



Beyond Deferred Action for Childhood Arrivals (DACA): What other forms of immigration relief may be available to Latinas?

On June 15, 2012 the Obama Administration announced a new policy, Deferred Action for Childhood Arrivals (DACA), which allows certain youth who came to the United States as children to apply for relief from deportation or removal proceedings for two years.ⁱ While the policy does not create a path to permanent residency or citizenship, DACA is a groundbreaking first step for advancing justice for immigrant youth and their families and recognizes the contributions of young immigrant Latinas to our society. Those with DACA status may apply and receive work authorization, and certain state benefits like in-state tuition and driver's licenses. Unfortunately, due to two recent decisions by the Administration, those granted deferred action through the Deferred Action for Childhood Arrivals process will no longer be eligible for benefits under the Affordable Care Act (specifically the ability to purchase a Pre-Existing Condition Insurance Plan or plans offered on the state-based exchanges starting in 2014), Medicaid, and the Children's Health Insurance Program (CHIP.)

The National Latina Institute for Reproductive Health, as the only national Latina organization advancing reproductive justice for over 20 million Latinas, recognizes that changes in immigration policy that promote fairness, justice, and opportunity advance reproductive justice for immigrant Latinas, their families, and their communities. As such, NLIRH urges the Obama Administration to restore health care access for immigrant youth granted DACA, so as to promote equity in reproductive health care access and outcomes for immigrant Latinas. Furthermore, by restoring DACA youth's eligibility for benefits under the Affordable Care Act (ACA), Medicaid, and CHIP, the Deferred Action for Childhood Arrivals (DACA) program can more fully embrace the contributions of immigrant Latinas, support Latinas' participation in employment and educational opportunities, and advance opportunity for immigrant youth.

Deferred Action for Childhood Arrivals (DACA) is granted on a case-by-case basis and not all undocumented youth will be eligible to qualify. It is estimated that of the 1.7 million eligible for DACA, another 2.7 million immigrant youth are not.ⁱⁱ Those who do not qualify for DACA may have questions regarding other forms of immigration relief. While Deferred Action is one type of relief for undocumented immigrants, it is certainly not the only type of relief. Undocumented immigrants may also receive relief if

they qualify for the T or U Visas, VAWA Self-Petition, Special Immigrant Juvenile Status, or asylum. Below are the different types of relief along with their respective eligibility requirements, processes, and benefits. There may be additional steps and other forms you need to file that are not described here. Other information may be found at www.uscis.gov. If you are interested in any of these forms of relief or need assistance, please contact a licensed immigration attorney in your area or a legal aid society that specializes in immigration law.

This handout is for informational purposes only and does not constitute legal advice nor replace counsel given by a licensed attorney. Additionally, the forms of immigration relief listed on this fact sheet are not the only ones available. Please consult with an immigration attorney or a legal aid society that practices immigration law.

What is Deferred Action?

Deferred action is when the Department of Homeland Security decides to postpone the removal of a non-citizen.ⁱⁱⁱ These decisions are discretionary and are on a case-by-case basis. U.S. Citizenship and Immigration Services may also decide that certain groups of noncitizens are eligible for deferred action.^{iv} Deferred action does not provide individuals with lawful permanent status.

What is DACA?^v

This past June the Secretary of Homeland Security announced that specific people who came to the United States as children and meet **all** the main guidelines may apply for consideration of deferred action. This type of deferred action would last for two years, could be renewed, and would provide eligibility for work authorization. Below are the main guidelines:

- You were under the age of 31 on June 15, 2012; AND
- You came to the United States before you were 16 years old; AND
- You have continuously resided in the United States since June 15, 2007, until now. If you travel outside of the United States after August 15, 2012, you will not be granted deferred action ; AND
- You were physically present in the United States on June 15, 2012, and you are physically present at the time you make your application for consideration of deferred action with U.S. Citizenship and Immigration Services; AND
- You entered without inspection before June 15, 2012, or your lawful immigration status expired by or on June 15, 2012; AND
- You are currently in school, have graduated or received a certificate of completion from high school, you have received a general education development certificate (GED) OR you are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; AND
- You have not been convicted of a felony, a significant misdemeanor, or three or more other misdemeanors, and you are not considered a threat to national security or public safety. For instance, a minor traffic offense is not a misdemeanor for this process. A significant misdemeanor may be one where the maximum term of imprisonment is less than a year but more than five days or may be

severe offenses such as domestic violence, sexual abuse, driving under the influence, drug distribution or trafficking, etc., where the length of imprisonment does not matter. According to some immigration law advocates, DUI convictions and gang membership may disqualify you from DACA.^{vi} **We advise that you consult a licensed immigration attorney or legal aid society that specializes in immigration law if you have concerns and questions regarding this eligibility guideline and the others as the information given here is not comprehensive.**

