DACA, Undocumented Students, and Financial Aid: What You Need to Know to Help Support Students

Angela D. Adams
Adams Immigration Law LLC
angela@adamsimmigration.com
adamsimmigration.com
(317) 967-6000

This presentation is for informational purposes only and should not be considered legal advice.
Roadmap

1. Overview of Existing Immigration Law
2. Why can’t undocumented students just “get legal?”
3. Impact on higher education and financial aid
Nonimmigrant Visa Categories

- Visitor Visas: B1/B2, Visa Waiver
- Work visas: H, I, L, E, O, P, Q, R
- Government visas: A, G, C
- Student visas: F, J, M, and OPT
- TN for Canada and Mexico
- S, T, U for victims of violent crimes and VAWA for victims of domestic violence
- K fiancé visas
Immigrant Visa Categories

- Lawful Permanent Resident (LPR) a.k.a. “green card”
- Immediate relatives, family based and employment based preference categories
- Employment Authorization Document (EAD) and Advance Parole are ancillary benefits
- Asylee or Refugee
- Naturalization to become US citizen after 3-5 years as LPR
Undocumented Immigrants: Two Types

- Overstay
- Entry Without Inspection (EWI)
Immediate relative (IR) of a US citizen

- Only an immediate relative can adjust status in the U.S. if visa **overstay**
- Immediate relative is defined as:
  - Children, spouses and parents of USC
  - If applying for a parent, USC son or daughter must be at least 21 years old
  - If applying for a child, child must be under 21 and unmarried
EWI Immediate Relative

- Cannot adjust status in the U.S.
- Must leave the U.S. and apply for a waiver of the 10 year bar and prove extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent
- But 212(a)(9)(c) a.k.a. “9C”
- Unless 245(i)
  - April 30, 2001, or before
Family-Based Preference Categories for Permanent Residency

- First: Unmarried sons and daughters of US citizens (over 21)
- Second: Spouses and children, unmarried sons and daughters of permanent residents
- Third: Married sons and daughters of US citizens (over 21)
- Fourth: Brothers and sisters of adult citizens
Employment-Based Preference Categories for Permanent Residency

- First: Extraordinary Ability, Outstanding Professors/Researchers, Multinational Executives or Managers
- Second: Advanced Degree or Exceptional Ability
- Third: Skilled Workers, Professionals and other
- Fourth: Special Immigrants, Religious Workers
- Fifth: Employment Creation (Investors)
So, why can’t they just “get legal?”

- **Backlogs** of 5-20 years for family and employment based permanent immigration categories (see U.S. Department of State Visa Bulletin)

- **EWI** ineligible for adjustment of status in the US
- **3 and 10 year bars for unlawful presence**
  ….can’t stay and can’t go
- **9(C) Illegal reentry after unlawful presence of at least one year or prior deportation = 10 year bar with no waiver**

- Lack of employment-based nonimmigrant visas
  (**H-1B 85,000 cap**, investor visa threshold, lack of lower skilled and labor visas)
Lack of immigration status leads to...

- Ineligible for Social Security number (but may get an Individual Tax ID Number or ITIN)
- Ineligible for driver’s license or state ID card
- Decreased access to college, professional licensure and ineligible for state or federal financial aid
- Limited healthcare coverage (ER only)
- Ineligible for public assistance and unemployment benefits
- Mixed status families: one family member is stuck
- Perceived lack of legal remedies
- Impact on emotional and mental health
Deferred Action for Childhood Arrivals (DACA)

Requirements:

- Entered U.S. before 16;
- 5 years of continuous residence and physical presence in the U.S. since June 15, 2007, and on June 15, 2012;
- Enrollment in or graduation from high school or other qualifying educational program or obtained GED;
- No convictions for felonies, multiple misdemeanors, or significant misdemeanors; and
- At least 15 at time of filing and not older than 30 on June 15, 2012.
What does DACA do?

- Two year employment authorization
  - Can get SSN and driver’s license
  - Renewable biannually

- Two year grant of prosecutorial discretion to defer removal action

- “Lawfully present” but no “lawful status”
What does DACA not do?

- Not a path to permanent residence or U.S. citizenship
- No “lawful status” in the U.S.
- Not eligible for federal financial aid or governmental assistance; State financial aid depends on state law (CA, NM, MN, TX, WA allow state financial aid)
DACA and In-State Tuition

- DACA recipients are considered to be “lawfully present”
- Granting DACA students in-state tuition does not violate state or federal law
- May not be eligible for professional licensure depending on state and federal law
Work After College?

- DACA students have work authorization
- Other undocumented students are currently ineligible. However:
  - Immigration laws will change
  - May be eligible for immigration benefit in future
  - May already have pending application and process could take many years
  - If return to country, they will be highly marketable with U.S. degree
Future of DACA uncertain

- 16 states challenging DACA rescission and two courts have ruled that applicants may renew and possibly submit new applications.

- Over 700 university presidents and chancellors signed the Pomona College letter supporting the continuation of DACA and protection for DACA students.
Financing College for DACA and Undocumented Students

- At least 20 states allow DACA and undocumented students eligibility for in-state tuition.
- DACA students are “lawfully present” in the U.S. and may be eligible for in-state tuition.
- At least 5 states allow state financial aid: CA, NM, MN, TX, WA.
- Students should be advised according to their state of residence and particular institutional policies.
Funding Sources and Options for DACA Students

- Private and Foundation Scholarships
- School Scholarships and FAFSA
- Private Loans
- Working for a University
- Payment Plans
- Alternatives to a Four-Year Degree
Private and Foundation Scholarships

- Noncitizen students may be eligible depending on source of funds and donor intent
- Local community organizations, individuals, private foundations
- University foundation unrestricted funds
- Never provide false information or claim to be a U.S. citizen
Resources for Undocumented and DACA Students

- Local foundations like Central Indiana Community Foundation: [www.cicf.org](http://www.cicf.org)
- Educators for Fair Consideration: [www.E4FC.org](http://www.E4FC.org)
- Local private funds like Indiana Latino Scholarship Fund (ILSF): [https://www.indianalatinoscholarshipfund.org/](https://www.indianalatinoscholarshipfund.org/)
- University foundations
Sanctuary Campuses?

- Not defined by law
- Premature to declare
- May hinder university’s ability to advocate for students
- Universities can require a subpoena for information not required by law
- FERPA and HIPAA protections
- SEVIS for international students
- FAFSA information?
Unauthorized Practice of Law (UPL)

- Consult trusted sources
- Beware of “Notario” fraud
- Seek advice from a qualified immigration professional or attorney and pay attention to changes in law and changes in interpretation of law and policy
- American Immigration Lawyers Association (AILA) to search for qualified attorneys [www.ailalawyer.org](http://www.ailalawyer.org)
Questions for Group:

- What are the differences between institutional aid, state aid, private aid, foundation aid and what are the rules on what can and can’t be used to support undocumented students?
- What are employment rules for undocumented and DACA students?
- Can an undocumented student without a SSN file for FAFSA?
- Are there colleges across the country doing things well?
Questions?

Angela D. Adams
Owner/Managing Attorney
Adams Immigration Law LLC
angela@adamsimmigration.com
https://adamsimmigration.com
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