Traveling on Advance Parole for DACA Recipients

November 28, 2023
House Keeping Items

- Webinar is being recorded
- Contact information will be shared at the end
- Utilize Q & A for questions throughout the webinar
- Panelists will utilize the chat feature to share links & resources
12:00pm – 12:05pm  DACA Updates and Timeline
12:05pm – 12:15pm  Overview of Advance Parole for DACA
12:15pm – 12:30pm  Tips and Risks to Consider Before Traveling
12:30pm – 12:40pm  Tips When Returning From Abroad
12:40pm – 12:50pm  Advance Parole and Adjustment of Status
12:50pm – 1:00pm  Traveling While Undocumented
DACA Updates and Timeline
DACA: *Texas v. United States* Litigation

• December 2020: Supreme Court case—was DACA terminated lawfully?
  • Court agreed: Termination was arbitrary and capricious

• Lawsuit by Texas, on the other hand, challenged the legality of the DACA policy—*is DACA unlawful?*
DACA: *Texas v. United States*

- August 30, 2022: DHS published DACA rule
  - Underwent Notice and Comment
  - Codified DACA into regulations
DACA: *Texas v. United States*

- 2023: U.S. District Court of the Southern District of Texas held that DACA policy was unlawful—
  - Held DACA rule is unlawful
  - Permanent Injunction but stay that the rule can be implemented to allow for renewals while litigation continues
What's next?

• Advocates appealed to Fifth Circuit
• Decision expected to come in 2024
• Then likely will be appealed to SCOTUS, decision likely at end of 2024 if not 2025
What did the DACA rule do?

- Sought to remedy notice and comment requirement—changing DACA from 2012 Napolitano Memo
- Rescinded the Napolitano Memo from 2012
- Kept same DACA requirements
Final Rule Published

• Expunged convictions continue to be accepted and are not automatic bars to DACA

• A Notice of Intent to Terminated is needed before USCIS terminates DACA

• Generally, protects information about DACA recipients
Who is eligible for DACA?

• USCIS is accepting, processing, and granting DACA renewals

• Eligible to renew if:
  • Current DACA recipient
  • DACA expired less than 1-year ago
When to Renew?

• If DACA expires 6 months from now, renew as soon as you can

• If your DACA expires 6 months to 1 year, you could consider renewing, but could receive less time with DACA
Overview of Advance Parole for DACA
What is Advance Parole?

- Advance authorization to re-enter the United States (“paroled”) upon return
- Approval Notices are Given on Form I-512L
- Specific requirements for DACA
Advance Parole Eligibility for DACA

Has to be based on either:

- **Employment** Purposes (overseas assignments, interviews, conferences, trainings, meetings)
- **Humanitarian** Purposes (obtaining medical treatment, attending funeral, visiting sick relative)
- **Educational** Purposes (semester study abroad, academic research, cultural exchange programs)
Advance Parole Eligibility

To Apply:
- Fill out Form I-131 (Application for Travel Document) + $575 Fee and Submit to USCIS

- Include Supporting Evidence
  - Employment: Conference Programs, Letters from Employer
  - Humanitarian: Letters from physician/hospital/social worker to prove family member illness or extreme age
  - Educational: Evidence of educational enrollment and why education program requires travel
General Process

- Persons have been able to successfully travel and return
- General Processing times according to USCIS: 3-4 months
- Emergency Travels: Call USCIS, can take application and pay there if approved:
  - **800-375-5283** to request an appointment
Advance Parole Case Examples
Advance Parole Case Examples

Employment:

• Applicant applied for advance parole to participate in her employer's annual humanitarian trip to provide free dental services to orphans.
• Advance Parole was requested as an employment and educational opportunity.
• Advance Parole was approved for a single 30-day trip.
Advance Parole Case Examples

Education:

- Applicant applied for advance parole to study abroad in France for a semester. Applicant requested multiple entries to be able to come back home to the U.S. for spring break and other holidays.
- Advance Parole was approved for a multiple entry 5-month trip.
- *Keep in mind that tourism is not a valid purpose for Advance Parole.*
Advance Parole Case Examples

Humanitarian:

• Applicant's family member died of COVID and was not able to visit them before they passed. Applicant requested advance parole to visit family member's grave & pay respects.