- You must be at least 15 years old to apply for consideration of deferred action unless you are in removal proceedings or have a final removal order or voluntary departure order.^{vii}

However, because DACA is a discretionary program, it may be changed or it may be temporary. We urge individuals to look at other immigration solutions as well. Because the DACA application process is complicated, please seek the advice of an immigration attorney in your area or a legal aid society that specializes in immigration law. For more information, please go to the Consideration of Deferred Action for Childhood Arrivals Process page at www.uscis.gov.

T Visa

Background: The T Visa provides immigration protection to victims of human trafficking and who are willing to assist law enforcement in the investigation or prosecution of human trafficking.^{viii} Latinas may become victims of human trafficking due to a number of intersecting and systematic oppressions including economic injustice, racial and ethnic oppression, and gender discrimination. Latinas who are trafficked are faced with issues concerning reproductive health; even those who are not victims of sex trafficking may face coercive sex as a fear tactic, putting trafficked women at risk for sexually transmitted infections (STI) and unwanted pregnancies.^{ix} Trafficked women's access to regular reproductive health care services, such as Pap tests, contraception, and STI testing and treatment, may be negligible to non-existent.^x While limited, the T-Visa program could provide some justice for Latina victims of trafficking in the form of immigration relief, which in turn may expand access to employment and reproductive health care.

Eligibility Requirements:^{xi}

- Be a current or past victim of trafficking.
- Be physically present in the United States, the American Samoa, the Commonwealth of the North Mariana Islands or at a port of entry (an airport, a border, or a seaport) because of trafficking.
- Comply with any reasonable requests for assistance in the investigation or prosecution of human trafficking (or be under the age of 18 or unable to cooperate due to physical or psychological trauma).
- Demonstrate that you would suffer extreme hardship involving unusual and severe harm if you were removed from the United States.
- Be admissible to the United States. If you are not admissible, you may apply for a waiver.

Process:^{xii}

- Submit a Form I-914 application for T Nonimmigrant status.
- Three passport size photos.
- Include a personal statement explaining how you were a victim of trafficking.
- Evidence that you meet the eligibility requirements.
- May submit a Form I-914 Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking Persons. This can be used as evidence that you are a victim of trafficking and that you have complied with reasonable requests from law enforcement.
- Option of submitting additional evidence of compliance with reasonable requests for assistance. Including trial transcripts, court documents, police reports, news articles, and witness affidavits.^{xiii}

Benefits:^{xiv}

- Depending on your age, you may file a T-Visa for your spouse, children, and other family.
- 5,000 visas given out each fiscal year for victims with no limit for family members of victims.
- Eligibility to work in the US.
- The T-Visa lasts for 4 years.
- May apply to be a lawful permanent resident within the 3rd year of having a T-Visa.^{xv}
- May be eligible for federal refugee benefits.
- No fee to file form and fee waiver is available for associated forms.

U Visa

Background: The U Visa provides immigration protection to victims of certain types of crimes including: rape, torture, trafficking, domestic violence, sexual assault, abusive sexual conduct, prostitution, kidnapping, and many other crimes.^{xvi} The U Visa was created in 2000 by the federal government^{xvii} to address the realities of lack of confidence in law enforcement in immigrant communities, which has been further undermined by dangerous immigration laws, policies, and programs, like Secure Communities, 287(g), and the Criminal Alien Program. Additionally, the U-visa system seeks to address the reality that a victim's lack of immigration status is exploited by their abusers, making it harder for the victim to seek assistance. The U Visa, in addition to a number of qualifying crimes, is, like the VAWA Self-Petition (see below) applicable to victims of intimate partner violence (IPV). But unlike the VAWA Self-Petition, those seeking a U Visa do not need to demonstrate the immigration status of their abuser. Immigrant Latinas experiencing abuse may face heightened reproductive health care needs, but limited access to comprehensive reproductive health care. Though limited, the U Visa system seeks to address the unique challenges of Latinas facing intimate partner violence and other violent crimes. Latinas with U Visa status may have expanded opportunities to employment and reproductive health care.

