



ALERTS

Appeals Court Ruling Puts DACA Program In Limbo

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Highlights

Recent court ruling put DACA program back in limbo

The status quo remains in effect for the time being and DHS continues to accept renewal requests for DACA and work authorization

DACA recipients and their employers are encouraged to act quickly to file renewals due to uncertainty over the program

On Oct. 5, 2022, the U.S. Court of Appeals for the Fifth Circuit issued a ruling in an extremely consequential lawsuit filed by several states challenging the legality of the Deferred Action for Childhood Arrivals Program known as DACA. The court upheld the decision by the lower federal district court in Texas, which had found that the DACA program was unlawful because it violated the requirements of the Administrative Procedures Act (APA), but stayed its decision while the Department of Homeland Security (DHS) appealed the lower court's findings.

In upholding the lower court's decision, the Fifth Circuit also stayed its decision and remanded the matter to the lower court for further consideration of the legality of a new DACA rule that the DHS finalized in late August. Anticipating the potential adverse ruling from the Fifth Circuit,

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DHS had finalized a new DACA rule that largely codified the existing program but attempted to shield it from APA challenges. That final rule is scheduled to go into effect on Oct. 31, 2022.

The Fifth Circuit's decision introduces new uncertainty into the program, as the next legal issue is whether the DHS' new DACA rule will pass legal muster. However, in the short term, the status quo remains in effect and DHS continues to accept renewal requests from existing DACA recipients.

Impact on Employers

DACA recipients and their employers should consider filing renewals quickly because of this legal uncertainty.

However, consistent with the stay and injunction that the lower court issued, DHS cannot accept any new DACA requests from applicants who are seeking an initial grant of DACA.

DACA Background

DACA is a form of administrative relief that protects eligible immigrants who came to the U.S. when they were children from deportation. In addition to protection from deportation, DACA provides eligible immigrants work authorization that can be renewed every two years.

An estimated 800,000 individuals have been approved under the DACA program since its inception.

DACA was created on June 15, 2012 under the Obama administration for individuals who meet certain criteria:

- Are under 31 years of age as of June 15, 2012
- Came to the U.S. while under the age of 16
- Have continuously resided in the U.S. from June 15, 2007 to the present
- Meet other criteria including proof of education, background checks, fingerprinting and other biometrics checks

For more information, please contact the Barnes & Thornburg attorney with whom you work or Tejas Shah at 312-214-5619 or tejas.shah@btlaw.com or Sarah Hawk at 404-264-4030 or sarah.hawk@btlaw.com.

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