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QUESTIONS AND ANSWERS ABOUT OBAMA ADMINISTRATION'S DEFERRED ACTION / DREAM ACT LAW.

As we reported in the July issue, the Obama Administration announced a new policy that will allow young immigrants here in the United States without documents to qualify for temporary legal status and work permission. On August 15th, the Department of Homeland Security released detailed answers regarding how the program will work, as well as the application forms. Here I use this newly revealed information to answer some frequently asked questions:

What is the age limit for Deferred Action? In order to qualify for this new status, you need to be under 31 years of age as of June 15, 2012, the date of the Executive Order by Obama. If you turn 31 *after* June 15, 2012, you can still apply.

What if I came to the US when I was 18 years old? You do not qualify. You had to come to the US *before* your 16th birthday.

Is there any requirement that I show I was in the U.S. for a specific time? Yes, there are two such requirements:

1. You must show you have continuously resided in the United States since June 15, 2007, up to the present time;
2. You must show you were physically present in the United States on June 15, 2012, and at the time of making your request for consideration of deferred action with USCIS

Do I have to prove I am in school? You can apply if you are currently in school, *or* have graduated from high school, *or* 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.

Who is considered to be “currently in school” under the law?
To be considered “currently in school”, you can be enrolled in:

- a public or private elementary school, junior high or middle school, high school, or secondary school;
- an education, literacy, or career training program; or

- an education program assisting students either in obtaining a regular high school diploma or a GED or other equivalent state-authorized exam.

Do I still qualify for Deferred Action if I have speeding tickets or convictions for driving without a license? Yes. You can qualify as long as you have 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. The rules say that a conviction for driving without a license is *not* a significant misdemeanor. However, driving while intoxicated (DUI) is a conviction that would disqualify you.

If you have a more serious misdemeanor or felony on your record, in some cases there may be a way to qualify by expunging your record, but you should get legal advice before applying.

Do brief departures from the United States interrupt the continuous residence requirement? Under the law, a “brief, casual, and innocent” absence from the United States will not interrupt your continuous residence. If you have left the US in the last 5 years, you should get legal advice before applying.

If I qualify for deferred action, am I eligible for employment authorization? Yes.

Does deferred action provide me with a path to a green card? No. Deferred action is a temporary status only that does not confer lawful permanent resident status or a path to citizenship. .

Is there a risk that my application will result in my deportation?

According to the Obama Administration, the information provided in this request is protected from disclosure to U.S. Immigration and Customs Enforcement (ICE) for the purpose of immigration enforcement proceedings. Exceptions are made if the requestor has a serious criminal record or fit within other deportation priorities of ICE.

However, the government has said explicitly that this is subject to change at any time without notice. If Obama does not win re-election, a new administration under Mitt Romney could certainly change this policy and use this information against applicants.

How do I apply? There are several application forms that must be filled out:

- Form I-821D, Consideration of Deferred Action for Childhood Arrivals
- Form I-765, Application for Employment Authorization, and
- Form I-765WS, Worksheet

You must also submit a check for the filing fee of \$465

You can find the mailing address, forms and instructions on www.uscis.gov/i-821d.

USCIS will review them for completeness, including submission of the required fee, initial evidence and supporting documents. If it is determined that the request is complete, USCIS will send you a receipt notice.

USCIS will then send you an appointment notice to visit an Application Support Center (ASC) for a biometrics appointment

USCIS will review each case on an individual, case-by-case basis. USCIS may request more information or evidence from you, or request that you appear at a USCIS office. USCIS will notify you of its determination in writing.

CHRISTOPHER A. KEROSKY of the law firm of KEROSKY PURVES & BOGUE has practiced law since 1984 and has been recognized as one of the top immigration lawyers in Northern California for the last seven years by San Francisco Magazine "Super Lawyers" edition (2006-2012). He graduated from University of California, Berkeley Law School and was a former counsel for the U.S. Department of Justice in Washington D.C. He has had his own law office in downtown San Francisco for 20 years.

WARNING: The foregoing is an article discussing legal issues. It is not intended to be a substitute for legal advice. We recommend that you get competent legal advice specific to your case. If you would like such advice from our office, call (415) 777-4445 (San Francisco); (916) 349-2900 (Sacramento) or (707) 433-2060 (Santa Rosa).