

Congress of the United States
Washington, DC 20515

June 25, 2021

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue NW
Washington, D.C. 20016

Dear Secretary Mayorkas:

Thank you for your commitment to preserving and fortifying Deferred Action for Childhood Arrivals (DACA) and the recent announcement of your intention to engage in notice and comment rulemaking on DACA.¹ As you embark on these and other efforts to restore faith in our immigration system, we urge you to consider administrative actions to provide protections for young people who have grown up in the United States as dependents of nonimmigrant visa holders.

Like Dreamers, many of these individuals—often referred to as “Documented Dreamers”—were raised in this country, completed their education in the American school system, and graduated with degrees from American institutions of higher education. As STEM graduates, high-performing students, and essential workers, they contribute significantly to our nation. However, due to the decades-long backlogs in the immigrant visa system, many of these individuals will turn 21, and “age out” of eligibility for their temporary visa status and for permanent resident status before they can complete the process. Others, such as the dependents of E-1 and E-2 nonimmigrants, have no path to permanent residence. When these individuals turn 21, if they are unable to change to a temporary status independent of their parent, they must make the untenable choice of remaining here with their families without status or returning to their country of birth alone. As such, to preserve family unity, we urge you to take action to protect and provide relief to Documented Dreamers, and specifically consider the following:

- 1. Update DACA criteria to include individuals who had lawful status on June 15, 2012.** Under current guidelines, DACA applicants must have been physically present in the United States on June 15, 2012 and have had no lawful status on that date.² We urge the Department of Homeland Security (DHS) to update the application criteria to allow individuals who had lawful status in the United States on June 15, 2012, but subsequently lost such status, to qualify for DACA. This would be consistent with the original June 15, 2012 memorandum, “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,” which only requires one to be “present in

¹ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1615-AC64>.

² U.S. Citizenship and Immigration Services, *Deferred Action for Childhood Arrivals Frequently Asked Questions*, <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions>.

the United States” on such date.³ This change would allow a portion of the Documented Dreamer population who fell or will fall out of status at age 21 to be eligible for protection from removal.

- 2. Direct U.S. Citizenship and Immigration Services (USCIS) to use the date that an individual can file an application for adjustment of status as the basis for calculating a dependent child’s age under the Child Status Protection Act.** Under the Child Status Protection Act (CSPA), the “CSPA age” of a dependent child is calculated based on “the date on which an immigrant visa number becomes available.”⁴ Under section 245(a)(3) of the Immigration and Nationality Act, an individual can file an application for adjustment of status to lawful permanent resident if “an immigrant visa is immediately available” at the time the application is filed. Each month, the Department of State publishes a summary of visa availability for the coming month in the Visa Bulletin.⁵ In addition to a chart of “Final Action Dates,” a separate “Dates for Filing” chart is published which indicates when immigrant visa applicants will be notified to assemble and submit required documentation to the Department of State. If USCIS determines that there are more immigrant visas available for the fiscal year than there are known applicants, USCIS will inform the public that individuals may file their applications for adjustment of status in accordance with the “Dates for Filing” chart.

In November 2020, USCIS updated its Policy Manual to confirm that it uses the “Final Action Dates” chart when calculating an applicant’s CSPA age, regardless of whether the individual filed the application in accordance with the “Dates for Filing” chart. We ask that USCIS revisit this policy and, for individuals who were able to utilize the “Dates for Filing” chart to file their adjustment applications, use such chart for purposes of this calculation. This will give more young people the opportunity to retain their eligibility for adjustment of status without running contrary to USCIS’s interpretation of when a visa is “available.”

We ask that you consider these measures to protect young people who maintained status as dependents of long-term visa holders. Thank you for your attention to this matter.

Sincerely,



Deborah K. Ross
Member of Congress



Ami Bera, M.D.
Member of Congress

³ Memorandum from Janet Napolitano, Secretary of Homeland Security, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children* (June 15, 2012), <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

⁴ INA 203(h)(1)(A); 8 U.S.C. 1153(h)(1)(A).

⁵ Department of State, *Visa Bulletin*, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>.

/s/
Zoe Lofgren
Member of Congress

/s/
Judy Chu
Member of Congress

/s/
Suzan DelBene
Member of Congress

/s/
Adam Smith
Member of Congress

/s/
Marilyn Strickland
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Joe Neguse
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Ro Khanna
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Henry C. "Hank" Johnson, Jr.
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CC: Tracy Renaud, Acting Director, U.S. Citizenship and Immigration Services.