character of Service” listing the type of discharge a service member obtained. The main types of discharge include the following:

- Honorable:
- General (under Honorable Conditions);
- Under Other Than Honorable Conditions;
- Bad Conduct;
- Dishonorable; or
- Uncharacterized.

To meet the military guideline, the “Character of Service” must be Honorable or General (under Honorable Conditions).



FOUO – Law Enforcement Sensitive

# Applying the DACA Guidelines – Issues of Criminality, Public Safety and National Security

Under the Secretary's guidelines, removal will not be deferred under DACA when the requestor:

- Has been convicted of a felony offense, a significant misdemeanor offense, or three or more other misdemeanor offenses not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct; or
- Otherwise poses a threat to national security or public safety.

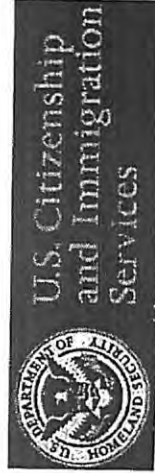
The guidelines and procedures for cases involving criminal, national security, and public safety issues are covered more in depth later in the training.



FOUO – Law Enforcement Sensitive



# V. Weighing the Evidence and Standard of Proof



FOUO – Law Enforcement Sensitive

## Module Objectives

The objective of this section is to provide a basic understanding of:

- Review primary and secondary evidence;
- Understand how to weigh the totality of the primary and secondary evidence when adjudicating a DACA request;
- Apply the preponderance of the evidence standard in the adjudication of DACA requests; and,
- Understand which DACA guidelines can be supported by an affidavit.



FOUO – Law Enforcement Sensitive

## Evaluating the Supporting Evidence

- The requestor is to show, by a preponderance of the evidence, that he/she meets the guidelines for deferral of removal under DACA.
- Evaluate and weigh the sufficiency of all evidence according to its relevancy, consistency, and probative value.
- Consider any additional and new facts and/or evidence in response to an RFE or NOID before rendering a final determination.



FOUO – Law Enforcement Sensitive

# Standard of Proof: Preponderance of the Evidence

A DACA requestor is to establish by a preponderance of the evidence that he/she meets the guidelines for the exercise of prosecutorial discretion in the form of deferred action.

Under this standard, the requestor must demonstrate that it is more likely than not that he or she meets those guidelines.

- The preponderance of the evidence standard is a lower standard of proof than both the “clear and convincing evidence” standard and the “beyond a reasonable doubt” standard applicable to criminal cases.
- More likely than not means probable, in other words, 51% or more.





# Primary Evidence

Primary evidence is evidence which, on its face, proves a fact.

- In the DACA context, an example of primary evidence that could be submitted to satisfy the age guideline would be a birth certificate.
- An example of primary evidence that could be submitted to satisfy all or part of the CR guideline would be school records.



FOUO – Law Enforcement Sensitive

## Secondary Evidence

Secondary evidence may be submitted to prove a fact or satisfy a guideline when primary evidence is unavailable. Secondary evidence must lead the officer to conclude that it is more likely than not, in other words, probable, that the fact sought to be proven is true.

- **Examples of acceptable secondary evidence to prove date of birth:**  
Baptismal records issued by a church showing that an individual was born at a certain time.
- **Examples of acceptable secondary evidence to meet the CR guideline:**  
Rental agreements in the name of the DACA requestor's parent, if corroborating evidence in the file (such as school or medical records) points to the DACA requestor's residence at that address.



FOUO – Law Enforcement Sensitive

## Affidavits (Continued)

Weigh the assertions in the affidavits in light of the totality of all the evidence presented. When evaluating what weight to give an affidavit, take the following into consideration:

- An affidavit needs to be signed and dated;
- The identity of the affiant needs to be readily ascertainable from the information in the affidavit;
- The affidavit should state the relationship between the affiant and the DACA requestor and contain facts that are relevant to the guideline the requestor seeks to meet; and
- The affidavit should state the basis of the affiant's knowledge and exhibit first-hand knowledge of the fact asserted.



## Totality of the Evidence

Review the totality of the documentary evidence to determine whether the facts needed to establish a specific guideline have been demonstrated.

### **When one piece of evidence can satisfy more than 1 DACA guideline:**

- **Example:** School transcripts can show “currently in school”, CR, and presence on 6/15/12, and can also corroborate age.

### **When multiple documents viewed together can satisfy 1 DACA guideline:**

- **Example:** A DACA requestor could meet the “present in the U.S. on 6/15/12” guideline by submitting various forms of credible documentation evidencing that he/she was present in the United States shortly before and shortly after June 15, 2012, such as bank statements, phone records, with receipts with identifying information, etc. The officer could infer, based on the totality of the evidence, that the individual meets this guideline.



U.S. Citizenship  
and Immigration  
Services

FOUO – Law Enforcement Sensitive



# VI. Removal Proceedings



FOUO – Law Enforcement Sensitive

# Charging Documents

Form I-862, Notice to Appear, initiates a removal proceeding under INA 240, and is the most common kind of charging document.

Other currently used charging documents includes:

- Form I-860, Notice and Order of Expedited Removal.



FOUO – Law Enforcement Sensitive

## Underlying Removal Ground Impacts DACA

If the DACA requestor indicates in Question #3.a. in Part 1 of Form I-821D that he/she has been in removal proceedings, and/or routine systems, background, and fingerprint checks indicate that the requestor is in removal proceedings, proceed as follows:

- Review the underlying removal charges; and
- Review the derogatory information obtained through routine checks.



U.S. Citizenship  
and Immigration  
Services

FOUO – Law Enforcement Sensitive

# Underlying Removal Ground Does Not Impact DACA

A individual in proceedings can have his/her removal deferred under DACA if the underlying removal ground does not adversely impact the exercise of discretion.

- Review the results of all routine systems, background, and fingerprint checks.
- If those routine checks do not reveal any additional derogatory information (such as issues of criminality, national security, or public safety), proceed with adjudication.



FOUO – Law Enforcement Sensitive



## Important Note

Do not rely solely on the grounds listed in the charging document and/or EARM.

- Not all issues may have necessarily been captured in the charging document.
- New issues may have arisen since the charging document was issued.

Review all derogatory information in its totality and then make an informed assessment regarding the appropriate exercise of discretion for DACA.



FOUO – Law Enforcement Sensitive

# Reinstatement of the Prior Removal Order

When an individual reenters the United States illegally after having been removed or after leaving voluntarily under an order of removal, he/she is subject to reinstatement of the prior removal order from its original date. INA 241(a)(5)

To meet the DACA guidelines, the removal AND the subsequent illegal reentry had to occur before June 15, 2007.

- Requestor is to have at least 5 years CR before June 15, 2012 up to the date of filing.
- Removal is not a BCI departure – it interrupts the CR period.



## Exercise

### Fact Pattern:

The requestor claims that he is 14 years old and indicates that his proceedings were administratively closed.

### Questions for Discussion:

How would you verify whether or not the requestor is currently in proceedings?

If the requestor is in proceedings, what impact does it have on his DACA request?



FOUO - Law Enforcement Sensitive

# VII. Background & Security Checks



FOUO – Law Enforcement Sensitive



# Module Objectives

The objective of this section is to provide a basic understanding of:

- Identify mandatory background checks
- Identify if a case needs to be referred to the BCU DACA Team
- Comprehend how to process various background-check elements



FOUO – Law Enforcement Sensitive

# Background & Security Checks

Background checks refer to the analysis of the results of security checks or any other identified concern relating to national security of public safety and the actions required to resolve the concern.

The routine background and security checks to be performed on DACA are:

- TECS queries; and
- FBI fingerprint checks.

Conduct the resolution in accordance with current NaBISCOP and CARRP policies.



FOUO – Law Enforcement Sensitive

## Background & Security Checks (Continued)

The CARRP process will guide the resolution of all TECS hits with national security issues.

- The BCU will process all non-KST / KST national security concerns.
- The CARRP unit will route cases for supervisory review before the decision is issued.

Cases with issues of criminality should be handled per standard protocols according to whether Egregious Public Safety (EPS) issues are present, as described in the November 7, 2011 NTA memorandum.



FOUO – Law Enforcement Sensitive

## Routing and Handling of TECS Hits and IDENTs

For DACA, a specialized adjudication team has been established at each center within the BCU. This team, BCU DACA, will process and adjudicate all DACA requests that have issues of criminality.

TECS hit and IDENTs with issues of criminality will be routed directly to the BCU DACA.

When an officer conducts a backend TECS query and the SQ-11 returns an issue of criminality that relates, the officer will route the case to the BCU DACA team for further processing.

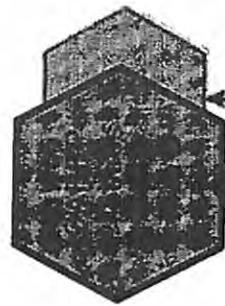
- If an officer inadvertently receives a DACA request with a criminal TECS hit and/or an IDENT, the officer must route the case to the BCU DACA.
- Officers will receive DNRs and non-criminal resolutions from the BCU.



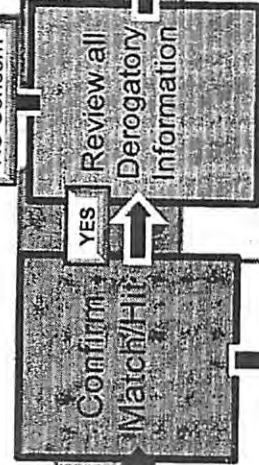
FOUO – Law Enforcement Sensitive



Flow chart indicates overview of the background check process once potentially derogatory information has been identified as a result of the security checks or from other sources.



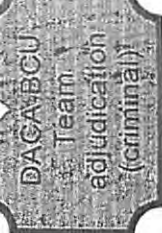
NS Concern



YES



YES



YES



NO

No

Document resolution/await F/P results if not available



No match/DNR



NO



YES

YES



FOUO - Law Enforcement Sensitive

# Alias and Date of Birth Search

## Confirming a Hit/Match

- Post-discovery of potentially derogatory information:
- Determine if the derogatory information "belongs" to the requestor
- Compare the derogatory information to information of the requestor
- Uncertain whether the derogatory information belongs to the requestor? – consult with your supervisor
- Persistent uncertainty? – supervisors may work through their chain of command and BCU DACA Team

*continued...*



FOUO – Law Enforcement Sensitive

## Background & Security Checks (Continued)

### Does the Information Belong to the Requestor?

- **Conclusive Match** – determine the appropriate categories:
  - National Security
  - EPS or other criminal cases
    - Forward to the BCU DACA Team if NS or criminal
  - Immigration related or other non criminal
- **Inconclusive (TECS/IBIS) Match** –consult your chain of command for appropriate follow-up action
  - Process all DNRs
  - Process all Immigration related or other non criminal inconclusive matches
  - Forward all criminal or NS inconclusive matches to BCU DACA Team



# Background & Security Checks (Continued)

## Resolving the Concern

- Sample activities of BCU resolution process
  - Contact with other components and/or agencies
  - Referral to ICE
  - Deconfliction
- BCU DACA Team documents findings on each resolution
- BCU DACA Team ISO reviews request following resolution
- All DNR hits identified in the normal adjudicative process will remain in the normal adjudicative workflow
- The BCU DACA Team will review all related hits that will result in a denial due to criminal or NS concerns



FOUO – Law Enforcement Sensitive



# Systems Checks – TECS

- Conduct batch TECS queries on primary name and DOB within 15 days
- Conduct a separate query for each name and DOB (alias) combination
  - Some files may contain multiple names and/or DOBs
  - TECS query results are valid for 180 calendar days
- TECS views include:
  - records of wants and warrants
  - lookouts from the NCIC (National Crime Information Center)
- USCIS has access to other types of records



FOUO – Law Enforcement Sensitive

## Systems Checks – TECS (Continued)

- Review the following in the A-file for name and DOB combinations and aliases:
  - Form I-821D
  - Form I-765 and I-765WS
  - All supporting documents filed with the I-821D and I-765
  - Other DACA-related documents in the A-file



FOUO – Law Enforcement Sensitive

## Systems Checks – TECS (Continued)

### Possible Results of TECS Queries:

- **NO MATCH FOUND** – screen displays “No Match Found”
- **TECS RECORD** – system located one possible match
- **HIT LIST** – system located more than one possible match



FOUO – Law Enforcement Sensitive

# Systems Checks – TECS (Continued)

## Types of TECS Hits

- **National Security (NS)** – may indicate an NS concern
- **Egregious Public Safety** – See Nov. 7, 2011 NTA memorandum
- **INTERPOL** – Indicates record of international want, warrant, etc.
- Examples of other TECS hits include:
  - Agricultural violations
  - Visa overstays
  - Marriage fraud
  - Absconders



FOUO – Law Enforcement Sensitive



## Systems Checks – TECS (Continued)

- Determine if the result of a security check relates to the requestor
- Review and resolve security checks
- Complete the background checks
- NaBISCOP policy
- SQ-11 procedures, search criteria, and best practices
- Procedures and formats for resolving hits



FOUO – Law Enforcement Sensitive

# Systems Checks – Fingerprints

- FBI Fingerprint Check – provides summary information of a U.S. administrative or criminal record
- ASC captures fingerprints for full biometrics capture
- Four results from FBI system:
  - NON-IDENT
  - IDENT
  - Unclassifiable
  - No Record



FOUO – Law Enforcement Sensitive

# Systems Checks – Biometrics/Prints Collection

- All requestors must be scheduled for biometrics capture at an ASC
- Requestors younger than age 14 will have press print captured
- All other requestors require both biometrics and 10-prints



FOUO – Law Enforcement Sensitive

## Interim Review

### Fact Pattern Number:

On his Form I-821D, a requestor listed his name and date of birth as John Chacon, May 17, 1988. An employer affidavit lists the requestor's first name as Johan with a DOB May 17, 1989.

What additional SQ11 queries must the officer conduct?



FOUO – Law Enforcement Sensitive



# VIII. Issues of Criminality and Public Safety



FOUO – Law Enforcement Sensitive

## Module Objectives

This module is geared more towards the BCU DACA Team, but all officers should be familiar with issues of criminality and case handling. Review fingerprint and RAP sheet handling

- Understand and be able to apply the criminality guidelines relevant to DACA
- Present and understand the criminal definitions to be used in DACA adjudications
- Understand the role of the centralized BCU DACA Team
- Understand when supervisory review is mandatory
- Review Process Handling



# Introduction

The Secretary's memorandum identifies the issues of criminality and public safety that would, as a matter of discretion, result in a decision to not defer removal under DACA.

## **Criminality**

No conviction for:

- A felony offense;
- A significant misdemeanor; or
- Three or more non-significant misdemeanors.
  - Not occurring on the same day and not arising out of the same act, omission, or scheme of misconduct.

## **Public Safety**

Public safety concerns are evaluated under the totality of the circumstances by taking into account the DACA requestor's entire criminal record and any other relevant factors.



FOUO – Law Enforcement Sensitive

## Fingerprints and Rap Sheets

At the time of adjudication, the file should contain a screen print of either the FBI Query with the RAP sheet (if applicable) or the C3 based Fingerprint Tracking System to indicate the present status of the fingerprint checks. A definitive fingerprint-clearance response is required before any DACA request for an individual 14 years of age and older may be approved.

- When there is a positive TECS hit and/or an IDENT, these cases will not be routed to the floor, but rather, to the dedicated BCU DACA team.
- Officers should not see these cases.
- If an officer does see such a case, or encounters issues of criminality in the course of adjudication or conducting the back-end TECS check, route the case to the BCU DACA Team.



U.S. Citizenship  
and Immigration  
Services

FOUO – Law Enforcement Sensitive



# Fingerprints and Rap Sheets (Continued)

## Validity of Print Results

While normally the response is valid for 15 months from the date the FBI processed the fingerprints, for DACA prior fingerprint results will not be accepted. Officers should utilize FD-258 to verify that the fingerprint check was completed specifically for the DACA request.