• Advance Parole was approved for a single 40-day trip.
Tips & Risks to Consider Before Traveling
Things to Consider Before Traveling

• BEFORE you leave the U.S., check your Advance (AP) Parole document

  • Confirm your information is correct (Name, address, A number, and country of birth)
  • Confirm your advance parole is valid for DACA
  • Confirm your travel dates
  • Confirm one entry vs. multiple entries into the U.S.
Things to Consider Before Traveling

• Make sure you have your valid DACA card & passport
  • Consider submitting your DACA renewal before you travel

• Advance Parole is granted for a specific trip(s) and purpose
  • Can be approved for travel to more than one country, for various purposes and for one or more entries into the U.S.

• Advance Parole is not authorized for "tourism" purposes
Things to Consider Before Traveling

Depending which country you will travel to:

• Valid visa or travel document may be required
• Covid testing may be required
• Vaccination may be required to return to the U.S.
• Covid may continue to impact international travel
Risks to Consider Before Traveling

• Advance parole document does not guarantee entry into the U.S.
  • Allows recipient to request re-entry into the U.S.

• Consult an expert, especially if in the past you:
  • Have been deported or ordered removed
  • Had contact with ICE/CBP
  • Had an arrest or conviction
Tips When Returning from Abroad
Keep in Mind when Returning to the US

• Carry with you your unexpired DACA card, valid passport, and original Advance Parole Document
  • Original Advance Parole Document will get stamped when you arrive to the US
  • Passport may also get stamped and/or be given I-94
• Keep proof of entry into the U.S.!
  • You will need the information for your DACA Renewal and for future applications
Keep In Mind when Returning to the US

• Be mindful of which airport you fly into
  • First airport you arrive to in the U.S. is where you will go through customs

• Be prepared in case you are sent to secondary inspection
  • Officer may ask you many questions
  • Officer may search your phone/belongings
  • Officer may review your social media accounts
Keep in Mind when Returning to the US

- Recommended you obtain a consultation with an immigration expert before traveling and/or when returning to the US
Advance Parole and Adjustment of Status
Consular Process v. Adjustment of Status

• Step 1: Filing an immigration petition (e.g. Family)
• Step 2: Getting your immigration visa
• Consular Process: Obtaining your visa outside the United States
• Adjustment of Status: Obtaining your visa inside the United States
Consular Process v. Adjustment of Status

• Consular Process:
  • Once a person leaves the United States, can cause certain bars:
    • 3/10 year bar if they’ve had more than 180 days of unlawful presence in the United States and leave
  • Notes:
    • While on DACA, person does not accrue unlawful presence
    • Leaving on advance parole does not trigger this!
    • Waiver available
Consular Process v. Adjustment of Status

• Adjustment of Status:
  • Only certain persons can be eligible for adjustment of status

• Common Forms:
  • 245(i) Eligibility: Persons who were beneficiaries of a petition filed on or before April 30, 2001
  • 245(a) Eligibility: Persons who are “inspected and admitted or paroled”
Getting a Green Card through Immediate Relative

• Main 245(a) Eligibility Requirements
  • Inspected and admitted or Paroled
    • Traveling and re-entering on advance parole is considered a “parole” and meets the definition under 245(a)
  • Must NOT:
    • Have worked without authorization
    • Have unlawful immigration status at time of adjustment
    • Exception: Immediate Relatives
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Getting a Green Card through Immediate Relative

• Immediate Relatives
  • Spouses of U.S. Citizens
  • Unmarried Child under 21 of a U.S. Citizen
  • Parent of a U.S. Citizen (21 years or older)
Example:

• Claudia entered without inspection by crossing the border and began working without authorization to help her mom. She received her DACA when she was 19 years old. She now wants to marry her U.S. spouse, Natalia. Claudia travels on advance parole and re-enters. Is Claudia eligible for adjustment of status?
Example:

• YES! Claudia would meet the 245(a) definition of paroled because she traveled and re-entered successfully. Because she is an immediate relative of a U.S. citizen spouse, she doesn’t have to worry about her previous work without authorization.
Flying Domestically as Undocumented
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Flying Domestically as Undocumented

• Make sure you have a VALID and UNEXPIRED ID (e.g. Passport)

• Of course, there are risks of being questioned further by immigration officials
  • Avoid airports near border or anti-immigrant states like TX and Florida
  • If asked questions, state your name but don’t answer about place of birth or if you have documents/papers or not
  • Talk to an attorney and have a number handy
Legal Services for Students

- **Services are:**
  - Available in client’s best language
  - Free and confidential
  - Available to individuals regardless of their status
  - Available to students, faculty, and staff
  - DACA renewal applications, naturalization and Advance Parole application filing fees are also covered