Eligibility Requirements:^{xviii}

- Be a victim of a qualifying criminal activity who has suffered substantial physical or mental abuse as a result of the crime.

- Possess information about the qualifying criminal activity. If you are under the age of 16 or cannot provide information because of a disability, a parent, guardian, or friend may cooperate with law enforcement on your behalf.
- You are helpful, have helped, or are likely to help law enforcement in the investigation or prosecution of the crime. If you are under the age of 16 or unable to provide information due to a disability, a parent, guardian, or close friend may assist law enforcement on your behalf.
- The crime occurred in the United States or violated U.S. laws.
- Be admissible to the United States. If you are not admissible, you may apply for a waiver.

Process:^{xix}

- Fill out I-918 Form, Petition for U Nonimmigrant Status.
- Submit an I-918 Supplement B, U Nonimmigrant Status Certification that is completed and signed by a law enforcement official stating that you were or will be helpful in the prosecution of the qualifying crime.
- Submit a personal statement describing the criminal activity of which you were a victim.
- Additional evidence may be needed.

Benefits:^{xx}

- Can apply for a U-Visa for family members at same time as applying for self.
- 10,000 visas each fiscal year for victims, no limit for family members.
- Eligible to work in the US.
- The U Visa lasts for 4 years and you may apply for an extension.
- Can apply for lawful permanent residency.
- No fee to file form and fee waiver is available for associated forms.

VAWA Self-Petition

Background: The Violence Against Women Act (VAWA) Self-Petition was created to provide protection for victims of abuse who are not citizens of the United States. In cases of domestic violence, U.S. immigration law allows certain victims of abuse who are not citizens to obtain lawful status without relying on their abusers to petition.^{xxi} Both men and women can apply.^{xxii} Latina immigrants are overrepresented among intimate partner violence (IPV)- related homicides and face unique barriers to justice.^{xxiii} Abusers exploit their victim's noncitizen status, leaving them afraid to report abuse. In addition to psychological and physical abuse and harm, victims of intimate partner violence may face unplanned pregnancies and sexually transmitted infections (STIs).^{xxiv} Furthermore, reproductive coercion is a form of intimate partner violence that is on the rise, and includes sabotaging birth control, threatening to leave a woman if she does not get pregnant, forcing a partner to use a form of contraception or to obtain an abortion, and coercing a partner to use recreational drugs to enhance arousal.^{xxv} Like the U Visa system, the VAWA Self-Petition Program seeks to address the unique challenges faced by immigrant Latinas who are victims of IPV.

Eligibility Requirements:^{xxvi}

- Who can apply:
 - The abused spouse of a U.S. citizen (USC) or a legal permanent resident (LPR).
 - The abused child of a U.S. citizen or a legal permanent resident. The parent of a U.S. citizen or legal permanent resident who has been abused may also apply based on the abuse of the child.
 - The abused parent of a U.S. citizen.
- Other requirements:
 - *Special Requirements for abused spouses:*
 - Is or was married to a USC or LPR.
 - Marriage was in good faith.
 - *Special Requirements for abused children:*
 - Is child of USC or LPR.
 - *Special Requirements for abused parents:*
 - Is parent of USC.
 - *Requirements for all victims:*
 - Has or had a qualifying relationship to the abuser.
 - Subjected to battery or extreme cruelty by the abuser.
 - Resides or Resided with the abuser.
 - Good moral character.

Process:^{xxvii}

- File Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant and all supporting documentation with the Vermont Service Center.
- If all requirements are met, a “Prima Facie Determination Notice” will be sent to the victim and is valid for 150 days, which can be used to obtain certain public benefits for domestic violence victims.

Benefits:^{xxviii}

- Changes to abuser’s immigration status after the victim files their petition will not adversely affect it.
- Can be placed in deferred action to prevent removal from the U.S.
- Eligible to work in the U.S.
- Eligible to apply for lawful permanent residency.
- Immediate relatives can apply for lawful permanent residency at the same time the victim files their VAWA self-petition.

