

Practice Update

The Potential Impacts of President Trump's Administration on DACA and Temporary Protected Status

January 21, 2025

President Donald Trump has indicated a strong intention to eliminate both the Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS) programs, which allow foreign nationals to temporarily live and work in the United States without the fear of deportation. In light of these anticipated measures, employers should take proactive steps to support the welfare of affected employees who may need to find viable alternatives, as well as to ensure the continued stability of their workforce.

DACA Program

The DACA program took root in 2012, through an Executive Order during President Barack Obama's administration, as a way to provide temporary relief (renewable 2-year terms) from deportation and work authorization for certain individuals who came to the United States as children. To qualify for DACA, applicants must have been born on or after June 16, 1981; have entered the United States before reaching the age of 16; and have continuously resided in the United States since June 15, 2007. In addition, DACA applicants must have been physically present in the United States, and without lawful immigration status, on or by June 15, 2012, when the program was officially announced, as well as at the time of filing the request for DACA with the U.S. Citizenship

Related Work

Immigration Planning and Compliance
Labor and Employment

Related Offices

Miami

HR Defense

Akerman Perspectives on the Latest Developments in Labor and Employment Law

[Visit this Akerman blog](#)

and Immigration Services (USCIS). DACA applicants must be currently enrolled in high school, have earned a General Education Development (GED) certificate or high school diploma, or have been honorably discharged from the U.S. armed forces and must have no criminal record.

The DACA program, and specifically rule-making surrounding the program, has been no stranger to turmoil and legal challenges over the past several years. On September 13, 2023, a federal district court in Texas declared unlawful the DACA final rule that had been issued by the Department of Homeland Security (DHS) in an effort to preserve and fortify the DACA program. This decision expanded the scope of the court's earlier injunction order issued in 2021 finding the DACA policy unlawful. The Texas court refrained from terminating the program altogether and preserved DACA recipients' authorized periods of stay in the United States. Most recently, on January 17, 2025, the Fifth Circuit Court of Appeals upheld the Texas district court's decision, agreeing that the DACA final rule was unlawful, but limited its ruling to Texas and further stayed the impact of its ruling, including as to Texas DACA recipients, pending appeal. Accordingly, current grants of DACA and related Employment Authorization Documents are to remain valid until they expire, unless individually terminated. As such, eligible DACA recipients can and should continue to be able to renew their DACA status, until something else changes.

According to USCIS, there were 537,730 active DACA recipients as of September 30, 2024.

Notwithstanding the significant protection it has afforded to so many, the DACA program, in its current form, remains in jeopardy. The first Trump administration previously terminated the DACA program, only for it to be reinstated by the U.S. Supreme Court in 2020. This time around, the DACA program may not be resuscitated. If that were to occur, many foreign nationals may lose their work authorization and face the possibility of deportation

to countries where they have not lived since they were very young.

Notably, in a recent interview before his second inauguration, President Trump expressed a willingness to work on a legislative solution, suggesting that there may be discussions about alternative protections for those who may be impacted by the elimination of the DACA program. However, no specific plan has been discussed and employers should not rely on these statements without performing an in-depth assessment of their staff's immigration needs to ensure the continued stability of their workforce.

TPS Program

Unlike DACA, the TPS program was established through legislative action in 1990, as a humanitarian effort to protect from deportation certain individuals who could not safely return to their “home” countries. In other words, a foreign country may be designated for TPS due to country conditions that temporarily prevent its nationals from safely returning. During a designated period, individuals who are TPS beneficiaries or who are found preliminarily eligible for TPS upon initial review of their cases (1) are not removable from the United States, (2) can obtain an employment authorization document, and (3) may be granted travel authorization. Once granted TPS, an individual cannot be detained on the basis of their immigration status in the United States for up to 18 months.

TPS may be granted to eligible nationals of TPS-designated countries, so long as they are already in the United States. Individuals who are not recognized as a citizen by any country (i.e. “stateless”), but who last resided in a designated country, may also be granted TPS. To be eligible for TPS, the applicant must (1) be a national of a country designated for TPS, or a stateless individual who last habitually resided in a designated country, (2) file Form I-821, Application for TPS, during the open

initial registration period, (3) have been continuously physically present in the United States since the effective date of the most recent designation date of their country, and (4) have been continuously residing in the United States since the date specified for their country.

There are currently 16 TPS-designated countries. While on the campaign trail, President Trump explicitly stated his intention to revoke TPS, particularly targeting Haitians and Venezuelans, two of the three largest groups of TPS-beneficiaries in the United States. Further, the designation for El Salvador ends in March and the designations for Sudan, Ukraine, and Venezuela end in April. President Trump has not indicated any plan to renew these designations, and may simply allow them to lapse, leading to significant uncertainty and risk for many individuals currently protected through the TPS program.

Important Considerations for Employers

President Trump already issued a sweeping Executive Order on day one of taking office, indicating the new administration's commitment to enforcement of the United States' immigration laws, but that order does not explicitly address the DACA or TPS programs.

Employers should take proactive measures to support affected employees by identifying available immigration alternatives, thereby avoiding unnecessary disruption to their workforce. Notably, DACA and TPS are temporary immigration benefits that do not lead to lawful permanent resident status nor do they provide any other immigration status. Fortunately, DACA and TPS do not prevent individuals from applying for other immigration benefits, thus leaving open the ability to explore other viable options.

Understanding unlawful presence is critical in assessing whether an employee may be eligible for

another immigration status. Unlawful presence is any period of time during which a foreign national is present in the United States without being admitted or paroled or is present in the United States after their period of authorized stay expires. DACA recipients accrue unlawful presence in the United States unless they are under 18 at the time of their DACA request. If the request is granted, the recipient will not accrue unlawful presence during the period of deferred action. If the DACA recipient was 18 or older at the time they applied for DACA, then they must obtain an unlawful presence waiver, also known as a Form I-601A waiver in the immigrant (permanent) visa context or a D3 waiver in the nonimmigrant (temporary) visa context, prior to obtaining a visa. Notably, to qualify for the Form I-601A waiver, the applicant must show that they have a qualifying relative, i.e., a U.S. citizen or lawful permanent resident spouse or parent, who would experience extreme hardship if the applicant is refused admission to the United States and the U.S. citizen or lawful permanent resident spouse or parent must remain in the United States without them or relocate abroad to reside with them outside of the United States. Factors considered when determining extreme hardship include health conditions, financial considerations, education, personal considerations, and other special factors.

Some examples of nonimmigrant visa statuses that may be available to DACA and TPS beneficiaries include the TN and H-1B visas. The TN visa is a nonimmigrant visa that allows citizens of Canada and Mexico to work in the United States in professional occupations for three years at a time (renewable indefinitely). Many such professional occupations require that the foreign national possess a bachelor's degree and/or state or provincial license.

The H-1B visa presents another potential alternative. The H-1B visa is a nonimmigrant visa that gives employers the opportunity to hire foreign nationals in specialty occupations for three years at a time and for a maximum period of six years. To qualify as a

specialty occupation, the offered position must require the application of highly specialized knowledge in fields such as architecture, business, engineering, mathematics, medicine and health, or the arts, and also require a bachelor's or higher degree.

Notably, foreign nationals present in the United States without a lawful status can only obtain TN or H-1B status by first leaving the country and seeking readmission into the United States in that status. If the foreign national has accrued unlawful presence, they must first obtain the appropriate waiver prior to seeking admission in TN or H-1B status.

For questions related to DACA and TPS, please contact your Akerman immigration lawyer.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.