Although biometrics will not be cloned from other filings, if the requestor has a criminal history with an IDENT result and there are already RAP sheets in the file, request updated RAP sheets through the Fingerprint Refresh Resubmission Process.



FOUO - Law Enforcement Sensitive

# Fingerprints and Rap Sheets (Continued)

## Getting Fingerprint Results

The fingerprint clearance should be complete before the case is sent for adjudication. However, if there is no fingerprint result printout in the file, the officer is responsible to perform a query of FBI Fingerprint Tracking in CLAIMS Mainframe and to also check SNAP to see if the requestor has been scheduled for an appointment at an ASC.

## A-number/Alias Information on the RAP Sheet

If any other A-numbers are found on the RAP sheet, the files must be requested, reviewed, and consolidated prior to any final action. If the RAP sheet indicates any aliases or alternate dates of birth, the officer must conduct required background and systems checks on all additional name/DOB combinations.



FOUO – Law Enforcement Sensitive

# Understanding Fingerprint Query Results

There are four possible results of a fingerprint query:

- Non-IDENT - FBI possesses no administrative or criminal history
- IDENT - There is an administrative or criminal record listed in the FBI files relating to the individual. FBI will forward a copy of the RAP sheet to USCIS.
- Unclassifiable - The individual's fingerprints were unacceptable for fingerprint analysis. The Service Center must follow procedures to schedule a reprint appointment and any required follow-up verification in lieu of fingerprint results.
- No Record - No Record an FD-258 was sent to the FBI or no response from the FBI. The Service Center must follow procedures regarding ASC reschedules and no shows.



FOUO - Law Enforcement Sensitive

## Procedures for Unclassifiable FBI Prints

An FBI response might indicate that an individual's fingerprints were unacceptable for fingerprint analysis. After an initial "unacceptable" response, the individual must be reprinted.

If the first fingerprint results are Unclassifiable, check SNAP to see if the requestor appeared for a second ASC appointment.

- If yes, check BBSS for the results.
- If not, schedule a second ASC appointment, using priority code "1" in SNAP to bypass the 60 day waiting period for rescheduling.





# Procedures for Unclassifiable FBI Prints (Continued)

## RFE guidance for unclassifiable prints

- If the second set of fingerprints are returned as “Unclassifiable”, the officer should issue DACA RFE 150 call up from Appendix D for police certificates.
- The DACA requestor must provide (1) police clearances for the previous five years from all places of residence, and (2) a statement disclosing any and all criminal history (arrests, charges, etc.), including overseas.



FOUO – Law Enforcement Sensitive

# RAP Sheet: Accuracy and Completeness Concerns

Since participation by state and local agencies is not mandatory, the FBI Fingerprint check does not contain records from every jurisdiction. Therefore, Non-IDENT does not mean that the individual has no administrative or criminal history.

If a criminal hit comes up in another system or the individual has provided testimony, a sworn statement, or other evidence of criminal activity that does not appear in the fingerprint results or RAP sheets, USCIS personnel should follow specific form SOPs (where applicable) for determining what additional steps are needed to address the derogatory information.



FOUO – Law Enforcement Sensitive

## Criminal Issues Specific to DACA

An individual may not be considered for DACA if he or she has been convicted of:

- A felony offense;
- A significant misdemeanor offense; or
- Three or more other misdemeanors,

OR, poses a threat to national security or public safety;

UNLESS, USCIS determines there are exceptional circumstances.

**The determination that exceptional circumstances exist for deferral of removal under DACA will be made only at the HQ level and in extremely rare cases.**



# What is a Felony?



FOUO – Law Enforcement Sensitive



## Felony

- A felony is a federal, state or local criminal offense for which the maximum term of imprisonment authorized is for a period of more than one year.
- A requestor convicted of one felony will be found not to meet the guidelines for DACA consideration, unless USCIS determines there are exceptional circumstances.



# What is a Significant Misdemeanor?



FOUO – Law Enforcement Sensitive

## Significant Misdemeanor

A significant misdemeanor is a misdemeanor that involves:

- Domestic violence
- Sexual abuse or exploitation
- Burglary
- Unlawful possession or use of a firearm
- Drug distribution or trafficking, or
- Driving under the influence of alcohol or drugs;

OR

- for which the individual was sentenced to time in custody of more than 90 days.



FOUO – Law Enforcement Sensitive

## Significant Misdemeanor (Continued)

- Sentence must involve time to be served in custody, and does not include suspended sentence.
- Time in custody does not include period in ICE custody that may follow completion of criminal sentence.
- A requestor convicted of one significant misdemeanor will be found not to meet the guidelines for DACA consideration, unless USCIS determines there are exceptional circumstances.





# What is a Misdemeanor?



FOUO – Law Enforcement Sensitive

## Misdemeanor

- Any federal state or local criminal offense, if:
- maximum term of imprisonment authorized is for a period of more than 5 days but not more than one year,
- regardless of whether the jurisdiction in which the offense is committed classifies the offense as a misdemeanor.



FOUO – Law Enforcement Sensitive

## Multiple Misdemeanors

- The requestor does not meet the guidelines for DACA consideration if convicted of three or more non-significant misdemeanors, unless USCIS determines there are exceptional circumstances.
- Misdemeanors occurring on the same day or arising out of the same act, omission, or scheme of misconduct, will only be counted as one misdemeanor for these purposes.



## Misdemeanors (Continued)

- A minor traffic offense, such as driving without a license, will not be considered a misdemeanor for purposes of this process.
- State law immigration-related offenses characterized as felonies or misdemeanors by state immigration laws will not be treated as disqualifying felonies or misdemeanors.
  - Distinguish from federal immigration offenses.





## Foreign Convictions

- Will generally not be treated as a disqualifying felony or misdemeanor.
- May be relevant to public safety concerns and whether, under the particular circumstances, the exercise of prosecutorial discretion is warranted.
- Cases involving foreign convictions should be elevated for supervisory review.



FOUO – Law Enforcement Sensitive

# What Constitutes a Conviction?



FOUO – Law Enforcement Sensitive

# What Constitutes a Conviction?

Defined in INA § 101(a)(48)(A) as:

- A formal judgment of guilt entered by a court, or
- If adjudication of guilt has been withheld, where:
  - a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt; and
  - the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.



FOUO – Law Enforcement Sensitive

## Formal Judgment of Guilt by Court

- The entry of guilt can be found on the record of conviction itself
- If the alien pled guilty, then there will be an indication of the plea and the court's finding of guilt
- If the alien went to trial, then the conviction record should indicate that the defendant was found guilty by judge or jury
- Court records vary from jurisdiction to jurisdiction, but you want to look for plea, finding, entry or similar words relating to guilt or a no contest (*nolo contendere*) plea
- Indication that entry of judgment of guilt was *not* made include words such as "withheld" or "deferred"





## No Entry of Judgment of Guilt

- Sometimes called Continued without a Finding (CWOFF); adjudication withheld; deferred adjudication, etc. Different jurisdictions use different terminology.
- If adjudication has been withheld, then to constitute a conviction, there must be 2 prongs satisfied:
  - (1) Verdict, Plea or finding of guilt *and*
  - (2) Punishment or restraint on liberty



## Conviction - Pleas

If there is no formal judgment of guilt, then for the court's action to constitute a conviction:

- The defendant must plead guilty or the court must make a finding of guilt.
- A "*nolo contendere*" or "no contest" plea is still a guilty plea for immigration purposes.
- Therefore, a "deferred prosecution" or pre-trial diversion program that does not require the defendant to plead guilty or require the court to make any finding of guilt cannot constitute a conviction.



## Conviction - Punishment, Penalty, Restraint on Liberty

- Imposition of costs in a criminal case constitutes a form of punishment for INA 101(a)(48)(A) definition of conviction. *Matter of Cabrera*, 24 I&N Dec. 459 (BIA 2008).
- Punishment might be fines.
- Probation, community supervision etc., is a restraint on liberty.
- Where the only consequence of a criminal judgment is a suspended non-incarceratory sanction, however, it may not constitute a conviction for immigration purposes. *Retuta v. Holder*, 591 F.3d 1181 (9th Cir. 2010) (a suspended fine was not a punishment or penalty sufficient to be a conviction).



## Examples of Possible Valid Convictions under the INA

- Pleas. An Alford plea, no contest plea and nolo contendere plea all satisfy the “finding of guilt” requirement for a conviction. See *Abimbola v. Ashcroft*, 378 F.3d 173 (2d Cir. 2004)(Alford plea is a guilty plea and therefore may form the basis of a conviction).
- Deferred Adjudication. Both the Board and the federal courts have held that a deferred adjudication is a conviction for immigration purposes where it involves an admission of guilt and limitations on the defendant’s liberty. See *Matter of Punu*, 22 I&N Dec. 224 (BIA 1998) (Texas deferred adjudication is a conviction).





## Examples (Continued)

- One court has held that a Massachusetts conviction, in which the defendant admitted to facts sufficient for a finding of guilt, with a continuation without a finding (CWOFF), and with the imposition of a restitution order, is a conviction under the INA. *De Vega v. Gonzales*, 503 F.3d 45 (1st Cir. 2007).
- A “guilty filed” disposition under Massachusetts law satisfies the finding of guilt requirement and may constitute a conviction under the INA. *Griffiths v. INS*, 243 F.3d 45 (1st Cir. 2001).



FOUO – Law Enforcement Sensitive

## Examples (Continued)

- Court Martial. A judgment of guilt that has been entered by a general court-martial of the United States Armed Forces qualifies as a conviction. *Matter of Rivera Valencia*, 24 I&N Dec. 484 (BIA 2008).
- Probation Before Judgment. A court's grant of probation before judgment generally constitutes a conviction under the INA. See generally, *Yanez-Popp v. INS*, 998 F.2d 231 (4th Cir. 1993).
- Guilty Pleas Held in Abeyance. A guilty plea held in abeyance may satisfy the statutory definition of conviction. *U.S. v. Zamudio*, 314 F.3d 517 (10th Cir. 2002).



## Not a Conviction?

- New York's Pretrial Diversion Agreement (PDA) is generally not considered a conviction because guilt has not been established by trial, plea or admission; nor have sufficient facts been admitted to support a finding of guilt. *Iqbal v. Bryson*, 604 F.Supp.2d 822 (E.D.Va. 2009).
- It's important to look at the actual diversionary agreement to see whether there was any type of admission or finding of guilt in the written agreement. Generally there will not be, but there are some states where admission of guilt is required for entry into the program (fairly rare to find these)



## Convictions - Appeals

A conviction is effective for immigration purposes, including DACA, while it is on direct appeal.

- See *Plane v. Holder*, 652 F.3d 991 (9th Cir. 2011), rehearing en banc denied, 2012 WL 1994862 (2012).
- If the conviction is ultimately reversed on appeal, the DACA requestor is free to file a new request for DACA, with fee, if otherwise eligible





## Vacated / Expunged Convictions

- Generally speaking, convictions may be vacated for one of two reasons
- A conviction may be vacated due to a procedural or substantive defect in the conviction itself
- A conviction may be vacated /expunged to provide post-conviction relief, such as a rehabilitative provision that removes the stigma of a conviction or an expungement for youth offenders or first-time offenders.



## Vacated / Expunged Convictions

- FOR PURPOSES OF DACA ONLY, these expunged or vacated convictions will NOT be treated as disqualifying felonies or misdemeanors.
- Case-by-case assessment to determine whether the person poses a threat to public safety and whether the exercise of prosecutorial discretion is warranted.
- Elevate for supervisory review.



## Juveniles

- Juvenile delinquency adjudication is not a conviction. *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2001).
- A conviction for immigration purposes includes conviction of an alien under age 18 who was charged as an adult.
- Juvenile delinquency may impact public safety issues when considering a request under DACA
- May also be considered in determining whether the exercise of prosecutorial discretion is warranted.



## Pardons

- A full and final unconditional U.S. pardon by the President or by the Governor of a state can erase a conviction for immigration purposes. See *Matter of Nolan*, 19 I&N Dec. 539 (BIA 1988).
- Underlying offense may impact public safety issues when considering a request under DACA
- May be considered in determining whether the exercise of prosecutorial discretion is warranted.
- A limited pardon will not erase conviction for immigration purposes.





## Exceptional Circumstances

- The requestor must specifically ask for the exception and must fully document the exceptional circumstances.
- Criminal history and activities compromising national security and public safety carry considerable weight in the totality of the circumstances analysis.
- Requires truly exceptional circumstance to overcome.
- **The determination that exceptional circumstances exist for deferral of removal under DACA will be made only at the HQ level and in extremely rare cases.**



# Handling Criminality, National Security or Public Safety Concerns

The evaluation of criminal issues with respect to a DACA request is done after BCU vetting of the TECS check and the FD 258 fingerprint results from the FBI.

If the up-front TECS check reveals a hit, the DACA request goes to BCU/Triage.

If the hit relates, BCU triage routes the DACA request to the BCU for resolution.

If the FD 258 fingerprint results return an IDENT, the BCU reviews the results to determine whether they are germane to the DACA request and the exercise of prosecutorial discretion. BCU will adjudicate all DACA requests with IDENT.

For guidance on when to seek supervisory review of a denial involving issues of criminality, see Chapter 9, Section D.



# Handling Criminality, National Security or Public Safety Concerns (Continued)

The evaluation of criminal issues with respect to a DACA request is done after BCU vetting of the TECS check and the FD 258 fingerprint results from the FBI. If the up-front TECS check reveals a hit, the DACA request goes to BCU/Triage.

## BCU Triage and Resolution Overview

1. If the hit relates, BCU triage routes the DACA request to the BCU;
2. BCU documents the TECS hit and the resolution in the ROIQ. While the DACA request is undergoing the up-front TECS check, the DACA requestor is placed in the scheduling queue for an ASC appointment to have his/her biometrics captured;
3. If the FD 258 fingerprint results return an IDENT, the BCU reviews the results to determine whether they are germane to the DACA request and the exercise of prosecutorial discretion;
4. BCU handles the case through to completion.



U.S. Citizenship  
and Immigration  
Services

FOUO – Law Enforcement Sensitive

# Evaluating Cases for EPS Concerns

The scope of criminal offenses deemed to be Egregious Public Safety (EPS) concerns are described in the November 11, 2011 NTA memorandum and the accompanying MOA between USCIS and ICE.

The nature and severity of the underlying crime or in the case of multiple crimes, the totality of the crimes, are weighed heavily and are significant unfavorable factors in evaluating public safety concerns, regardless of the disposition of the crime(s).

- For example, an individual with multiple arrests with no convictions could pose significant public safety concerns.
- Similarly, an individual arrested for multiple assaults or other violent crimes could be deemed a public safety risk.





# Determining When a Case Requires BCU Handling

## For Cases Indicating Criminal Issues

When the requestor answered "No" to criminality questions on the I-821D:

And...	Then...
...the requestor answered "No" to criminality questions on the I-821D.	...the case is handled by the BCU.
...the requestor answered "No" to criminality questions on the I-821D.	...the case is handled by the BCU.
...the requestor answered "No" to criminality questions on the I-821D.	...the case is handled by the BCU.
...the requestor answered "No" to criminality questions on the I-821D.	...the case is handled by the BCU.
...the requestor answered "No" to criminality questions on the I-821D.	...the case is handled by the BCU.
...the requestor answered "No" to criminality questions on the I-821D.	...the case is handled by the BCU.
...the requestor answered "No" to criminality questions on the I-821D.	...the case is handled by the BCU.



