

IMMIGRATION

DACA RENEWAL EMPLOYER ADVISORY ALERT: THE C33 CATEGORY

By Kathleen Campbell Walker



On [January 13, 2018](#), U.S. Citizenship and Immigration Services (USCIS) posted that due to a federal court order issued on January 9, it would begin again to accept **renewal** requests from those who had previously been granted deferred action under the Deferred Action for Childhood Arrivals (DACA) policy. This statement was a result of the preliminary injunction issued by U.S. District Judge William Alsup of the 9th Circuit court in response to a lawsuit filed on September 11, 2017 by California Attorney General Xavier Becerra on behalf of the University of California. The states of Minnesota, Maryland, and Maine joined California in the lawsuit. This action followed a complaint filed by the States of New York, Massachusetts, Washington, Connecticut, the District of Columbia, Hawaii, Illinois, Iowa, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, and Virginia in the U.S. District Court of the Eastern District of New York requesting an injunction against the [rescission of the DACA program by the Department of Homeland Security \(DHS\) on September 5, 2017](#).

Who can apply for DACA renewals now?

If a DACA recipient's DACA status expired on or after September 5, 2016, they may still file a renewal request using [the I-821D, I-765, and I-765](#) worksheet along with the required fee of \$495.00 (\$410.00 filing fee plus \$85.00 biometric fee) for the I-765 work authorization form. There is no filing fee for the I-821D form. DHS will follow the [June 15, 2012](#) DHS memorandum for the processing of the DACA renewals.

This announcement DOES NOT apply to those who have never been approved for DACA. If the applicant's DACA status expired or the

applicant received DACA status BEFORE September 5, 2016, a renewal request will not be accepted by USCIS BUT a new initial DACA request may be filed.

Note that the I-821D instructions state that the I-821D may not be filed more than 150 days prior to the expiration of an applicant's current DACA status. The answer to question 50 in the [DACA FAQs](#), however, does note that requests received earlier than the 150 day window will be accepted, but the renewal period approved could result in less than a full two years. It is important to consult with legal counsel regarding this decision.

What could employers do to help?

If desired, employers could provide a notice to employees of this development and information provided by USCIS as well as a loan for payment of the filing fee, if possible and in accordance with human resource policies, to continue their work authorization. For those employers who keep copies of the support documentation provided with the I-9 forms either voluntarily or due to enrollment in E-Verify, a review of the support documents will also typically help employers assess their workforce as to those vulnerable to losing their work authorization as a DACA recipient.

How long will this renewal option last?

Obviously, the answer depends on numerous factors such as possible legislation as well as the progress of the court cases. On [January 16, 2018](#), the Department of Justice (DOJ) filed a notice of appeal in the *University of California* lawsuit to seek review in the Ninth Circuit Court of Appeals. In addition, DOJ announced its intent to file a petition for writ of certiorari with the U.S. Supreme Court before the Ninth Circuit renders its judgment on the appeal just filed. Attorney General Jeff Sessions stated the following in the notice posted regarding the appeal:

"It defies both law and common sense for DACA—an entirely discretionary non-enforcement policy that was implemented unilaterally by the last administration after Congress rejected similar legislative proposals and courts invalidated the similar DAPA policy—to somehow be mandated nationwide by a single district court in San Francisco."

In the meantime, it will be important for those desiring to renew to proceed **as soon as possible** and consult legal counsel.

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