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The Future of Deferred Action for Childhood Arrivals

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A lot of the objectives set out in Trump's immigration plan may not be feasible. However, he does have the authority to change or repeal President Obama's Deferred Action for Childhood Arrivals ("DACA"). During his campaign, Trump stated that he would repeal all of President Obama's executive actions, including DACA. Since becoming the President Elect, he has not stated whether he still plans to follow through with the plan to repeal DACA. We have already seen him shift on some of his big campaign promises. The great, big wall may now have sections of fencing instead. Currently, the future of DACA is uncertain.

We see three possible paths for the future of DACA. Trump may keep his presidential promise and repeal DACA for all recipients. He may order USCIS to stop approving DACA applications. Or he may be persuaded to keep DACA intact. We do not know which path he will choose or when he will make this decision. This leaves DACA recipients with a lot of questions about their future.

If you already have DACA and are eligible to renew (you can renew 150 days before it expires), you may want to renew your application as early as possible in case Trump decides to stop granting new DACA applications. However, he may repeal DACA retroactively meaning that everyone with DACA will lose their deferred status and employment authorization. The benefit to renewing DACA is that you may be granted deferred status and employment authorization for two more years if Trump does not repeal DACA retroactively. But the risk of renewing DACA is that you may lose the money you paid to renew if he repeals DACA.

Those who qualify for DACA, but have never applied, have a more difficult choice to make. By applying for DACA, you are voluntarily giving your personal information to the Department of Homeland Security. While the Obama Administration stated that the information provided in the DACA request was protected from disclosure to ICE and CBP for the purpose of immigration enforcement proceedings unless the requestor meets the criteria for the issuance of a Notice to Appear. The Trump Administration may not have this policy. The benefit to those applying for DACA for the first time is that they may be granted deferred action and receive employment authorization for two years. The risk is that if DACA is repealed, they would lose the fees paid to apply for DACA and DHS now has their personal information and legal status. DACA applicants should weigh the benefit against the risk and determine how they would like to proceed.

While we wait for Trump to release more specific details about his immigration plan, we advise those living in the United States without lawful status to be wary of "notarios" or "legal specialist"

promising that they can protect them from deportation. This protection may be in the form of a letter that is supposed to protect them from deportation or they may submit a fraudulent visa/asylum application on behalf of the immigrant. However, in many of these cases those fraudulent actions may place the immigrant in deportation proceedings. “Notaries” and “legal specialist” are not attorneys. They are not authorized to practice law and will not be able to defend you if you are placed in deportation proceedings. If you have any doubts about whether you qualify for an immigration benefit such as a visa, asylum, DACA, employment authorization, then talk to a licensed attorney. The best protection you can obtain for yourself and your family is to know your rights.

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