FOUO – Law Enforcement Sensitive

# Determining When a Case Requires BCU Handling (Continued)

## For Cases Indicating Criminal Issues (cont.)

If the requestor answered "Yes" to criminality questions on his/her DACA request then:

If	Then
There is clear derogatory information provided by the requestor and/or in our records;	Case is handled by the BCU DACA Team.
No derogatory information can be found in our records or it is unclear, and the requestor did not provide any additional information or documentation;	



FOUO – Law Enforcement Sensitive

# Handling DACA Cases with Public Safety Concerns

## Criminal Cases with EPS Concerns

If the BCU determines the case presents issues of criminality, processing of the DACA request must be categorized as either EPS or non-EPS.

- Criminal cases determined to be Non-EPS are handled and adjudicated by the BCU DACA Team.
- Criminal cases determined to be EPS are handled by the BCU DACA Team. The BCU DACA Team shall refer the case to ICE prior to adjudicating the case, even if USCIS can deny the DACA request on its merits. If ICE does not accept the referral, the BCU will adjudicate the case.



FOUO – Law Enforcement Sensitive

# Handling Cases Involving NS Concerns (Continued)

If the requestor answered "Yes" to questions on the I-821D related to NS issues of violent crimes, terrorism, human rights violations, persecution of others, etc. then:

IF...	Then...
non security derogatory information provided by the releasor and/or the records	release case info to CA & process as standard process
no derogatory information can be found in the records and the releasor can provide information	



U.S. Citizenship  
and Immigration  
Services

FOUO – Law Enforcement Sensitive



## Handling Cases Indicating Possible Gang Membership / Activity (Continued)

If the requestor disclosed issues indicating gang membership on his/her I-821D, then:

If...	Then...
There is clear derogatory information provided by the requestor and/or in our records,	Case is handled by the BCU DACA Team.
No derogatory information can be found in our records or it is unclear and the requestor did not provide information,	



U.S. Citizenship  
and Immigration  
Services

FOUO – Law Enforcement Sensitive

## When Supervisory Review is Required for Denials Involving Issues of Criminality, Public Safety, or National Security

Denials due to the following issues of criminality require supervisory review:

- Conviction for any crime committed before reaching age 18, and was tried as an adult; or
- Conviction for a “significant misdemeanor;” or
- No criminal convictions and outwardly appears to meet the guidelines in the Secretary’s June 15, 2012 memorandum; however, based on other derogatory information obtained through routine systems and background/security checks, there are credible reasons to believe that the requestor poses a threat to national security or public safety. In these instances the officer should refer the proposed denial for supervisory review after the case has been processed through the CARRP process.

**NOTE:** These are not the only denials that require supervisory review. The full list is discussed in the Decisions module.



# IX. Fraud and Misrepresentation



FOUO – Law Enforcement Sensitive

# Module Objective

- Understand how to detect potential fraud in the DACA context and when to refer to CFDO for further research and evaluation.
- Identify what work product you can expect from the CFDO.
- Describe the purpose of the Intelligence Compass.



FOUO – Law Enforcement Sensitive



# Fraud Review and Fraud Referrals

In the normal course of adjudication, officers should be aware of potential fraud indicators.

Fraud encompasses any material representation or omission, accompanied by an intent to deceive.

Fraud-related concerns should be addressed according to the March 2011 Fraud Detection SOP and the 2008 ICE/USCIS Investigation of Immigration Benefit Fraud MOA.



FOUO – Law Enforcement Sensitive

## Fraud Review and Fraud Referrals (Continued)

In the immigration context, fraud is a willful misrepresentation of a material fact. An omission of a material fact can also constitute a willful misrepresentation, rising to the level of fraud.

When reviewing an immigration request, a finding of fraud is generally supported by the presence of the following three elements.

1. There must have been a misrepresentation or concealment of a fact;
2. The misrepresentation or concealment must have been willful; and
3. The fact must be material.

A finding of fraud is also supported when the immigration filing contains fraudulent documents that are germane.



FOUO – Law Enforcement Sensitive

## How to Evaluate Inconsistencies

Many DACA requestors were brought to the United States as young children by their parents.

Documents that officers are generally accustomed to seeing may or may not be available.

The absence of a given document does not in and of itself mean that a guideline is not met, nor is it necessarily an indicator of fraud.

DACA requestors have spent a significant portion of their lives in the United States as minors. Thus, the requisite intent normally associated with fraud and willful misrepresentation may not be present.



## How to Evaluate Inconsistencies (Continued)

Applying the concept of the totality of the circumstances, officers should look at the entire record, including the DACA request, the supporting documents, the results of background and security checks, and any information obtained from routine systems checks.

One example of an inconsistency could be the use of different names.

- Officers might see name discrepancies in school or employment records.
- Name discrepancies, standing alone, may not necessarily be a fraud indicator.
- Officers need not issue an RFE for evidence of a legal name change or other evidence, or refer the case to CFDO, if they can reconcile the discrepancy by applying the totality of the circumstances test.





# Potential Fraud Indicators

In the DACA context, examples of ***potential*** fraud indicators could include:

(b) (7)(E)



U.S. Citizenship  
and Immigration  
Services

FOUO – Law Enforcement Sensitive

## Fraud Indicators (cont'd)

(b) (7)(E)

When needed, CFDO can call the State DOE to verify education.



FOUO - Law Enforcement Sensitive

# FDNS in the DACA Process

- The Fraud Detection and National Security (FDNS) Directorate administratively investigates allegations of immigration benefit fraud and produces a Statement of Findings (SOF) that adjudicators use to render their decisions.
- In the DACA context, the SOF will document all fraud findings and underlying issues impacting the favorable exercise of prosecutorial discretion.
- When adjudicating Forms I-821D and I-765 for DACA, officers will refer cases to the CFDO via a fraud referral sheet when there are articulable elements of fraud found within the filing. Officers will refer cases prior to taking any adjudication action even if there are issues which negate the exercise of prosecutorial discretion to defer removal.



FOUO – Law Enforcement Sensitive

# The Work Product You Can Expect From the CFDO

Officers can expect a complete SOF documenting the results of the following:

- Extensive systems checks
  - USCIS systems
  - LEA systems
  - Other government systems
- Electronic records
  - Commercial databases
  - Public records
  - Education systems
- Phone calls
  - Schools
  - State Departments of Education
  - Employers



FOUO – Law Enforcement Sensitive



## Limitations of the CFDO

- Interviews only in rare circumstances
- Schools may not be able to divulge information to the CFDO due to privacy laws – great variation in school documents.
  - As a result, the CFDO's inability to obtain any information from the school is not necessarily indicative of fraud.
- Always remember, many DACA requestors might have limited documentary evidence.
  - Sometimes one document can meet more than one guideline and other times, several documents, viewed together, can meet a single guideline.



# What Will You Receive from CFDO?

- Results of investigation documented in Statement of Findings (SOF)
- Fraud Found, Fraud Not Found, Inconclusive
- Fraud Found SOF can be used to issue a Notice to Appear
- One piece of the evidence puzzle



FOUO – Law Enforcement Sensitive

# CFDO Referrals and Responses

- The CFDO findings will be recorded in FDNS-DS and reported in an SOF and placed in the A-file to enable officers to make accurate and informed decisions on the DACA requests.
- Denials based on a finding of fraud must be recorded in C3.
- DACA cases denied due to confirmed fraud shall be referred for NTA issuance in accordance with the NTA memorandum dated November 7, 2011. The appropriate NTA charge will be determined on a case-by-case basis in consultation with local counsel.



FOUO – Law Enforcement Sensitive

# Inadmissibility Due to Fraud or Misrepresentation

Individuals requesting DACA are not subject to the 212 inadmissibility grounds, because they are neither applying for a visa nor seeking admission to the United States. Instead, they are seeking the exercise of for deferral of removal under DACA.

## If Fraud is found in a DACA request

The presence of confirmed or suspected fraud issues are germane in deciding whether it is appropriate to defer removal under DACA.

- As a result, when an individual is found to have committed fraud in connection with a DACA request, the DACA request is denied not because the individual is inadmissible due to fraud, but rather, because the fraud negates the exercise of discretion to defer removal.
- Denials are to be supported by a properly documented SOF.
- NTA issuance is in accordance with the NTA memorandum dated November 7, 2011.



FOUO – Law Enforcement Sensitive



# The Intelligence Compass

- Identifies trends and patterns in immigration, migrant flows, and fraud practices, as well as fraud indicators. It is an additional tool available to officers to assist them in established fraud detection procedures
- Does not in itself establish an element of fraud. It may assist officers in identifying additional lines of inquiry or identifying cases for further scrutiny or referral to Center Fraud Detection Operations (CFDO) or other FDNS officers
- No information in the Intelligence Compass will be used to determine the adjudication of any immigration benefit



FOUO – Law Enforcement Sensitive

# Module Objectives

The objective of this section is to :

- Understand plain language basics;
- Introduce the use of the standard DACA RFE templates, which are mandatory; and;
- Understand and apply the elements of the new RFE templates.



## Plain Language Basics

USCIS policy directs the use of plain language in RFEs, NOIDs, and other communications with its customers

Use of Plain Language in DACA-related RFEs and NOIDs:

- Shows customer focus
- Communicates more effectively
- Reduces time spent explaining
- Improves compliance
- Reduces ambiguity and complaints
- Reduces the likelihood of SRMTs or possible litigation



## Plain Language Basics (Continued)

A goal of Plain Language is that the intended message is clearly and completely understood the first time an individual reads the document.

To create Plain Language content for DACA communications use:

- Simple words
- Active voice
- “You” in place of “the requestor”
- Short sentences (approx. 20 words or less) and brief paragraphs (7 sentences or less)
- Bulleted lists
- Extra blank spaces on the page for readability.





# Word and Phrase Usage

<u>WORD TO AVOID</u>	<u>SUGGESTED ALTERNATIVES</u>
• allege	• state; explain; say; suggest
• claim	• state; explain; say; suggest
• failed to submit	• did not submit
• ludicrous	• not credible
• preposterous	• not credible
• merely	• only; or delete altogether
• outlandish	• not credible
• poppycock	• not credible
• prove	• show; establish
• ridiculous	• not credible



## Clear and Focused RFEs

A series of RFE templates have been created for DACA and are included in the DACA SOP. These DACA RFE templates will be loaded to all centers' common drive/correspondence generator. Use of these RFE templates is mandatory. Individualized, locally created RFEs shall not be used. When an officer encounters an issue for which there is no RFE template, the officer must work through his/her supervisor to identify the issue for SCOPS so that a template can be created.

- Better requests lead to better RFE responses.
- The DACA RFE templates implement standards from the RFE initiative.



## RFE Tips

- A key goal for DACA is consistency.
- Use the standard DACA RFE templates only.
- Add appropriate additional language to inform the requestor:
  1. What evidence was already submitted,
  2. Why the previously submitted evidence is deficient, and
  3. What evidence he/she needs to provide.



## Neutral Tone

- ISOs are “triers of the facts.” This means that RFEs will have a neutral tone and will weigh evidence to determine only whether the basic requirements have been met.



FOUO – Law Enforcement Sensitive



## Use of Legal Citation

- The RFE will use Plain Language. Officers should not insert any citations to statutes, regulations, case law, the AFM, etc.



# XI. Decision Systems Processing



FOUO – Law Enforcement Sensitive

# Module Objectives

The objective of this section is to:

- Provide a basic understanding of the requirements to properly update C3;
- Understand the C3 updates required for BCU and CFDO activity;
- Understand the supervisory review process for denials;
- Understand the categories that require supervisory review; and
- Introduce the mandatory DACA denial template.



FOUO – Law Enforcement Sensitive

## Processing Decisions

- All actions taken on a DACA request must be reflected on C3, including approval, continuation, denial or a customer service inquiry.
- Standard History Action Codes will be used with the exception of SRMT actions.
- Denials based on a fraud finding must reflect its designated History Action Code ["EC"].



FOUO – Law Enforcement Sensitive



# Processing Decisions BCU and CFDO C3 codes

- Cases being transferred to the BCU DACA Team – C3 shall be updated with ["FF5"] Sent to the Background Check Unit (BCU) for resolution.
- Cases being returned to Adjudications from the BCU DACA Team or just prior to final adjudications by the BCU DACA Team shall be updated with ["HCC5"] Received from Background Check Unit (BCU) with Resolution
- Cases being transferred to the CFDO with a fraud referral shall be updated with ["FF1"] Sent to the Fraud Detection Unit (FDU) for Analysis
- Cases being returned to Adjudications from the CFDO shall be updated with ["HCC1"] Returned from Fraud Detection Unit (FDU) with Results.



FOUO – Law Enforcement Sensitive

## Processing Decisions – Fraud Indicators

- If fraud indicators are present during the case review process, the case shall be forwarded to the CFDO with a completed fraud referral sheet prior to any further adjudicatory actions.
- If the case is returned with a finding of fraud, the filing shall be denied with a finding of fraud “EC”.



FOUO – Law Enforcement Sensitive

# Processing Decisions – RFE

For DACA requests, when requesting additional evidence, an RFE will be used. A NOID will rarely be used. Appendix D has a list of DACA RFE call ups to be used when processing a DACA request

Follow the steps below to process an RFE:

Step	Action
1	Access "Additional Case" and review the Service Center's decision on the RFE.
2	Access the RFE and review the "Case Review" section.
3	<p>Section:</p> <ul style="list-style-type: none"> <li>• Review the Service Center's decision.</li> <li>• Review the RFE and review the "Case Review" section.</li> </ul>
4	Access the RFE and review the "Case Review" section.
5	Access the RFE and review the "Case Review" section.
6	Access the RFE and review the "Case Review" section.
7	Access the RFE and review the "Case Review" section.
8	Access the RFE and review the "Case Review" section.



FOUO – Law Enforcement Sensitive

# Processing Decisions – NOID

Following a determination to issue a NOID, the Service Center must take the following steps to process the NOID.

Step	Action
1	Access "Administrative Case" and verify the case is properly entered into the system.
2	Process NOID.
3	Screen: <ul style="list-style-type: none"> <li>• Case Review</li> <li>• Process for Submission</li> <li>• Review for Denial Notice Preparation</li> </ul>
4	Process ISC and verify the case is properly entered into the system.
5	Review and submit the NOID.
6	Print Summary Report and verify the case is properly entered into the system.
7	Review the case and verify the case is properly entered into the system.

Best Reproducible Copy Available



U.S. Citizenship  
and Immigration  
Services

FOUO – Law Enforcement Sensitive



# Processing Decisions – Approvals

After a decision to approve an initial I-821D, the Service Center must follow the steps below to process an approval for a DACA request.

Step	Action
1	Perform TECS checks.
2	Place your approval stamp and signature in the "Action Block" of the I-821D and note the validity dates directly under the approval stamp.
3	Access "Adjudicate A Case" and wand in the receipt number of the Form I-821D.
4	From the I-821D (I-821, with "3" in Part 2) screen: <ul style="list-style-type: none"> <li>• Press [F10] and select "Approve the Case".</li> <li>• Then select "Approve - Order Notice" to access the approval screen.</li> </ul>
5	Select the appropriate approval phrase.
6	Complete the following fields: <ul style="list-style-type: none"> <li>• The valid from date is the date of approval.</li> <li>• The valid to date is 2 years from date of approval.</li> <li>• Send to Clerical – <b>always</b> change the "Y" to an "N".</li> </ul>
7	Press [F4] to save. You will be asked if you want to change case status. Select "Yes".
8	Press [ESC] until you are asked to exit.
9	Put in ROP order and place a pink coversheet on the left-hand side of the file.



U.S. Citizenship  
and Immigration  
Services

FOUO – Law Enforcement Sensitive

## Processing Decisions – Denials

- A denial template has been created for DACA and is included in the DACA SOP. This DACA denial template will be loaded to all centers' common drive/correspondence generator. Use of this denial template is mandatory. Individualized, locally created denials shall not be used. When an officer encounters an issue for which there is no check box on the denial template, the officer must work through his/her supervisor to identify the issue for SCOPS so that the template can be amended.



