



**KPB Immigration Law Firm**

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Article: **DACA IS BACK... FOR NOW. WHAT DOES IT MEAN?**

By: **Christopher A. Kerosky, Esq**

The U.S. Citizenship and Immigration Service (USCIS) announced on Saturday January 13th that DACA renewal applications are now being accepted in response to the federal court order last week requiring them to do so.

**The notice from USCIS reads:**

Due to a federal court order, USCIS has resumed accepting requests to renew a grant of deferred action under DACA. Until further notice, and unless otherwise provided in this guidance, the DACA policy will be operated on the terms in place before it was rescinded on Sept. 5, 2017.

**Who Can Apply?**

What this means is that persons who were previously granted deferred action under DACA may request renewal. They do so by filing Form I-821D (PDF), Form I-765 (PDF), and Form I-765 Worksheet (PDF), with the appropriate fee.

While the announcement is not entirely clear on this, it appears that those who have DACA now can file for a renewal if their application expires less than 150 days from now. It's not clear whether USCIS will accept renewal applications from those whose DACA expires more than 150 days from now. See FAQs from the National Immigrant Law Center. <https://www.nilc.org/issues/daca/faq-uscis-accepting-daca-renewal-applications/>

Those who previously received DACA but their DACA expired after September 5, 2016 can also file a DACA request as a renewal request. However, persons whose DACA expired before September 5, 2016, cannot renew under this announcement.

**No Right to Travel.**

USCIS will not accept or approve requests for permission to travel outside the country known as "advance parole", which was previously available to DACA recipients. No one with DACA should travel outside the U.S., unless there's a future change in the law.

**No New Applications.**

USCIS is not accepting requests from individuals who have never before been granted deferred action under DACA. This bars from relief those who have turned 15 years old since September 5, 2017 and would have been eligible had the original DACA Executive Order remained in place. It also bars those who never applied earlier for other reasons.

## Response to Judge's order

The Trump Administration took this action because it was required by Hon. William Alsup, a federal judge in San Francisco. Judge Alsup's order on January 9th ruled that Trump's decision to cancel DACA may have been improper and temporarily required the Administration to continue to renew DACA for those who had that status. It is likely the Trump Administration will appeal the order to the Ninth Circuit and, if necessary, to the U.S. Supreme Court. One of those courts could rescind Judge Alsup's order and that would likely result in USCIS closing down DACA completely again. Also, this order is merely a preliminary injunction and so further proceedings in the District Court may result in the order being lifted.

## Who Should Apply?

Persons whose DACA expires in the next five months would be wise to apply to renew their status. Likewise, persons should apply who allowed their status to lapse after September 5, 2016 and were barred from re-applying by the Trump Administration's cancellation of DACA.

The passage of Congressional legislation such as the DREAM Act of 2017 would be far preferable to the status quo as it would provide deportation relief to far more people on a legislative basis and create a path to permanent residence. For a summary of that bill, go to: <https://www.congress.gov/bill/115th-congress/senate-bill/1615>

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## About the author:

**Christopher A. Kerosky** of the law firm of KEROSKY PURVES & BOGUE LLP 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.

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