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MEMORANDUM

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To: International Education Program Administrators

Deferred Action: Childhood Arrivals Process (DREAM ACT LITE)

1) Deferred Action: Childhood Arrivals Process

On Friday August 3rd USCIS released a publication “Consideration of Deferred Action for Childhood Arrival Process.” This process is all about the President’s administrative substitute for the DREAM Act. Calling the program a “Childhood Arrivals” process makes it sound quite user friendly and palatable for the opposition. The publication may be found [here](#). There are several interesting developments regarding the genesis of the policy.

Affirmative applications are being administered by the benefits granting agency USCIS-not the enforcement oriented ICE. ICE will only handle cases for those applicants already under removal proceedings. Perhaps, this development results from the very low grant level by ICE under the “Prosecutorial Discretion” program which caused the need for the “Childhood Arrivals Process.”

The “Childhood Arrivals Process” is guided purely and solely by USCIS discretion. It has no basis in regulation or any other reviewable guidance – except, perhaps, through a supervisor. There is no appeal, nor any motion to reopen/reconsider. Deferred action has long existed in the USCIS process and its use has always been closely guarded. It is an example of the sovereign’s prerogative. As a rare and unusual use of discretion, USCIS may have been able to exempt itself from oversight.

However, as a program affecting a significant number of applicants – its administration is certain to be faced with “Due Process of Law” challenges. Still, until the DREAM Act is passed, it’s progress.

Major Highlights of the Program:

The program will permit applicants to remain in the U.S. for a two year period – subject to discretionary two year extensions – with work authorization. It is not a path to a green card. It does not provide “lawful status.” Further, the program may be terminated at any time, without notice.

Applications will become available at www.uscis.gov on August 15, 2012 and may be filed on or after that date, through a designated lockbox which will forward the application to one of four Service Centers. The filing fee for a mandatory combination of the Deferral form, I-765 Employment Authorization and biometrics will be \$465.00. The form is not yet available.

The criteria for eligibility are:

1. Applicant was under the age of 31 as of June 15, 2012;
2. Came to the United States before reaching their 16th birthday;

3. Has continuously resided in the United States since June 15, 2007, up to the present time;
4. Was physically present in the United States on June 15, 2012, and at the time of making the request for consideration of deferred action with USCIS;
5. Entered without inspection before June 15, 2012, or lawful immigration status expired as of June 15, 2012;
6. Is currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
7. Has not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

Eligibility is limited to the individual applicant. There is no derivative status for family members.

Information provided to USCIS for the deferral process will not be shared with ICE, or CBP for immigration enforcement purposes unless the facts would make the applicant subject to issuance of a Notice to Appear (NTA) under "Prosecutorial Discretion" guidelines issued by USCIS on November 7, 2011 (www.uscis.gov/NTA). However, the information can be shared with national security and law enforcement agencies.

The USCIS publication of August 3rd expands on the seven eligibility criteria including age; criteria for prior brief, casual and innocent departures, a restriction on travel during pendency of after the grant of an application (with prior permission); criminal convictions and definitions; fee exemptions (very limited); presentation of records to prove entry dates and periods of physical presence; and avoidance of scams. The publication promised further clarifications, as well as the application form by the August 15 activation date.

To file, or not to file, that is the question. Remembering that the entire program is discretionary and may be withdrawn with no notice- will it be better to wait the happenstance of at least one predictable significant event- the presidential election – or to go forth into the great unknown. Perhaps, an answer is to collect the necessary evidence of entry and physical presence, and only file the application after the future has happened.

Many thanks for your comments, your suggestions and for referring your students, scholars and faculty members.

Please let me know if you have any questions, or if you would like copies of any of the materials covered.

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