## Appendix F

### NOTICE OF DENIAL OF CONSIDERATION OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS, FORM I-821D

USCIS has evaluated your Form I-821D, Consideration of Deferred Action for Childhood Arrivals. For the reason(s) indicated below, USCIS has, in its unreviewable discretion, determined that it will not defer action in your matter. Accordingly, your Form I-765, Application for Employment Authorization, has also been denied. Deferred action is a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion. You may not file an appeal or motion to reopen/reconsider this decision.

- ☐ You are under age 15 and are not in removal proceedings; do not have a final removal order, and do not have a voluntary departure order.
- ☐ You have failed to establish that you came to the United States under the age of sixteen (16).
- ☐ You have failed to establish that you were under age 31 on June 15, 2012.
- ☐ You have failed to establish that you have continuously resided in the United States since June 15, 2007, until the date of filing your request.
- ☐ During your period of residence in the United States, you had one or more absences that did not qualify as "brief, casual, and innocent."
- ☐ You have failed to establish that you were present in the United States on June 15, 2012 and that you were lawfully present in the United States on that date.
- ☐ You have failed to establish that you are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or that you are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States.
- ☐ You have been convicted of a felony or a significant misdemeanor, or you have been convicted of three or more misdemeanors, or you otherwise do not warrant a favorable exercise of prosecutorial discretion because of national security or public safety concerns.
- ☐ You have failed to pay the fee for your concurrently filed Application for Employment Authorization, Form I-765, and/or your biometrics fee, because your payment has been rejected for insufficient funds and you have failed to correct the fee deficiency within the allowed time.
- ☐ You failed to appear for the collection of biometrics at an Application Support Center.
- ☐ You failed to respond to a Request for Evidence within the time prescribed.



U.S. Citizenship  
and Immigration  
Services

FOUO - Law Enforcement Sensitive

DACA Denial Template

# Processing Decisions – Denials (Continued)

## Supervisory Review on Denials

Officer must obtain supervisory review before entering the final determination if the denial is based upon:

1. Conviction as an adult for crime committed as a minor;
2. Convicted of a "significant misdemeanor";
3. No criminal convictions, but there are credible reasons to believe the requestor poses a threat to national security or public safety. In these instances the officer should refer the proposed denial for supervisory review after CARRP vetting has been completed;
4. Departures during the CR period do not seem to be "brief, casual, and innocent";
5. Respondent is not "currently in school," but claims that he/she meets the guidelines based on enrollment in a non-academic or vocational class, or
6. The CFDO has issued a statement of findings with confirmed fraud.



U.S. Citizenship  
and Immigration  
Services

FOUO – Law Enforcement Sensitive



## Processing Decisions – Denials (Continued)

When the denial falls under one of the categories that requires supervisory review, ensure that concurrence has been obtained before processing the DACA request for denial.

Step	Action
1	Perform TECS checks.
2	Access "Adjudicate a Case" and wand in the barcode on the I-821D
3	Press [F10].
4	Select: <ul style="list-style-type: none"> <li>• "Deny the Case".</li> <li>• "Order Denial Notice".</li> <li>• "Yes" to the prompt, "Change Case Status?"</li> </ul>
5	Remove the Supervisor Hold: <ul style="list-style-type: none"> <li>• Press [ALT] + [F8] at the same time.</li> <li>• Enter User ID and Password.</li> <li>• Press [F4].</li> <li>• Select "Confirm Action".</li> </ul>
6	Press [ESC] until you are asked to exit.
7	Place your denial stamp and signature in the "Action Block" of the I-821. <b>NOTE:</b> The date on the denial stamp should be the date of adjudication.
8	Prepare and send the denial.
9	Put in ROP order and place a pink coversheet on the left-hand side of the file over the denial stamp.
	765 for denial. See Chapter 12.



U.S. Citizenship  
and Immigration  
Services

FOUO – Law Enforcement Sensitive

# Processing Decisions - Abandonment Denials

Abandonment denials are initiated on Form I-821D in the following instances:

- Failure to respond to an RFE or NOID;
- Failure to appear at an ASC for biometrics collection within the specified time frame.

Process the I-821D abandonment denial only after all A-files are retrieved.

Step	Action
1	<p>Ensure that no other addresses exist:</p> <ol style="list-style-type: none"> <li>1. Review the file for any correspondence received,</li> <li>2. Review the returned envelope for any changes from the post office,</li> <li>3. Check C3, National Claims, and AR11 for an alternate address or an address change, and</li> <li>4. Check the systems to see if a more recent DACA request was submitted with updated address.</li> <li>5. Check Forms I-821D and I-765 to ensure that there is no different address provided between the two forms.</li> </ol>
2	Perform TECS checks.
3	Access "Adjudicate a Case".
4	Press [F10].
5	<p>Select:</p> <ul style="list-style-type: none"> <li>• Deny the Case.</li> <li>• Order "Abandonment Denial Notice", if denial paragraph information pops up, press "ESC" once.</li> </ul>



U.S. Citizenship  
and Immigration  
Services

pt "Change Case Status?"

203

FOUO – Law Enforcement Sensitive

*continued...*

# Processing Decisions - Abandonment Denials (Continued)

Step	Action
6	<p>Remove the Supervisory Hold at the main screen:</p> <ul style="list-style-type: none"> <li>• Press [ALT] + [F8] at the same time.</li> <li>• Enter User ID and password.</li> <li>• Press [F4].</li> <li>• Select "Confirm Action".</li> </ul>
7	Press [ESC] until you are asked to exit.
8	<p>Place your denial stamp and signature in the "Action Block" of the I-821D.</p> <p><b>NOTE:</b> The date on the denial stamp should be the date of adjudication.</p>
9	Prepare and send the denial.
10	Put in ROP order and place a pink coversheet on the left-hand side of the file over the denial letter.
11	Process the Form I-765 for denial. See Chapter 12.



FOUO – Law Enforcement Sensitive

## Processing Decisions - Abandonment Denials (Continued)

- **NOTE:** If the RFE/NOID was not stamped as a “No Response,” the officer should write it on the document. A “No Response” will ALWAYS remain on top of the request for proper ROP and the officer will place the denial/withdrawal letter on top of the “No Response.”

When notices are returned as undeliverable, the officer should:

- Review the file and systems for any change of address
- Check both Form I-821D and the I-765 to ensure that there is no difference between the provided addresses.

When an RFE, NOID, or NOIT is returned to the Service Center as undeliverable, the officer should update C3, follow all procedures above to locate a new address. If a new address is found, re-mail the RFE, NOID, or NOIT.



FOUO – Law Enforcement Sensitive



## Post Denial Process - NTA

After a DACA denial, take the following post-denial processing steps to determine if an NTA or other further action is required.

1. Review the grounds for denial.
2. If the denial grounds do not involve criminal, national security, or public safety issues, hold the A-file for 45 days and then forward to the NRC if a request to review is not received through SRMT.
3. If the denial involves criminal, national security, or public safety issues, refer to the November 7, 2011 NTA memo. Confirmed fraud denials also warrant NTA issuance.
4. The NTA unit will determine whether NTA issuance is appropriate under the NTA memo referenced above.



FOUO - Law Enforcement Sensitive

## Exercise

### Question:

When is supervisory review required before issuing a denial?



FOUO – Law Enforcement Sensitive

## Returned Mail

If a DACA denial is returned to the Service Center as undeliverable, follow all procedures above to locate a new address and re-mail the denial.

If there is no new address and the 45 days...	Then...
Have <del>NOT</del> passed,	None
Have passed,	Send to the NRC if no further communication is received



U.S. Citizenship  
and Immigration  
Services

FOUO – Law Enforcement Sensitive

## Returned Mail (Continued)

If mail is returned as undeliverable and no other address is found:

- If the response time indicated has not yet passed, the file should be placed on hold in accordance with local procedures for the remainder of the response time.

If there is no other address found and the response time has passed on the	Then
REF	Deny as no address found
NOA (with NO comment)	Deny for EO 13526
NOA (with NO comment)	Deny for EO 13526



FOUO – Law Enforcement Sensitive



# XII. Responding to Requests to Review Certain Denials



FOUO – Law Enforcement Sensitive

## Module Objectives

The objective of this section is to provide a basic understanding of:

- The denial grounds which may be reviewed through the SRMT process; and,
- Responding to a request for review.



FOUO – Law Enforcement Sensitive

# Requests for Review

- DACA requestors cannot file a Motion to Reopen or Reconsider and cannot appeal denial of their Form I-821D. However, DACA requestors may request review of certain denials using the Service Request Management Tool (SRMT) process if there is a claim that the denial was incorrect or the denial is based on administrative error. The denial grounds that may be reviewed through the SRMT process include:
  - The requestor did not come to the United States prior to reaching his/her 16<sup>th</sup> birthday;
  - The requestor was under the age of 15 at the time of filing, but not in removal proceedings;
  - The requestor was not under the age of 31 on June 15, 2012;
  - The requestor was not in an unlawful immigration status as of June 15, 2012;
  - The requestor was not physically present in the United States on June 15, 2012;
  - The requestor did not appear to have biometrics collected at a USCIS ASC;
  - The requestor did not request to have his/her biometrics appointment at a USCIS ASC rescheduled prior to the scheduled date;
  - The requestor failed to pay the filing and biometric fees for the Form I-765; and
  - The requestor failed to respond to an RFE (including claims the USCIS possibly mailed the RFE to the incorrect address).



# Responding to Requests to Review

- Standard responses, to include some interim responses, have been developed to inform the requestor that his/her denial has been reopened on a service motion and that the denial is correct or incorrect.
- In addition, Special History Action Codes (HAC), which have been developed in order to track the requests for review, are to be used when responding to a request to review. See Chapter 13 of the DACA SOP for a list of these codes and their appropriate use.





# XIII. DACA Termination



FOUO – Law Enforcement Sensitive

# Module Objectives

The objective of this section is to provide a basic understanding of:

- What termination is;
- When it is appropriate to terminate; and,
- The process for termination.



FOUO – Law Enforcement Sensitive

# DACA Termination - General Ineligibility

## If removal under DACA was improperly deferred

- Reopen the case on Service Motion and issue a Notice of Intent to Terminate (NOIT).
- The DACA requestor has 33 days to respond to the NOIT and provide a brief or statement contesting the grounds cited in the intent to terminate.
- If the adverse grounds are not overcome, or no response is received to the NOIT, the officer should prepare a termination letter and seek supervisory review of the draft termination letter prior to issuance.
- Adjudicating officers must ensure C3 is updated using the newly created HACs.



## DACA Termination – Fraud or Misrepresentation

- If an officer subsequently learns that a DACA requestor committed fraud related to seeking the DACA request, the officer should reopen the case on Service Motion and issue a NOIT indicating the fraud/misrepresentation.
- The decision to issue a NOIT based on fraud should be supported by a fully documented Statement of Findings (SOF) and any other relevant documents/information.
- The requestor is allowed 33 days to respond to the NOIT.
- If the adverse grounds are not overcome, or no response is received to the NOIT, the officer should prepare a termination letter and seek supervisory review of the draft termination letter prior to issuance.
- The terminated DACA case must be recorded in FDNS-DS.
- Adjudicating officers must ensure C3 is updated using the newly created HACs.





## DACA Termination – Criminal, NS, or Public Safety Issues

- If disqualifying criminal offenses or public safety concerns, which are deemed to be EPS, arise after removal has been deferred under DACA, the officer should forward the case to the BCU DACA Team who in turn, will refer the case to ICE and follow the handling procedures outlined in the November 7, 2011 NTA memorandum for EPS cases.
- If ICE does not accept the case or if the disqualifying criminal offense is non-EPS per the November 7, 2011 NTA memorandum, the BCU DACA Team will process the case for termination and forward the individual's name to ERO.
- If national security concerns arise after removal has been deferred under DACA, the case should go through the CARRP process, per established CARRP protocols .



# XIV. Employment Authorization Request



FOUO – Law Enforcement Sensitive

# Module Objectives

The objective of this section is to provide a basic understanding of:

- The legal authority for employment authorization based on deferral of removal under DACA;
- The forms required for an employment authorization request under DACA;
- How an individual might show economic necessity; and
- Requests for replacement EADs.



FOUO – Law Enforcement Sensitive

## Employment Authorization under DACA

- The Secretary's memorandum provides that individuals whose removal has been deferred under DACA may receive employment authorization.
- The eligibility category for employment authorization based on a grant of deferred action is 8 CFR 274.12(c)(14) and requires a showing of economic necessity.
- To identify DACA-related EADs, the (c)(33) code will be used.
  - DACA requestors have been instructed to note the (c)(33) code on their Form I-765.
- The EAD is predicated on deferred action under DACA. Therefore, the 90-day EAD clock on the Form I-765 begins after Form I-821D is approved.





# Employment Authorization Under DACA (Continued)

Forms I-821D and I-765, with Form I-765WS must be concurrently filed.

The new Form I-765WS is a worksheet designed to capture the information about the requestor's income, expenses, and assets needed for the economic necessity determination.

- To streamline the adjudication of the employment authorization application, the I-765WS should have been reviewed while adjudicating the Form I-821D.
- To assist officers, at intake, the Lockbox will place the I-765WS in ROP order behind the Form I-821D.

Form I-765 cannot be approved unless Form I-821D has been approved.



FOUO – Law Enforcement Sensitive

## Processing

While it is contemplated that the same officer will routinely adjudicate both Forms I-821D and I-765, when that is not the case and you are adjudicating only Form I-765, review C3 to ensure that there is no outstanding RFE and that Form I-821D has been approved.

- The RFE would have been issued on Form I-765 during the adjudication of Form I-821D.
- The RFE on Form I-765 does not preclude adjudication of, and should not routinely delay Form I-821D.



## Showing Economic Necessity

- An EAD based on deferred removal under DACA requires a showing of economic necessity.
- If Form I-765WS has been completed, review the information provided regarding current income, assets, and expenses to determine whether economic necessity has been established. The requestor may, but need not, include supporting documents with Form I-765WS.
- There is a general presumption that DACA requestors will need to work given their undocumented circumstances and the fact that they are not generally anticipated to have independent means. Absent evidence of sufficient independent financial resources, the Form I-765WS is sufficient to establish economic need, without any further economic analysis.



FOUO – Law Enforcement Sensitive

## Showing Economic Necessity (Continued)

### If I-765WS is Incomplete or Not Presented

- If the Form I-765WS is blank or the form is missing, an officer must issue an RFE on the I-765 (not the Form I-821D).
  - EXCEPTION: There is a very limited fee exemption available. If the DACA requestor has been granted a fee exemption, which will display as a fee waiver in C3, **DO NOT** RFE for the completed I-765WS.
- If an officer issues an RFE on the I-765, he/she should proceed with adjudication of the I-821D.
- When the response to the I-765 RFE is received and the I-765 is approved, the expiration date of the EAD should be for 2 years or the end date of the deferred removal under DACA, whichever is earlier.
- If the requestor does not respond to the I-765 RFE, the I-765 should be denied for abandonment.



U.S. Citizenship  
and Immigration  
Services

FOUO – Law Enforcement Sensitive



## The (c)(33) EAD

If removal is deferred under DACA, action can be taken on the Form I-765. If the Form I-765 is approved, a (c)(33) EAD will be issued with a 2 year validity from the date of the approval, or to the end of the deferred removal under DACA, whichever is earlier.



FOUO – Law Enforcement Sensitive

## Replacement EADs

### Evidence Required:

- Biometrics from the applicant's most recent ASC visit.
- Original signature.
- Current card issued with validity dates that have NOT expired (unless the individual is requesting to replace a lost/stolen EAD).

**Validity Dates:** When issuing a replacement card, the validity period should mirror the dates authorized under the previous card.

**Biometrics:** Upon receipt, the contractor will clone from biometrics from the applicant's most recent ASC visit.

**Note** – Reminder, NBC will process all stand-alone initial DACA EADs when the (c)(33) is based upon an ICE determination.



