

Penn State Law

From the Selected Works of Shoba Sivaprasad Wadhia

2013

FOIA Response Deferred Action Policy at USCIS

Shoba S Wadhia



Available at: https://works.bepress.com/shoba_wadhia/24/



To: Interested Parties
From: Shoba Sivaprasad Wadhia
Date: July 29, 2013
Re: Internal Documents by USCIS on Deferred Action (non-DACA)

Earlier this year, I filed a Freedom of Information Act (FOIA) Request with USCIS seeking internal documents and guidance pertaining to deferred action since June 17, 2011. In July 2013, USCIS responded with 34 identifiable pages that were responsive to my request. Of note, the response includes:

- A few pages about DA screening for VAWA self-petitioners (most of the VAWA gurus will be familiar with the May 1997 memo)
- Standard Operating Procedures (SOP) for Handling Deferred Action Requests At USCIS Field Offices (p. 14-20)
- Templates for a DA Approval and DA Denial
- Blank Form G-312 Deferred Action Summary

The FOIA response illustrates that DHS has improved tracking and transparency of deferred action since June 17, 2011. Those who have worked exclusively on Deferred Action for Childhood Arrivals (DACA) may not be too impressed by the data listed above, but it should be pointed out that INS and DHS have historically lacked very much detail on the broader deferred action program, a program that has been part of our immigration system for many decades. Historically, USCIS did not have a method for tracking deferred action cases or a system for notifying applicants about the outcome of a decision. Details of the pre-2011 era of DA are summarized described in painful detail below in *Sharing Secrets: Examining Deferred Action and Transparency in Immigration Law*, University of New Hampshire Law Review, Vol. 10, No. 1 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1879443

The FOIA response also makes a few substantive points (some of which are historic):

- There appears to be 3 stages of review (still) for a DA request: field office, district director and regional director (page 16)
- DA is not an adjudication
- Those denied DA or those who have their DA terminated will not be automatically placed into removal proceedings or removed but

rather will be measured against the November 2011 NTA Memo (like with DACA cases)

- DA is automatically terminated if the individual departs the United States
- A criminal conviction may result in a DA termination

The FOIA request and response can be found at this link:

http://law.psu.edu/file/Immigrants/FOIA_May_2013.pdf

Still pending is another request with USCIS for statistical data and the body of deferred action cases since June 17, 2011 (as opposed to records and internal guidance). To the extent it aids your own FOIA pursuits, I was advised by the FOIA unit to disaggregate my requests for guidance from my requests for actual cases. For a broader inventory of my FOIA requests and responses on prosecutorial discretion, please visit:

http://works.bepress.com/shoba_wadhia/

Sincerely,

Shoba Sivaprasad Wadhia, Esq.