Special Immigrant Juvenile Status

Background: The Special Immigrant Juvenile Status provides immigration protection for undocumented juveniles in a state juvenile court system due to abuse, abandonment, or neglect.^{xxix} Access to reproductive health care for young immigrant Latinas facing neglect and abuse may be trivial to

non-existent, due to lack of documentation, age, lack of financial and other resources, and other barriers. Special Immigrant Juvenile Status grants eligibility to apply for legal permanent resident status and work authorization,^{xxx} which will expand access to reproductive health care for these young Latinas.

Eligibility Requirements:^{xxxii}

- A state court* in the United States must decide that you are:
 - A dependent of the court or to legally place you with a state agency, a private agency, or a private person.
 - That it is not in your best interests to return to your home country or the last country you resided.
 - You cannot be reunited with a parent because of any of these factors: abuse, abandonment, neglect or another similar factor.

*A state court may be called different names in different states. These names include: “juvenile court,” “family court,” or “orphan’s court.” Whatever the name, the state court must have authority under state law to decide on the custody and care of children.

Additionally:

- You need to be under 21 years of age when you file Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.
- The state court decision must be in effect when you file Form I-360 and when U.S. Citizenship and Immigration Services (USCIS) decides your application.
- You cannot be married when you file and when USCIS decides your application.
- You must be inside the United States when you file Form I-360.
- If you are in the legal custody of the U.S. Department of Health and Human Services:
 - You must have permission from HHS for the court to place you somewhere else.
 - You do not need to ask permission from HHS if the court does not place you elsewhere.

Process:^{xxxiii}

- You must file a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant form.
- If you would like to file for lawful permanent residency at the same time you file for special immigrant juvenile status, then you must file a Form I-485, Application to Register Permanent Residence or Adjust Status.
- There are other steps you will need to complete and forms that you may need to file. Please contact a licensed immigration attorney or a legal aid society for more assistance.

Benefits:^{xxxiii}

- Eligible to apply for lawful permanent residency.
- Eligible to work in the US.
- Parents cannot receive any immigration benefits from child who receives special immigrant juvenile status.
- The I-360 form is free to file and there is a lower fee for those under the age of 14 who are filing a Form I-485.

Asylum

Background: Asylum refers to applicants that have been persecuted or fear prosecution in their home countries because of their race, religion, nationality, membership in a particular social group or political opinion.^{xxxiv} Any individual may apply for asylum irrespective of their immigration status.^{xxxv} The government must have committed the persecution or the government is unwilling or incapable of controlling a group that is committing the persecution.^{xxxvi} Although gender in itself is not a basis for an asylum application, persecution that women face related to their gender, such as domestic abuse, female genital mutilation (FGM), or honor killings, may lead to the granting of asylum.^{xxxvii} Latinas granted asylum have access to health care and other supports so as to promote their integration into U.S. society.

Eligibility Requirements:^{xxxviii}

- You must be physically present in the United States or are seeking entry at a port of entry (airport, seaport, or border crossing).

Process:

- Submit a Form I-589 Application for Asylum with the U.S. Citizenship and Immigration Services that has jurisdiction where you live within one year of your arrival in the United States. You can still apply after a year if changes in circumstances affected your eligibility to apply for asylum or extraordinary circumstances caused a delay in filing, and you filed within a reasonable amount of time given the circumstances.^{xxxix}
- You will then be fingerprinted, a background security check will be conducted, and at some point, most applicants are interviewed.^{xi}
- If your application is denied by U.S. Citizenship and Immigration Services, you will have to include a letter with your application stating that you previously applied for asylum and were denied. The letter and application must be submitted to an Asylum Office that has jurisdiction in the place you reside.^{xli}
- May apply for asylum while in Immigration Court removal proceedings.^{xlii}

Benefits:^{xliii}

- Monetary and medical assistance.
- Employment preparation and job placement.
- English-language training.
- You may apply for legal permanent residency one year after being given asylum.
- You may apply for a social security card.
- You may apply for asylum for your spouse or children.
- If you are given asylum, you are permitted to work in the United States.
- No fee to apply for asylum.^{xliv}

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