FOUO – Law Enforcement Sensitive

# XV. Processing Form I-131, Application for Travel Document



FOUO – Law Enforcement Sensitive

## Module Objectives

The objective of this section is to provide a basic understanding of:

- The advance parole requirements for individuals whose removal has been deferred under DACA:
- How to apply these requirements; and
- The advance parole processing and validity periods.





## Advance Parole

Parole is the authorization to allow an otherwise inadmissible person to physically proceed into the United States under certain safeguards and controls. Parole is not an admission.

Parole is granted on a case-by-case basis for urgent humanitarian reasons or significant public benefit.

Advance parole is generally granted prior to the individual's departure from the United States to authorize that person's temporary parole upon his/her return to the United States following a brief absence.

The legal authority for parole is found in INA 212(d)(5)(A).



FOUO – Law Enforcement Sensitive

## Advance Parole (Continued)

In accordance with the discretionary authority provided in INA 212(d)(5)(A), grants of advance parole to DACA recipients may be made based on the need to travel abroad for educational, employment, or humanitarian purposes.

- These categories are to be construed broadly, but must be supported with evidence demonstrating the need to travel.



## Advance Parole - DACA Recipients

A DACA requestor may not concurrently file Form I-131 for advance parole with his/her DACA request.

A DACA recipient may file an advance parole request with a copy of the I-797 notice deferring removal under DACA.



FOUO - Law Enforcement Sensitive

# Advance Parole Requested for Educational Purposes

If the DACA recipient is requesting advance parole to travel for educational purposes, the individual must show that the travel will be undertaken for educational pursuits.

Examples include:

- Semester abroad programs; or
- Travel necessary to conduct academic research.



FOUO – Law Enforcement Sensitive



## Advance Parole – Expedite Requests

As a general matter, expedite requests will not be granted.

However, in a dire emergency, and if properly documented and verified, if an individual were to appear at a local office, the local office has the option of processing the advance parole or working through established POCs at the Service Center under normal protocols.



FOUO – Law Enforcement Sensitive

## Impact of Travel Without Advance Parole

Deferred Action is terminated automatically if an individual travels outside the United States without advance parole after removal has been deferred under DACA.



FOUO – Law Enforcement Sensitive

# Advance Parole for DACA Recipients in Removal Proceedings

Individuals in removal proceedings, including those with final removal orders, may seek advance parole if the request meets the guidelines for advance parole consideration under DACA.

A departure made while under a final order of removal (including a voluntary departure order that converted automatically to a final removal order) renders that individual inadmissible under INA 212(a)(9)(A).



FOUO – Law Enforcement Sensitive



U.S. Citizenship  
and Immigration  
Services

# Deferred Action for Childhood Arrivals -SRMT Guidance-

SCOPS-HQ, August 2012



# Objectives

At the end of this workshop, officers will learn how to respond to DACA-related requests through the Service Request Management Tool (SRMT) process. Officers will:

- Understand what DACA is;
- Understand the basic authority for deferred action in general;
- Understand the Secretary's specific guidelines for DACA;
- Learn how to respond to a DACA-related SRMT while a DACA request is still pending;
- Learn how to respond to a request to review a denied DACA request; and
- Learn how to resolve potential inconsistencies.



U.S. Citizenship  
and Immigration  
Services

## Key Resources

Officers will have a number of key resources at their disposal. These include:

- The Secretary's memorandum and related FAQs;
- The national DACA SOP;
- The AFM; and
- USCIS systems.



U.S. Citizenship  
and Immigration  
Services

# I. DACA Overview



U.S. Citizenship  
and Immigration  
Services



# Module Objectives

The objective of this section is to provide a basic understanding of:

- The authority for exercising prosecutorial discretion;
- The authority and intent behind DACA;
- DACA terms; and
- DACA challenges.



U.S. Citizenship  
and Immigration  
Services



# Authority for Deferred Action

Under INA 103, the Secretary has the authority to administer the immigration laws.

- Includes the authority for the Secretary to exercise her discretion in deciding when and how to remove individuals from the United States.

There are no specific deferred action provisions in the statute or the regulations.

- Deferred action is not a benefit and does not confer any status.
- Deferred action does not lead to any status.
- Deferred action simply means that action to remove someone is deferred until a certain date and that the decision to pursue removal may be revisited at some point in the future.



U.S. Citizenship  
and Immigration  
Services

# Authority and Intent for DACA

## DACA is Derived Action for Childhood Arrivals

On June 15, 2012, the Secretary issued a memo to CBP, USCIS, and ICE, describing the guidelines for exercising prosecutorial discretion in cases involving certain young people who arrived in the United States as children.

The intent behind the Secretary's memorandum is to prioritize resources on high priority removal cases.

There is a basic recognition that individuals brought to the United States as young children lacked the intent to violate the law.



U.S. Citizenship  
and Immigration  
Services



# DACA Terms

Since deferred action is not a benefit, different terms are used for DACA.

Instead of:

- *Application*, use request.
- *Applicant*, use requestor (or DACA requestor).
- *Approve or grant*, use defer removal, defer action under DACA, etc.
- *Must, should, or shall*, use is to be.



U.S. Citizenship  
and Immigration  
Services

# DACA Implementation

Deferred action requests under standard protocols (i.e., non-DACA) do not require a form or fee.

For DACA, USCIS:

- Is conducting extensive stakeholder outreach;
- Has created a DACA video, a DACA website, and has published a series of FAQs; and
- Created a new Form I-821D, *Consideration of Deferred Action for Childhood Arrivals*.



U.S. Citizenship  
and Immigration  
Services



# DACA Implementation (Continued)

Form I-821D allows USCIS to:

- Collect the information and documents needed to determine whether the Secretary's DACA guidelines have been met;
- Track the intake and workflow of DACA requests;
- Perform background and security checks on DACA requests;
- Request additional information when needed;
- Enter the adjudicative actions in the system;
- Track the status of the DACA request and respond to customer inquiries;
- Track statistics; and
- Position the Agency for potential renewal in 2 years.



U.S. Citizenship  
and Immigration  
Services



# DACA Implementation (Continued)

The Secretary's memorandum allows DACA requestors to obtain work authorization based on economic necessity.

- Existing regulations are at 8 CFR 274a.12(c)(14) – based on a grant of deferred action.
- The (c)(33) code will be used to distinguish DACA-related EADs.

DACA requestors are required to concurrently file Form I-765, Application for Employment Authorization, with the new I-765WS, together with their Form I-821D. This allows USCIS to:

- Streamline the process by adjudicating the EAD request concurrently with the DACA request; and
- Collect biometrics at Application Support Centers (ASCs).

The Lockbox will reject Form I-821D if it is not filed concurrently with Form I-765.



U.S. Citizenship  
and Immigration  
Services

# DACA Challenges

- Since deferred action is not a benefit, it does not fit squarely within the regulations.
  - This makes DACA requests different from benefit applications that officers are accustomed to adjudicating.
- Although the regulations are useful resources, the guiding principles derive from the overarching discretionary authority to defer someone's removal and the Secretary's DACA guidelines.



U.S. Citizenship  
and Immigration  
Services



# DACA Challenges (Continued)

DACA requestors arrived in the United States as children.

- Depending on their age, they may or may not have documentation of their own.
- Officers may see documents from the DACA requestor's parents, for example, rent receipts or utility bills.
- One piece of evidence might satisfy more than one guideline. For example, school transcripts can also show residence, age, and arrival before age 16.
- Because some DACA requestors may have been working under assumed names, name discrepancies, standing alone, will not necessarily be a fraud indicator.
- Officers will be looking at the documents in their totality to see how they add up, and, if necessary, will issue an RFE to resolve discrepancies.
- Cases could be referred to the CFDO for further research if the discrepancies have not been resolved.



U.S. Citizenship  
and Immigration  
Services



## II. Required Forms and Fees



U.S. Citizenship  
and Immigration  
Services

## Module Objective

The objective of this section is to provide a basic understanding of:

- The Forms required to file a DACA request.



U.S. Citizenship  
and Immigration  
Services

# The DACA Request

## Each DACA request must include:

- Form I-821D, *Consideration of Deferred Action for Childhood Arrivals*;
  - There is no fee for Form I-821D.
- Form I-765, *Application for Employment Authorization* with I-765 WS;
- Basic I-765 filing fee and the biometrics services fee; and
  - Total fee of \$465 (or proof of fee exemption approval).
  - Fee exemption will appear as fee waived in C3.
- Documentary evidence to meet the DACA guidelines.



U.S. Citizenship  
and Immigration  
Services



# The DACA Request (Continued)

There is no derivative DACA.

- Requestors must file requests individually.
- Requestors must meet the DACA guidelines in their own right.

Form I-821D is a discrete form for DACA designed to address each guideline and should not be confused with Form I-821 used for TPS.

Some data elements that are not germane to DACA are not on the I-821D. For example:

- Inadmissibility; and
- Information about relatives.



U.S. Citizenship  
and Immigration  
Services



# The DACA Request (Continued)

- A new worksheet, Form I-765WS, has been created to capture the information needed to determine economic necessity for the EAD.
- Form I-765WS asks the requestor to provide basic information about his/her current income, annual expenses, and total value of assets.



U.S. Citizenship  
and Immigration  
Services

### III. Pertinent CLAIMS 3 Fields



U.S. Citizenship  
and Immigration  
Services

# Module Objective

The objective of this section is to show:

- Form I-821D category displayed in CLAIMS 3



U.S. Citizenship  
and Immigration  
Services



## How Form I-821D Will be Displayed in C3

For DACA requests, all pertinent fields will be populated in CLAIMS 3 (C3) into the Form I-821 screen, but with a new category "3" to show it is actually a DACA request, not TPS.

While Forms I-821 for TPS, and I-821D for DACA are very similar, when Form I-821 appears in CLAIMS with category "3" (to denote that it is actually an I-821D for DACA), only those fields pertaining to the DACA request will be active.

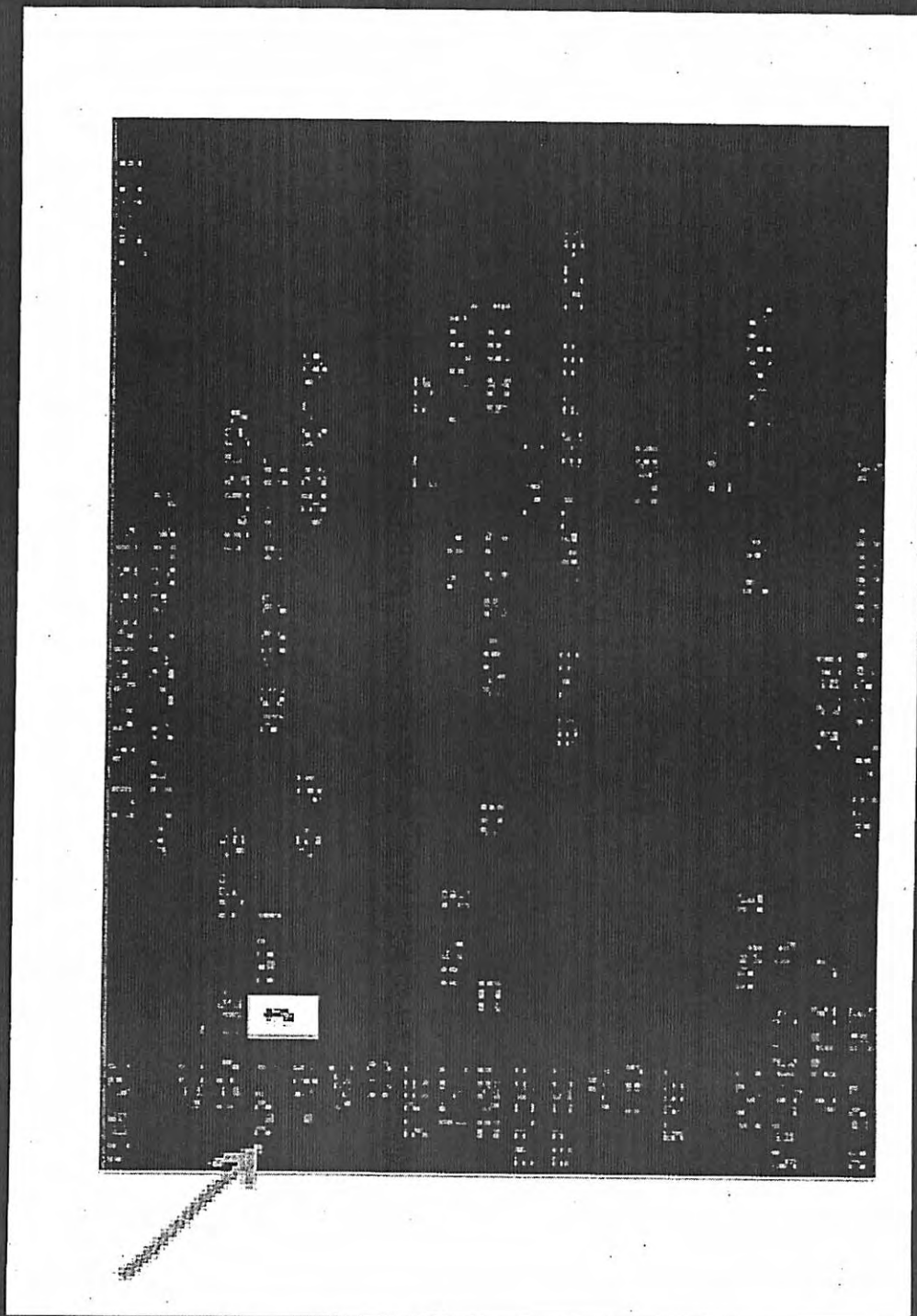


U.S. Citizenship  
and Immigration  
Services



# A View of Form I-821D in C3

Best Reproducible Copy Available



# IV. DACA Guidelines



U.S. Citizenship  
and Immigration  
Services

# Module Objectives

The objective of this section is to provide a basic understanding of:

- The basic DACA guidelines.
- The discretionary nature of deferred action;
- Examples of evidence that a requestor may submit to show he/she meets the DACA guidelines



U.S. Citizenship  
and Immigration  
Services

U.S. Citizenship and Immigration Services



# Basic DACA Guidelines

The requestor is to show, by a preponderance of the evidence, that he/she meets the guidelines for deferral of removal under DACA.

An individual meeting the following guidelines may be favorably considered for DACA if, under the totality of the circumstances, he/she:

- Was in unlawful status as of June 15, 2012;
- Is at least 15 years of age on the date of filing;
  - If in removal proceedings, can be under 15.
- Arrived in the United States prior to reaching his/her 16th birthday;
- Has continuously resided in the United States since June 15, 2007, up to the time the request for consideration of deferred action for childhood arrivals is submitted;



U.S. Citizenship  
and Immigration  
Services



# Basic DACA Guidelines (Continued)

- Was present in the United States on June 15, 2012;
- Is currently in school, graduated from high school, obtained a general educational certificate (GED), is currently enrolled in an accredited GED program, or is an honorably discharged veteran of the Coast Guard or U.S. Armed Forces;
- Was born after June 15, 1981 (i.e., was not age 31 or older on June 15, 2012);
- Has not been convicted of a felony offense, a significant misdemeanor offense, or three or more non-significant misdemeanor offenses; and
- Does not otherwise pose a threat to national security or public safety.



U.S. Citizenship  
and Immigration  
Services

# Applying the DACA Guidelines -- Identity

Each DACA requestor is to establish his/her identity

Examples of acceptable evidence include:

- Passport;
- Birth certificate, accompanied by some form of photo identification;
- National ID document from the requestor's country of origin bearing the requestor's photo and/or fingerprint;
  - Includes a Matricular consular document issued by the consulate or embassy in the United States.
- U.S. Government immigration or other document bearing the requestor's name and photo;
- School-issued ID with photo;
- Military ID with photo; or
- Any other relevant document.



