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Deferred action for the "dreamers" - youthful illegal aliens

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Deferred Action for the "Dreamers" -- Youthful Illegal Aliens

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I have received a lot of questions from people on the new policy announced by the White House on 15 June, 2012, what they refer to as ?Reform for the Dreamers.? Essentially, what is being addressed is those people who are below the age of 30, came into the US before they were 16, and have been here for five years. So the idea is the people who are illegally here and were here at a relatively young age, we want to protect.

And the policy as announced by the President is motivated by the fact that these folks have come here, they've studied hard, they've worked hard, and they came not because they wanted to come, but because they came as a child, and they had no control over where they were.

Let me make one thing very clear at the outset. This program does nothing for people who are legal residents or immigrants or temporary residents of the United States. It does nothing if you are legally in the USA and your children are here legally in the USA, it does nothing for you. Stop listening if that's what you are interested in. But if you want to know more about the law and how it is shaping up, I will tell you more as best as I can based upon our knowledge as it exists today.

So the idea here was that you want to protect those people who came here without their own volition, without their own desire. They are here because their parents are here. And the President said that he wanted to step in and take care of these folks because this is not a new effort. It was started as early as six years ago. I know it because we were very actively involved at one point in this process as well.

The President talks about six years ago, the unlikely trio John McCain, Ted Kennedy, and President Bush had come together to champion this so called ?Dream Act,? but, unfortunately, according to the President, the Republicans blocked it in the Senate. So the idea here is that the President wanted to step in and do whatever he could without involvement of Congress. So remember, Congress passes laws, whereas the Executive Branch of government, which is the President and all the agencies underneath the President,

including DHS, USCIS, etc., all of them implement and execute the laws. When you are implementing something or executing something, remember that your authority is limited. You cannot create new rights. You cannot create more laws. Because of that, the President made it clear and USCIS made it clear that we are not creating any permanent entitlement.

What we are going to do is this: if you meet the criteria, we will give you temporary residence in USA for two years. It carries no other rights except the right to work. The details would be implemented within 60 days, so let me get to that document. This is probably the most informative document to date. These are the Frequently Asked Questions that the government has put out.

The duration of the deferred action is for a period of two years, subject to renewal.

What does deferred action basically mean? It means, "We will not deport you, we will not remove you, and we will not send you outside USA." That does not create any new rights. It does not make you a permanent resident. It does not make you even a legal non-immigrant, like an H-4 or E-2 visa holder. It does not give you anything substantive. It basically gives you the right not to be deported until government changes its mind, and they can change their mind right away. There is nothing in law that says they cannot change their mind. The use of prosecutorial discretion confers no substantive right.

It does not make you legal in the USA. They want to begin implementing the process within sixty days of June 15, and the rights are available immediately, but they will start orderly implementation within 60 days.

Then they talk about who is eligible. The individual must have come to the USA under the age of sixteen; must have been here five years before the date of this memorandum (which is June 15th, 2012); must currently be in school or have graduated from high school or have obtained a general education development certificate (GED) or be an honorably discharged veteran of the Coast Guard or Armed Forces of the US; and must have not been convicted of felony offense. No felony. If there is even one felony, you can't qualify for this. Also, you can't be convicted of a significant misdemeanor offense, and they define what significant misdemeanor offense means. Also, you can't be convicted of multiple misdemeanor offenses or otherwise pose a threat to national security or public safety. So if you have a criminal background or have a history of being a threat to national or public safety, you will have a problem. And you must not be above the age of thirty.

Then they talk about what is deferred action. They define it. It basically means, "We will not send you out." It does not mean whatever unlawful presence you have already accrued gets washed away. What does that mean? In a very basic manner, once your I-94 expires or you enter US without inspection, if you come through the border without being inspected in other words (for example, a coyote brought you to USA), the fact that you are getting deferred action now does not mean all your past problems are washed away. So be very careful. Do not think that, because unlawful presence of one year will bar you from getting any kind of status in USA for ten years unless you qualify for a very narrowly tailored waiver. It is very difficult to get a waiver on something like that. Just because you are getting a deferred action now does not mean that all the past "sins" and infractions have been washed away. They are still there. Those violations are not going to go away.

You will receive employment authorization and remember that deferred action can be terminated anytime. Then they talk about how they are going to implement them. Individuals

who are not in removal proceedings (meaning you are in the immigration court right now), some people who are in removal proceedings will be treated differently. One classification is individuals who are not in removal proceedings or who have already been ordered to be removed (meaning their proceedings are over and the judge has said, "Okay. You need to be removed. You need to be sent away.") Those people will be treated little bit differently. Individuals who are still in proceedings will be treated differently. So they have these various methodologies that they are going to come out with. We still do not know all the details yet, but they will be treating these people differently, but all of these folks will have the right to get their work authorization and deferred action as long as they meet those four to five criteria that I have mentioned earlier.

Another thing that the government mentioned was that the people who they have already identified, they are automatically giving them deferred action without having to apply. So basically the government is acting upon its own accord. There is a lot of information in this Frequently Asked Questions document. I will attach that document to this little conversation that I have here.

Then they talk about what kind of documentation you need to show that you came to USA before the age of 16, that you have resided here for five years, and that you were physically present in the US as of June 15, 2012. They said provide us financial records, medical records, school records, employment records, military records, but that is not the only thing. You can give anything that you think tends to prove your presence in the USA that will help you.

So now this where they talk about what they consider a significant misdemeanor offense. First of all, a felony is anything that is punishable by more than one year in prison, according to this definition. So anything that is punishable by more than one year in prison, if you have been convicted of that, you do not qualify. You also can't have a significant misdemeanor and they define it here. A significant misdemeanor is a federal, state, or local criminal offense punishable by no more than one year of imprisonment and, even if no imprisonment-- that is the key point-- even if there is no imprisonment-- but involves violence, threat, assault, domestic violence, sexual abuse or exploitation, burglary, larceny, fraud, driving under the influence of alcohol or drugs, obstruction of justice, bribery, or unlawful flight.

So there is a whole list of things that, if you have been convicted of, even if they were a misdemeanor, you will not qualify. And if you have three misdemeanors, you will not qualify at all. And they talk about what threat to public safety is. It is, for example, gang membership, participation in criminal activities, or participation in activities that threaten the United States.

What if my case is not approved? Can I ask for an appeal? The answer is no. You cannot get an appeal, but they will set up a public procedure where you can ask the supervisor of the case officer who decided your case to look at the case again and decide.

Do my dependents or immediate relatives get benefit? No. This is only for you, the person who qualifies.

Can I travel outside United States? The answer is, "We have not decided that yet." I will be very careful with that, because, if you are subject to unlawful presence and you have been here over a year under unlawful presence, travel outside USA could bar you for ten years.

I hope this gives you some information on what you need to do and what this is all about.

Feel free to post a message here if something is not clear.

Good luck, folks.

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