U.S. Citizenship  
and Immigration  
Services

FOUO - Law Enforcement Sensitive



# Applying the DACA Guidelines -- Age at Time of Filing

To establish age at the time of filing, the requestor can submit his/her birth certificate or other acceptable secondary evidence establishing date of birth.

- The requestor's date of birth will be on several documents, and possibly in our systems.
- Age is a fundamental guideline. Officers will work closely with their supervisor to reconcile discrepancies.

**Note:** SRMT requests for data changes, such as date of birth and name, should be routed to the file for review during adjudication.



U.S. Citizenship  
and Immigration  
Services

## Applying the DACA Guidelines -- Age at Time of Filing (Continued)

### **Requestors NOT in Removal Proceedings**

- The DACA requestor is to be age 15 or older at the time of filing.

### **Requestors IN Removal Proceedings**

- A DACA requestor in removal proceedings may be under age 15 at the time of filing the DACA request.
- In removal proceedings includes:
  - Administratively closed cases;
  - Having an order of voluntary departure after proceedings were initiated (which can be an alternate order of VD/removal); or
  - A final removal order.
- The requestor should be noting this on the Form I-821D.
- The requestor should already have an A-file, with documents relating to the removal proceedings.
- Systems checks should also indicate that the requestor is in removal proceedings.



U.S. Citizenship  
and Immigration  
Services



## Applying the DACA Guidelines -- Age on June 15, 2012

To meet this guideline, the requestor must have been born on or after June 15, 1981.

The requestor can submit his/her birth certificate or other acceptable secondary evidence establishing his/her date of birth.



U.S. Citizenship  
and Immigration  
Services

# Applying the DACA Guidelines -- Unlawful Status as of June 15, 2012

## Unlawful status means:

- Lawful immigration status expired as of June 15, 2012;
- The requestor EW'd before June 15, 2012 and the requestor did not obtain any lawful status by that date ; or
- If paroled into the United States, the requestor's parole expired as of June 15, 2012 and the requestor did not obtain an extension or any other lawful status by that date.

Part 1 of Form I-821D asks for date of initial entry and status at entry.



U.S. Citizenship  
and Immigration  
Services



# Applying the DACA Guidelines -- Unlawful Status as of June 15, 2012 (Continued)

Examples of documents that may show the requestor's immigration status on June 15, 2012 include, but are not limited to the following:

- I-94/I-95/I-94W Arrival/Departure Record showing the date the requestor's authorized stay expired;
- If the requestor has a final order of exclusion, deportation, or removal issued on or before June 15, 2012, a copy of that order and related charging documents, if available;
- An INS or DHS charging document placing the requestor into deportation, exclusion, or removal proceedings;
- Any other document that is relevant to show that the requestor lacked lawful immigration status on June 15, 2012; or
- Any document relating to parole.



U.S. Citizenship  
and Immigration  
Services

# Applying the DACA Guidelines -- Arrived Before Age 16

The DACA requestor is to establish that he/she arrived in the United States before his/her 16th birthday.

- The response to Part 1, questions 13 through 17 of Form I-821D will provide the date of initial entry into the United States.
- The response to question 6 in Part 1 and the requestor's birth certificate or other acceptable evidence will establish the requestor's date of birth.
- The answers to these 2 questions on Form I-821D, combined with evidence of the requestor's date of birth, will establish this guideline.



U.S. Citizenship  
and Immigration  
Services



## Applying the DACA Guidelines -- Continuous Residence (CR)

The DACA requestor is to submit evidence that he/she has resided continuously in the United States since June 15, 2007, or earlier, and up to the present time.

- Present time means the date of filing the DACA request.

A DACA requestor can establish continuous residence even if he/she had a brief absence from the United States.

- The absence must be brief, casual, and innocent and have occurred before August 15, 2012.
- Travel occurring after August 15, 2012, will not be considered brief, casual, and innocent, unless removal has been deferred under DACA and advance parole has been granted.



U.S. Citizenship  
and Immigration  
Services

# Applying the DACA Guidelines -- CR (Continued)

Examples of evidence establishing that an absence was brief, casual, and innocent and therefore did not interrupt the requestor's continuous residence include, but are not limited to:

- Plane or other transportation tickets or itinerary showing the travel dates;
- Passport entries;
- Hotel receipts showing the dates the requestor was abroad;
- Evidence of the purpose of the travel (e.g., the requestor attended a wedding or funeral);
- Copy of any advance parole documents; or
- Any other relevant/probative evidence that could support a brief, casual, and innocent absence.

Note that a departure made while under an order of voluntary departure or deportation, exclusion, or removal is not brief, casual, and innocent.



U.S. Citizenship  
and Immigration  
Services



# **Effect of Travel Outside the U.S. After 8/15/12**

## **Travel outside the United States after August 15, 2012 and before the DACA request is filed:**

- The departure interrupts CR; CR not met.

## **Travel outside the United States while the DACA request is pending:**

- The requestor abandons the DACA request; deny for abandonment.

## **Travel outside the United States after removal has been deferred, but without advance parole:**

- Deferred action under DACA is terminated automatically.



U.S. Citizenship  
and Immigration  
Services

# Applying the DACA Guidelines -- Present in the U.S. on 6/15/12

The DACA requestor is to establish that he/she was present in the United States on June 15, 2012.

- The responses to Part 1 regarding the date of entry, status at entry, and date the authorized stay expired, and the responses to the questions in Part 2 regarding all absences from the United States since June 15, 2007, together with the evidence submitted, will show whether this guideline is met.



U.S. Citizenship  
and Immigration  
Services



# Examples of Acceptable Evidence for CR and Presence in U.S. on 6/15/12

## Evidence

### Acceptable Documentation

- |                          |  |
|--------------------------|--|
| Employment Records       | <ul style="list-style-type: none"><li>• Pay stubs;</li><li>• W-2 Forms;</li><li>• Federal, State, or local income tax returns; or</li><li>• Letters from employer(s) or, if the DACA requestor has been self-employed, letters from banks, and other firms with whom he/she has done business.</li></ul> |
| Receipts, Bills, Letters | <ul style="list-style-type: none"><li>• Rent receipts;</li><li>• Utility bills bearing the requestor's name and address; or</li><li>• Receipts or letters from companies showing the dates during which the requestor received service.</li></ul>  |

## School Records

Transcripts, letters, report cards, etc., from the school(s) requestor attended in the United States showing the name of school(s) and the period(s) of school attendance.

## Medical Records

Hospital or medical records showing medical treatment or hospitalization of the requestor. Such records should show the name of the medical facility or physician, as well as the date(s) of the treatment or hospitalization.



U.S. Citizenship  
and Immigration  
Services

# Evidence of CR and Presence on 6/15/12 (Continued)

## Evidence

### Acceptable Documentation

#### Memberships

- Official records from a religious entity in the United States confirming the requestor's participation in or attendance at a religious ceremony, rite, or passage (e.g., baptism, first communion, wedding, etc.).
- Documentation showing membership in community org. (e.g. Scouts).

#### Military

#### Records

Military records (e.g., certificate of discharge, military personnel records; or military health records).

#### Additional

#### Documents

Additional documents to support the requestor's claim may include:

- Money order receipts for money sent in or out of the country;
- Passport entries;
- Birth certificates of children born in the United States;
- Bank books with dated transactions;
- Correspondence between the requestor and other persons/org.;
- Social Security card;
- Selective Service card;
- Automobile license receipts, title, vehicle registration, etc;
- Deeds, mortgages, contracts to which requestor has been a party;
- Tax receipts;
- Insurance policies, receipts, or postmarked letters; and/or
- Any other relevant document.



U.S. Citizenship  
and Immigration  
Services



# Applying the DACA Guidelines - Education

## **Basic Educational Guidelines**

The educational guideline for DACA can be met in a number of different ways. The requestor can show that he/she:

- Is currently in school;
- Has graduated from high school; or
- Has obtained a certificate of completion from high school or a General Educational Development (GED) certificate.



U.S. Citizenship  
and Immigration  
Services

# Applying the DACA Guidelines – Education (Continued)

## Currently in School

The DACA requestor can be enrolled in:

- A public or private elementary school, junior high or middle school, high school, or secondary school;
- An education, literacy, or career training program (including vocational training or an English as a Second Language (ESL) course);
- An education program assisting students either in obtaining a regular high school diploma or its recognized equivalent under State law (including a certificate of completion, certificate of attendance, or alternate award), or in passing a GED exam or other equivalent State-authorized exam; or
- A public or private college or university or a community college.



U.S. Citizenship  
and Immigration  
Services



# Applying the DACA Guidelines – Education (Continued)

## Currently in School

The DACA requestor can be enrolled in:

- A public or private elementary school, junior high or middle school, high school, or secondary school;
- An education, literacy, or career training program (including vocational training or an English as a Second Language (ESL) course);
- An education program assisting students either in obtaining a regular high school diploma or its recognized equivalent under State law (including a certificate of completion, certificate of attendance, or alternate award), or in passing a GED exam or other equivalent State-authorized exam; or
- A public or private college or university or a community college.



U.S. Citizenship  
and Immigration  
Services

# Applying the DACA Guidelines – Education (Continued)

## School Breaks and Medical Leave

**School Breaks:** When the DACA requestor files the DACA request, it is possible that school may not be in session due to a holiday or a semester (or quarter or trimester) break.

- A break may occur during a course, for example spring break, or it may occur between semesters, for example summer break.
- If a DACA request is filed between semesters, the requestor is considered to be currently in school if he/she is enrolled for the next semester and submits evidence of such enrollment.

**Medical Leave:** Note that a DACA requestor on temporary medical leave from school is considered to be currently in school. Evidence of the medical leave and the expected return date to school are to be provided.



U.S. Citizenship  
and Immigration  
Services



# Applying the DACA Guidelines – Education (Continued)

## Enrollment in Personal Enrichment or Recreational Classes

A DACA requestor who is enrolled in a personal enrichment class (such as arts and crafts) or who is enrolled in a recreational class (such as canoeing) is not in an alternative educational program and thus is not considered to be “currently in school” for DACA purposes.



U.S. Citizenship  
and Immigration  
Services

# Applying the DACA Guidelines – Education (Continued)

## Enrollment in On-Line Classes

- Evidence of enrollment in on-line courses is acceptable.
- It is not uncommon for students to be enrolled in online courses.
- Officers will focus on the completeness, credibility, relevance, and sufficiency of the evidence rather than the electronic medium over which the education was received.



U.S. Citizenship  
and Immigration  
Services



# Applying the DACA Guidelines – Education (Continued)

## Primary/Middle/Secondary School – Accepted for Enrollment

Evidence of acceptance for enrollment may include, but is not limited to:

- An acceptance letter on school letterhead from the school's authorized representative, if the requestor was accepted for enrollment, but the classes have not yet commenced. Evidence of registration or other evidence that the student accepted the offer is also to be included;
- A current individualized education program (IEP), as required under the Individuals with Disabilities Education Act, for a student with a disability, would also be acceptable evidence of enrollment;
- A current class schedule containing the student's name, the list of courses, and the day and time of each class; or
- Any other relevant evidence.



U.S. Citizenship  
and Immigration  
Services

# Applying the DACA Guidelines – Education (Continued)

## Primary/Middle/Secondary School – Attending Classes

DACA requestors already enrolled and attending classes may submit:

- Current school registration cards,
- Current transcripts;
- Report cards;
- Progress reports; or
- A current IEP showing the student's progress to date.



U.S. Citizenship  
and Immigration  
Services



# Applying the DACA Guidelines – Education (Continued)

## GED

To show “currently in school” based on enrollment in a class for a GED or other equivalent State-authorized exam, officers will look for a letter or other document from an authorized representative of the program, that includes information such as:

- The requestor’s name and date of enrollment;
- The duration of the program and expected completion date;
- Whether the course of study is for or a GED exam or other equivalent State-authorized exam;
- The program’s source of public funding (Federal, State, county, or municipal), if any; and
- The program’s authorized representative’s contact information.



U.S. Citizenship  
and Immigration  
Services

# Applying the DACA Guidelines – Education (Continued)

## GED (Continued)

If the GED/Equivalency program is not publicly funded in whole or in part, documentation from the program is also to provide information about its demonstrated effectiveness. Such information could include, but is not limited to:

- The duration of the program's existence;
- The program's track record in assisting students in obtaining a GED, or a recognized equivalent certificate;
- Receipt of awards or special achievement or recognition that indicate the program's overall quality; and/or
- Any other information indicating the program's overall quality.



U.S. Citizenship  
and Immigration  
Services



# Applying the DACA Guidelines – Education (Continued)

## Public or Private College or University, or Community College – Accepted for Enrollment

Evidence of enrollment in a public or private college or university or a community college may include, but is not limited to:

- An acceptance package and related materials on school letterhead from the school's authorized representative, if the requestor was accepted for enrollment, but the classes have not yet commenced. Evidence of registration or other evidence that the student accepted the offer is also to be included.



U.S. Citizenship  
and Immigration  
Services

U.S. Citizenship and Immigration Services

# Applying the DACA Guidelines – Education (Continued)

## Public or Private College or University, or Community College – Accepted for Enrollment (Continued)

Evidence of acceptance for enrollment can also include:

- A current individualized education program (IEP), as required under the Individuals with Disabilities Education Act, for a student with a disability;
- A copy of the student's current tuition bill;
- The student's current class schedule containing the list of courses, and the day and time of each class; or
- Any other relevant evidence.



U.S. Citizenship  
and Immigration  
Services



# Applying the DACA Guidelines – Education (Continued)

## *Public or Private College or University, or Community College – Attending Classes:*

For DACA requestors already enrolled and attending classes, evidence may include, but is not limited to:

- Current school registration cards;
- Current transcripts;
- Report cards;
- Progress reports; or
- A current IEP showing the student's progress to date.

The document(s) presented are to show the name of the student, the name of the school, the time period or semester covered by the document, and the current grade level or class year.



U.S. Citizenship  
and Immigration  
Services

# Applying the DACA Guidelines – Education (Continued)

## Alternative Educational Programs (Continued)

Type of Program	Non-Profit Status	Alternative Educational Programs – Funding/Effectiveness	
		Public Funding (in whole or in part)	Demonstrated Effectiveness – Required for each program that is not publicly funded. (Does not apply to non-profit literacy programs).
ESL	N/A	Letter from the ESL program administrator or authorized representative providing basic details about the source(s) of funding.	The program administrator or authorized representative is to provide information about the program's demonstrated effectiveness. Such information could include, but is not limited to: <ul style="list-style-type: none"> <li>• The duration of the program's existence;</li> <li>• The program's track record in placing students in post-secondary education, job training, or employment;</li> <li>• Receipt of awards or special achievement or recognition that indicate the program's overall quality; and/or</li> <li>• Any other information indicating the program's overall quality.</li> </ul>
**Literacy	A copy of the IRS letter confirming tax exempt status under 501(c)(3)	If, not tax exempt, but publicly funded, a letter from the program administrator providing basic details about the source(s) of funding.	
Career Training and Vo-Tech	N/A	Letter from the school registrar or authorized school representative providing basic details about the source(s) of public funding.	

★★

Refer the case to CFDO if enrolled in a literacy program run by a for-profit entity.



U.S. Citizenship  
and Immigration  
Services



# Applying the DACA Guidelines – Education (Continued)

## Alternative Educational Programs – Evidence of Acceptance for Enrollment or Attending Classes

### Enrolled in/Attending Literacy or ESL Program

#### ESL

A letter from the program administrator or authorized representative providing information such as:

- The requestor's name;
- Date of enrollment;
- Duration of the ESL program and expected end date;
- The program admin/auth. Rep's contact info.

#### Career Training and Vo-Tech

##### Accepted for Enrollment

An acceptance letter on school letterhead from the school registrar/authorized school representative. Letter is to include: name and address of the program, a brief description of the program, the duration of the program, the date classes will begin, with evidence of registration.

Evidence of acceptance for enrollment may also include a copy of the current year registration (intake form/enrollment form), or any other relevant documentation.

##### Attending Classes

- Current attendance records
- Transcripts
- Report cards
- Test reports
- Progress reports

Documents are to show the name of the school, the name of the requestor, the time period or semester covered by the document, and, if relevant, the current educational or grade level.



U.S. Citizenship  
and Immigration  
Services

U.S. Citizenship and Immigration Services

# Applying the DACA Guidelines – Education (Continued)

## Graduated from School

Evidence of “graduated from school” may include copies of:

- A diploma;
- Transcripts showing the date of graduation; or
- A GED Certificate, certificate of completion, certificate of attendance, or alternate award from a public or private high school/secondary school.

Evidence of GED or equivalent certificate includes, but is not limited to:

- Passed a GED exam; or
- Other comparable State-authorized exam resulting in the issuance of a recognized equivalent of a regular high school diploma under State law.



U.S. Citizenship  
and Immigration  
Services

Page 3 of 4 New Guidelines for DACA Applicants



# Applying the DACA Guidelines – Honorable Military Discharge

As an alternative to showing that he/she is currently in school or has graduated from school, a DACA requestor can meet the Secretary's guidelines by showing that he/she is an honorably discharged veteran of the U.S. armed forces or U.S. Coast Guard.

Examples of acceptable evidence of honorable military/Coast Guard discharge include:

- Form DD-214, Certificate of Release or Discharge from Active Duty;
- NGB Form 22, National Guard Report of Separation and Record of Service;
- Military personnel records;
- Military health records; or
  - A military health record will indicate branch of service, but not the character of the service member's discharge;
- Any other relevant document.



U.S. Citizenship  
and Immigration  
Services

# Applying the DACA Guidelines – Honorable Military Discharge (Continued)

The Form DD-214 and NGB Form 22 both contain a section, “Character of Service” listing the type of discharge a service member obtained. The main types of discharge include the following:

- Honorable:
- General (under Honorable Conditions);
- Under Other Than Honorable Conditions;
- Bad Conduct;
- Dishonorable; or
- Uncharacterized.

To meet the military guideline, the “Character of Service” must be Honorable or General (under Honorable Conditions).



U.S. Citizenship  
and Immigration  
Services



# Applying the DACA Guidelines – Issues of Criminality, Public Safety and National Security

Under the Secretary's guidelines, except where DHS determines that exceptional circumstances exist, removal will not be deferred under DACA when the requestor:

- Has been convicted of a felony offense, a significant misdemeanor offense, or three or more other misdemeanor offenses not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct; or
- Otherwise poses a threat to national security or public safety.



U.S. Citizenship  
and Immigration  
Services

FOUO – Law Enforcement Sensitive

# Special History Action Codes (HAC) for DACA Cases

For reporting purposes, special HACs have been developed for DACA cases:

- Cases being transferred to the BCU DACA Team – C3 shall be updated with ["FF5"] Sent to the Background Check Unit (BCU) for resolution.
- Cases being returned to Adjudications from the BCU DACA Team or just prior to final adjudications by the BCU DACA Team shall be updated with ["HCC5"] Received from Background Check Unit (BCU) with Resolution
- Cases being transferred to the CFDO with a fraud referral shall be updated with ["FF1"] Sent to the Fraud Detection Unit (FDU) for Analysis
- Cases being returned to Adjudications from the CFDO shall be updated with ["HCC1"] Returned from Fraud Detection Unit (FDU) with Results.



U.S. Citizenship  
and Immigration  
Services



# Post Decision Handling

- After approval of Forms I-821D and I-765, the A-file shall be routed to the NRC.
- After denial, the A-file remains at the center for 45 days and is then forwarded to the NRC if a request to review is not received through SRMT.
- Cases requiring an NTA go to the NTA Unit. NTA issuance follows current guidance and the November 7, 2011, memorandum entitled, Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens. None of the denial grounds that can be reviewed via the SRMT process will be sent to the NTA Unit.



U.S. Citizenship  
and Immigration  
Services

# V. Employment Authorization Request



U.S. Citizenship  
and Immigration  
Services



# Module Objectives

The objective of this section is to provide a basic understanding of:

- The legal authority for employment authorization based on deferral of removal under DACA;
- The forms required for an employment authorization request under DACA; and
- How an individual might show economic necessity.



U.S. Citizenship  
and Immigration  
Services

# Employment Authorization under DACA

- The Secretary's memorandum provides that individuals whose removal has been deferred under DACA may receive employment authorization.
- The eligibility category for employment authorization based on a grant of deferred action is 8 CFR 274.12(c)(14) and requires a showing of economic necessity.
- To identify DACA-related EADs, the (c)(33) code will be used.
  - DACA requestors have been instructed to note the (c)(33) code on their Form I-765.
- The EAD is predicated on deferred action under DACA. Therefore, the 90-day EAD clock on the Form I-765 begins after Form I-821D is approved.



U.S. Citizenship  
and Immigration  
Services



# Employment Authorization Under DACA (Continued)

Forms I-821D and I-765, with Form I-765WS must be concurrently filed.

The new Form I-765WS is a worksheet designed to capture the information about the requestor's income, expenses, and assets needed for the economic necessity determination.

- To streamline the adjudication of the employment authorization application, the I-765WS should have been reviewed while adjudicating the Form I-821D.
- To assist officers, at intake, the Lockbox will place the I-765WS in ROP order behind the Form I-821D.

Form I-765 cannot be approved unless Form I-821D has been approved.



U.S. Citizenship  
and Immigration  
Services

# Showing Economic Necessity

- An EAD based on deferred removal under DACA requires a showing of economic necessity.
- If Form I-765WS has been completed, officers will review the information provided regarding current income, assets, and expenses to determine whether economic necessity has been established. The requestor may, but need not, include supporting documents with Form I-765WS.
- There is a general presumption that DACA requestors will need to work given their undocumented circumstances and the fact that they are not generally anticipated to have independent means. Absent evidence of sufficient independent financial resources, the Form I-765WS is sufficient to establish economic need, without any further economic analysis.



U.S. Citizenship  
and Immigration  
Services



## The (c)(33) EAD

If removal is deferred under DACA, action can be taken on the Form I-765. If the Form I-765 is approved, a (c)(33) EAD will be issued with a 2 year validity from the date of the approval, or to the end of the deferred removal under DACA, whichever is earlier.



U.S. Citizenship  
and Immigration  
Services

# VI. Processing Form I-131, Application for Travel Document



U.S. Citizenship  
and Immigration  
Services

Form I-131, Application for Travel Document

# Module Objectives

The objective of this section is to provide a basic understanding of:

- The advance parole requirements for individuals whose removal has been deferred under DACA;
- How to apply these requirements; and
- The advance parole processing and validity periods.



U.S. Citizenship  
and Immigration  
Services

U.S. Citizenship and Immigration Services



# Advance Parole

Parole is the authorization to allow an otherwise inadmissible person to physically proceed into the United States under certain safeguards and controls. Parole is not an admission.

Parole is granted on a case-by-case basis for urgent humanitarian reasons or significant public benefit.

Advance parole is generally granted prior to the individual's departure from the United States to authorize that person's temporary parole upon his/her return to the United States following a brief absence.

The legal authority for parole is found in INA 212(d)(5)(A).



U.S. Citizenship  
and Immigration  
Services

U.S. Citizenship and Immigration Services



## Advance Parole (Continued)

In accordance with the discretionary authority provided in INA 212(d)(5)(A), grants of advance parole to DACA recipients may be made based on the need to travel abroad for educational, employment, or humanitarian purposes.

- Advance Parole requests must be supported with evidence demonstrating the need to travel for one these three purposes.



U.S. Citizenship  
and Immigration  
Services

## Advance Parole - DACA Recipients

- A DACA requestor may not concurrently file Form I-131 for advance parole with his/her DACA request.
- A DACA recipient may file an advance parole request with a copy of the I-797 notice deferring removal under DACA.



U.S. Citizenship  
and Immigration  
Services



# Advance Parole Requested for Educational Purposes

If the DACA recipient is requesting advance parole to travel for educational purposes, the individual must show that the travel will be undertaken for educational pursuits.

Examples include:

- Semester abroad programs; or
- Travel necessary to conduct academic research.



U.S. Citizenship  
and Immigration  
Services

# Advance Parole Requested for Employment Purposes

If the DACA recipient is requesting advance parole to travel for employment purposes, the individual must show that the travel relates to fulfilling job requirements.

These purposes also include the pursuit of a position in the United States with a foreign employer.

Examples include:

- Overseas assignments, interview, conference, or training; or
- A meeting with overseas clients.



U.S. Citizenship  
and Immigration  
Services



# Advanced Parole Requested for Humanitarian Purposes

If the DACA recipient is requesting advance parole to travel for humanitarian purposes, the individual must show the travel is for emergent, compelling, or sympathetic circumstances.

Examples include:

- Travel for medical reasons, to visit an ailing family member, to attend funeral services for a family member or for any other urgent familial purpose.



U.S. Citizenship  
and Immigration  
Services

# Adjudication

- Advance parole valid for the duration of the event, as documented in the advance parole application, not to exceed the duration of the deferral under DACA.
- For multiple events, the advance parole is valid for the duration of all the documented events, not to exceed the duration of the deferral under DACA.



U.S. Citizenship  
and Immigration  
Services



## Advance Parole – Expedite Requests

As a general matter, expedite requests will not be granted.

However, in a dire emergency, and if properly documented and verified, if an individual were to appear at a local office, the local office has the option of processing the advance parole or working through established POCs at the Service Center under normal protocols.



U.S. Citizenship  
and Immigration  
Services

# Impact of Travel Without Advance Parole

Deferred Action is terminated automatically if an individual travels outside the United States without advance parole after removal has been deferred under DACA.



U.S. Citizenship  
and Immigration  
Services



# Advance Parole for DACA Recipients in Removal Proceedings

- Individuals in removal proceedings, including those with final removal orders, may seek advance parole if the request meets the guidelines for advance parole consideration under DACA.
- A departure made while under a final order of removal triggers inadmissibility issues. Outreach will include warnings about these consequences.



U.S. Citizenship  
and Immigration  
Services

# VII. Responding to Requests to Review Certain Denials



U.S. Citizenship  
and Immigration  
Services

U.S. Citizenship and Immigration Services



## Module Objectives

The objective of this section is to provide a basic understanding of:

- SRMT handling procedures while a DACA request is pending;
- How to respond to a request to review a denial through the SRMT process; and
- The denial grounds that may be reviewed through the SRMT process.



U.S. Citizenship  
and Immigration  
Services

# SRMT for Pending DACA Request

## Change of Address:

- Change address on Form I-821D;
- Change address on Form I-765;
- Check SNAP. If an appointment has been scheduled, change the address and reprint the notice. Before mailing the notice, make a photo copy and forward to the file with a date stamp indicating the date the address change was made; and
- Complete SRMT and send response to requestor that address change has been made.



U.S. Citizenship  
and Immigration  
Services



# SRMT for Pending DACA Request (Continued)

Corrections - requests to change or correct any type of biographical information, such as name or date of birth:

- Every SRMT needs to be reviewed, as in some cases the correction is actually a Request for an address change based upon a typographical error on the original receipt notice. If this is the case, follow the directions for handling a change of address.

▪ If the correction is related to a biographical information capture:

- Review SRMT – do not make any biographical changes in the system.
- Complete SRMT using language below as a response:

This information has been forwarded to your file. The officer reviewing your request for deferred action will make any appropriate changes to your filing at that time. Thank you for your inquiry.

- Print the completed SRMT and forward to the file using the special cover sheet. Attach a reference screen print of the I-821D and the I-765.



U.S. Citizenship  
and Immigration  
Services

## Form I-797C, Notice of Action

Form I-797C, Notice of Action

**THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT.**

RECEIVED IN SAC-12-920-50002	CASE TYPE 1B21 / I-821D
REQUEST DATE AUGUST 20, 2012	APPLICANT AZ56 GGG GGG LASTNAME, FIRSTNAME M.
SUBSEQUENT REQUEST DATE AUGUST 20, 2012	PAGE 1 of 1
REQUESTOR NAME M LASTNAME 123 MAIN STREET WASHINGTON DC 20001  MOTION Type: Approval Notice Valid from 08/20/2012 to 02/01/2013	

This courtesy notice is to advise you of action taken on this case. The official review has been mailed to the authorized addressee. The action was also mailed as part of the official review.

### Section of Deferred Settlement

This office is to inform you regarding U.S. Citizenship and Immigration Services's (USCIS) decision on your Form I-601D, Application for Waiver of Grounds of Inadmissibility, filed on 01/11/2016.

[illegible]

1. The first step is to identify the problem. In this case, the problem is that the company is not meeting its sales targets. This could be due to a variety of factors, such as poor marketing, poor product quality, or poor customer service.

This form does not constitute employment authorization, nor may it be used in place of an Employment Authorization Document. If granted, you will receive your Employment Authorization Document separately by mail. Subsequent criminal convictions (including those for which you have been deferred) may result in revocation of your deferred action. This notice does not provide compliance for travel outside of the United States.

**You are required to notify us if you change your address. You may also (the alien's change of address card, Form A-13, to**

bottom: 19578 and the U.S. Department of Homeland Security (USD) reserves the right to verify the information submitted in the document and/or associated documentation to ensure conformity with applicable laws, rules, regulations, and other

[illegible]

Please see the notification information on the back. You will be notified separately about any other cases you filed.

ADMINISTRATIVE APPEALS OFFICE

U. S. CITIZENSHIP &amp; IMMIG SERVICE

P.O. BOX #2321

LINCOLN 68501-2521

Customer Service Telephone: 800-375-5283



Form 1-5000-1 2/10/07 Y

**Even see the back of this notice for important information.**



U.S. Citizenship  
and Immigration  
Services

Form I-821D approvals will be issued on a Form I-797C, Notice of Action. See sample to the left.

The Form I-765 approval will be issued via the standard process which includes the EAD and the Form I-797D insert.



## Decisions (Continued)

- A denial template has been created for DACA and is included in the DACA SOP. This DACA denial template will be loaded to all centers' common drive/correspondence generator. Use of this denial template is mandatory. Individualized, locally created denials shall not be used. When an officer encounters an issue for which there is no check box on the denial template, the officer must work through his/her supervisor to identify the issue for SCOPS so that the template can be amended.



U.S. Citizenship  
and Immigration  
Services

## Form I-821D denial template

### Appendix F

#### NOTICE OF DENIAL OF CONSIDERATION OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS, FORM I-821D

USCIS has reviewed your Form I-821D, Consideration of Deferred Action for Childhood Arrivals. For the reasons indicated below, USCIS has, in its unreviewable discretion, determined that it will not consider your application for deferred action. USCIS has determined that you are not an individual who has this best interest. Deferred action is a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion. You may not file an appeal or motion to reopen/reconsider this decision.

- ☐ You are under the age of fifteen (15) and are not in removal proceedings; do not have a final removal order; or do not have a voluntary departure order.
- ☐ You have failed to establish that you came to the United States under the age of sixteen (16).
- ☐ You have failed to establish that you were under age 31 on June 15, 2012.
- ☐ You have failed to establish that you have continuously resided in the United States since June 15, 2007, until the date of filing your request.
- ☐ During your period of residence in the United States, you had one or more aliases or first (not) qualify as "lawful, lawful, and innocent."
- ☐ You have failed to establish that you were present in the United States on June 15, 2012 and that you were lawfully present in the United States on that date.
- ☐ You have failed to establish that you are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or that you are an honorably discharged member of the Coast Guard or Armed Forces of the United States.
- ☐ You have been convicted of a felony or a significant misdemeanor, or you have been convicted of three or more misdemeanors, or you do not warrant a favorable exercise of prosecutorial discretion because of public safety concern.
- ☐ You do not warrant a favorable exercise of prosecutorial discretion because of other concerns.
- ☐ You have failed to pay the fee for your community-based application for Employment Authorization, Form I-955, and/or your tax return, the fee for your payment has been rejected for insufficient funds and you have failed to correct the fee deficiency within the allotted time.
- ☐ You failed to appear for the collection of biometrics at an Application Support Center.
- ☐ You failed to respond to a Request for Evidence or Notice of Intent to Deny within the time period.
- ☐ You have abandoned your Form I-821D, Consideration of Deferred Action for Childhood Arrivals because you departed the United States while the form was pending.



U.S. Citizenship  
and Immigration  
Services



# Requests for Review

DACA requestors cannot file a Motion to Reopen or Reconsider and cannot appeal denial of their Form I-821D. However, DACA requestors may request review of certain denials using the Service Request Management Tool (SRMT) process. Categories that may be reviewed fall under administrative error. There is no review through the SRMT process of substantive/discretionary denials.



U.S. Citizenship  
and Immigration  
Services

# Requests to Review (Continued)

## Administrative Errors Related to Material Facts:

- The denial of the DACA request on the grounds that the requestor did not come to the United States prior to reaching his/her 16<sup>th</sup> birthday, but the evidence submitted at the time of filing shows that the requestor did, in fact, arrive before the required age; or
- The denial of the DACA request on the grounds that the requestor was under age 15 at the time of filing, but not in removal proceedings, but the evidence submitted at the time of filing and/or systems checks show that the requestor was, in fact, in removal proceedings when the DACA request was filed; or
- The denial of the DACA request on the grounds that the requestor was not under the age of 31 on June 15, 2012, but the evidence submitted at the time of filing shows that the requestor did not exceed the upper age limit on June 15, 2012; or
- The denial of the DACA request on the grounds that the requestor was not in an unlawful immigration status as of June 15, 2012, but the evidence submitted at the time of filing shows that the requestor was, in fact, in an unlawful status on June 15, 2012; or
- The denial of the DACA request on the grounds that the requestor was not physically present in the United States on June 15, 2012, up through the date of filing, but the evidence submitted at the time of filing establishes that the requestor was, in fact, present.



U.S. Citizenship  
and Immigration  
Services



# History Action Codes

The following special HACs will be used to track the requests for review through the SRMT process and must be used when responding to requests:

- **SRMT DACA:** When providing an Interim Response to a Request Via SRMT to Review a Denied DACA request.
- **SRMT DACA Reopened on Service Motion:** When reopening a Denied DACA Request on Service Motion.
- **SRMT DACA Approved on Service Motion:** When Approving a Denied DACA Request that has been Reopened on Service Motion.
- **SRMT DACA Denial Affirmed:** When Affirming the Denial of a DACA Request that has been Reopened on Service Motion.



U.S. Citizenship  
and Immigration  
Services

# Standard Responses and Templates

Standard responses, to include some interim responses, have been developed to inform the requestor that his/her denial has been reopened on a service motion and that the denial is correct or incorrect.



U.S. Citizenship  
and Immigration  
Services



# Responding to Requests to Review

Requestors will be provided 30 days from the date of denial to request review of the denial.

When a request is received at the call center, TIER 1 personnel will review the date of denial in CRIS.

If the request is 30 days beyond the date of the denial, the call center will not process such request and instead will issue the following notification:

- You did not request a review of the denial of your Form I-821D, Consideration of Deferred Action for Childhood Arrivals within the required 30 days. Therefore, we will not be able to process your request. However, you may file a new Form I-821D concurrently with a new Form I-765, Application for Employment Authorization, with a new fee.



U.S. Citizenship  
and Immigration  
Services

# Responding to Requests to Review (Continued)

## Administrative Errors Related to Material Facts:

- The denial of the DACA request on the grounds that the requestor did not come to the United States prior to reaching his/her 16<sup>th</sup> birthday, but the evidence submitted at the time of filing shows that the requestor did, in fact, arrive before the required age; or
- The denial of the DACA request on the grounds that the requestor was under age 15 at the time of filing, but not in removal proceedings, but the evidence submitted at the time of filing and/or systems checks show that the requestor was, in fact, in removal proceedings when the DACA request was filed; or

Step	Action
1	Request the file.
2	Respond to the SRMT with an interim response.
3	Update C3 (with HAC code), indicating SRMT DACA.
4	Reopen the I-821D and I-765 on Service Motion and update C3 with the HAC Codes SRMT DACA Reopened on Service Motion for each form.
5	Route the file to the reviewing ISO.



U.S. Citizenship  
and Immigration  
Services

Form I-864, Edition 01/01/01



# Responding to Requests to Review (Continued)

## Administrative Errors Related to Material Facts (cont.):

Step 6	Action
If the denial...	Then...
Was correct,	<ul style="list-style-type: none"> <li>The ISO will route the filing to the SISO for concurrence.</li> <li>The SISO will concur or not concur and route back to the ISO for appropriate systems updating.</li> <li>If SISO concurs, the ISO updates C3 with HAC code SRMT DACA Denial Affirmed and respond to the DACA requestor using the appropriate DACA SRMT call-up in Appendix G of the DACA SOP.</li> <li>If SISO does not concur, follow the instructions below (was not Correct)</li> </ul>
Was not correct,	<ul style="list-style-type: none"> <li>The SISO routes the filing to the ISO for review.</li> <li>The ISO approves Forms I-821D and I-765.</li> <li>The ISO updates C3 with HAC code SRMT Approved on Service Motion for each to show that the case was approved on Service Motion.</li> </ul>
Was not correct, but other reasons for denial still exist,	<ul style="list-style-type: none"> <li>The ISO will route the filing to the SISO for concurrence.</li> <li>If the SISO concurs, the ISO will re-deny the case.</li> <li>The ISO updates C3 with the HAC code SRMT DACA Denial Affirmed for each form.</li> <li>The ISO produces a new denial using the SRMT denial template found in Appendix H of the DACA SOP.</li> </ul>



U.S. Citizenship  
and Immigration  
Services

# Responding to Requests to Review (Continued)

## Requestor did Appear to Have Biometrics Collected at a USCIS ASC:

- Follow the steps below when an SRMT is filed due to a claimed administrative error related to the requestor's biometrics collection.

Step	Action
1	Review the electronic systems to see whether the requestor had his/her biometrics taken. Request the A-file (if needed).
2	Reopen Forms I-821D and I-765 on Service Motion.
3	Update C3 with HAC codes SRMT DACA Reopened on Service Motion, for both forms.
4	Send an interim SRMT response using SRMT DACA 1 call-up.



U.S. Citizenship  
and Immigration  
Services



# Responding to Requests to Review (Continued)

## Requestor did Appear to Have Biometrics Collected at a USCIS ASC (cont.):

If the requestor...	Then...
Did not have his/her biometrics taken.	<p>The reviewing officer should check:</p> <ul style="list-style-type: none"> <li>• Returned Mail</li> <li>• Address Changes</li> <li>• Rescheduling Requests</li> <li>• The BPU ASC Reschedule Spreadsheet</li> </ul>
If you... Locate returned mail, an address change, or a rescheduling request,	<p>Then...</p> <ul style="list-style-type: none"> <li>• Initiate ASC appointment rescheduling.</li> <li>• After the biometrics results are received, adjudicate the case.</li> <li>• If Form I-821D is approved, approve Form I-765.</li> <li>• Update C3 with HAC SRMT DACA Approved on Service Motion for each form.</li> <li>• If denied, issue a denial using the SRMT denial template.</li> <li>• Update C3 with HAC SRMT DACA Denial Affirmed for each form.</li> </ul>
Do not locate any returned mail, address, or rescheduling request,	Respond to the SRMT that the denial stands, using the SRMT denial template.



U.S. Citizenship  
and Immigration  
Services

# Responding to Requests to Review (Continued)

Requestor did Appear to Have Biometrics Collected at a USCIS ASC (cont.):

If the requestor	Then:
Did have his/her biometrics taken,	<ul style="list-style-type: none"><li>• The ISO will adjudicate Forms I-821D and I-765.</li><li>• If Form I-821D is approved, ISO approves Form I-765.</li><li>• ISO updates C3 with HAC SRMT DACA Approved on Service Motion for each form.</li><li>• If denied, ISO issues a denial using the SRMT denial template.</li><li>• ISO updates C3 with HAC SRMT DACA Denial Affirmed for each form.</li></ul>



U.S. Citizenship  
and Immigration  
Services



## Responding to Requests to Review (Continued)

Requestor requested that His/Her Biometrics Appointment at a USCIS be Rescheduled Prior to the Scheduled Date:

Follow the steps below when an SRMT is filed due to a claimed administrative error related to the request to reschedule the ASC appointment.

Step	Action
1	Request A file
2	Reopen Forms I-821D and I-765 on Service Motion.
3	Update C3 with HAC code SRMT DACA Reopened on Service Motion for both forms.
4	Send an interim SRMT response using SRMT DACA 2 call-up.



U.S. Citizenship  
and Immigration  
Services

# Responding to Requests to Review (Continued)

Requestor requested that His/Her Biometrics Appointment at a USCIS be Rescheduled Prior to the Scheduled Date (cont.):

Step	Action
5	Review the filing and SRMT to determine if a request was received to reschedule the ASC appointment.
If the requestor...	Then:
Requested to have his/her biometrics appointment rescheduled prior to the scheduled date,	<ul style="list-style-type: none"> <li>The ISO will schedule a new ASC appointment and route the A-file to the appropriate holding shelf to await the biometrics results.</li> <li>Adjudicate the case after the biometrics results are received.</li> <li>If Form I-821D is approved, approve Form I-765.</li> <li>Update C3 with HAC SRMT DACA Approved on Service Motion for each form.</li> <li>If denied, issue a denial using the SRMT denial template.</li> <li>Update C3 with HAC SRMT DACA Denial Affirmed for each form.</li> </ul>
Did not request to have his/her biometric appointment rescheduled prior to the scheduled date,	Respond to the SRMT that the denial stands, using the SRMT denial template.



U.S. Citizenship  
and Immigration  
Services



## Responding to Requests to Review (Continued)

Requestor Paid the Filing and Biometric fees for the I-765:

Follow the steps below when an SRMT is filed due to a claimed administrative error related to Non-Sufficient Funds.

Review the electronic systems to see whether the requestor paid the associated fees with the filing.

Step	Action
1	Records Division reviews electronic systems to determine if the fee was paid timely and properly (if necessary, request the A-file)
2	Reopen Forms I-821D and I-765 on Service Motion.
3	Update C3 with HAC code SRMT DACA Reopened on Service Motion for both forms.
4	Send an interim SRMT response using SRMT DACA 3 call-up.



U.S. Citizenship  
and Immigration  
Services

# Responding to Requests to Review (Continued)

Requestor Paid the Filing and Biometric fees for the I-765 (cont.):

If the Records Division determines...	Then...
The appropriate fees were not paid,	Respond to the SRMT that the denial stands, using the SRMT denial template.
The appropriate fees were paid,	<ul style="list-style-type: none"> <li>• The ISO will schedule a new ASC appointment and route the A-file to the appropriate holding shelf to await the biometrics results.</li> <li>• Adjudicate the case after the biometrics results are received.</li> <li>• If Form I-821D is approved, approve Form I-765.</li> <li>• Update C3 with HAC SRMT DACA Approved on Service Motion for each form.</li> <li>• If denied, issue a denial using the SRMT denial template.</li> <li>• Update C3 with HAC SRMT DACA Denial Affirmed for each form.</li> </ul>



U.S. Citizenship  
and Immigration  
Services



# Responding to Requests to Review (Continued)

USCIS Denied the Request for DACA based on Abandonment and the Requestor Claims He/She did Respond to a RFE Within the Prescribed Time:

Follow the steps below when an SRMT is filed due to a claimed administrative error related to the requestor's response to a RFE.

Step	Action
1	Request A file
2	Reopen Forms I-821D and I-765 on Service Motion.
3	Update C3 with HAC code SRMT DACA Reopened on Service Motion for both forms.
4	Send an interim SRMT response using SRMT DACA 4 call-up.



U.S. Citizenship  
and Immigration  
Services

# Responding to Requests to Review (Continued)

USCIS Denied the Request for DACA based on Abandonment and the Requestor Claims He/She did Respond to a RFE Within the Prescribed Time (cont.):

Step	Action
5	Review the filing and SRMT to determine if a request was received to reschedule the ASC appointment.
If the requestor...	Then...
Responded to the RFE within the prescribed time.	<ul style="list-style-type: none"> <li>• Route the filing to the reviewing officer.</li> <li>• Adjudicate the case based on the evidence submitted initially and the RFE response.</li> <li>• If Form I-821D approved, approve Form I-765.</li> <li>• Update C3 with HAC SRMT DACA Approved on Service Motion for each form.</li> <li>• If denied, issue a denial using the SRMT denial template.</li> <li>• Route to SISO for denial concurrence.</li> <li>• Update C3 with HAC SRMT DACA Denial Affirmed for each form.</li> </ul>
Did not respond within the required time, or no response was received.	Respond to the SRMT that the denial stands, using the SRMT denial template.



U.S. Citizenship  
and Immigration  
Services



# Responding to Requests to Review (Continued)

USCIS Mailed the RFE to the Wrong Address and the Requestor Submitted a COA Prior to the RFE Issuance:

Follow the steps below when an SRMT is filed due to a claimed administrative error related to the requestor's change of address.

Step	Action
1	Request A file
2	Reopen Forms I-821D and I-765 on Service Motion.
3	Update C3 with HAC code SRMT DACA Reopened on Service Motion for both forms.
4	Send an interim SRMT response using SRMT DACA 5 call-up.
5	Verify the requestor's address



U.S. Citizenship  
and Immigration  
Services

# Responding to Requests to Review (Continued)

USCIS Mailed the RFE to the Wrong Address and the Requestor Submitted a COA Prior to the RFE Issuance (cont.):

If the requestor...	Then...
<p><b>Filed a change of address, prior to the issuance of an RFE</b></p>	<ul style="list-style-type: none"> <li>• Re-issue the RFE with a new 87-day response time to the correct address and route the A-file to the RFE hold shelf.</li> <li>• After the RFE response is received, adjudicate Forms I-821D and I-765 based on the evidence submitted initially and the RFE response.</li> <li>• If Form I-821D is approved, approve Form I-765.</li> <li>• Update C3 with HAC SRMT DACA Approved on Service Motion for each form.</li> <li>• If denied, issue a denial using the SRMT denial template.</li> <li>• Route to SISO for denial concurrence.</li> <li>• Update C3 with HAC SRMT DACA Denial Affirmed for each form.</li> </ul>



U.S. Citizenship  
and Immigration  
Services



# Responding to Requests to Review (Continued)

USCIS Mailed the RFE to the Wrong Address and the Requestor Submitted a COA Prior to the RFE Issuance (cont.):

If the requestor...	Then...
Did not file a COA prior to the issuance of an RFE.	Review that the RFE was sent to the correct address.
If the RFE was sent to...	Then...
The correct address.	Respond to the SRMT that the denial stands, using the SRMT denial template.
An incorrect address.	<ul style="list-style-type: none"> <li>• Route the filing to the SISO.</li> <li>• The ISO shall re-issue the RFE with a new 87-day response time to the correct address and route the A-File to the RFE hold shelf.</li> <li>• After the RFE response is received, adjudicate the case based on the evidence submitted initially and the RFE response.</li> <li>• If Form I-821D approved, approve Form I-765.</li> <li>• Update C3 with HAC SRMT DACA Approved on Service Motion for each form.</li> <li>• If denied, issue a denial using the SRMT denial template.</li> <li>• Update C3 with HAC SRMT DACA Denial Affirmed for each form.</li> </ul>



U.S. Citizenship  
and Immigration  
Services