

Criminal Bars to the DACA Program

The Deferred Action for Childhood Arrivals (“DACA”) program is a discretionary immigration policy granting deferred action for certain undocumented young people who came to the U.S. as children. This program allows an individual to apply for employment authorization. However, it does not grant a direct path to lawful permanent residence or to citizenship. DACA status can be revoked at any time.

Following federal court orders in 2021, DACA renewal remains available, but as of July 16, 2021, USCIS is not granting initial requests. If an individual’s DACA status has been expired for more than one year, it is considered as an initial request, and it will not be processed.

Convictions of a broad array of criminal offenses will bar eligibility for the DACA program. Such convictions will also bar DACA renewals, which must be done every two years.

DACA is criminally barred by:

- Conviction of **any felony** (federal, state, or local offense that is punishable by imprisonment of more than one year);
- Conviction of a **“significant misdemeanor,”** an offense that is punishable by imprisonment of more than five days but less than a year and is an offense of
 - Domestic violence
 - Sexual abuse or exploitation
 - Burglary
 - Unlawful possession or use of a firearm
 - Drug distribution or trafficking
 - Driving under the influence of alcohol/drugs, **including NY traffic infractions, like VTL 1192.1**
 - Any conviction for which the individual was sentenced to jail for more than 90 days (suspended sentences do not count toward the 90 days).
- Conviction of **three or more “non-significant” misdemeanors** that do not occur on the same day nor arise from the same act or scheme of conduct, **including any three NY misdemeanors, NY violations (like PL 240.20, PL 240.26, PL 140.05, etc.), or any NY traffic infractions that have a possible jail sentence of more than 5 days.**

The following dispositions will not automatically disqualify someone from DACA eligibility, but the Department of Homeland Security (DHS) will consider them on a case-by-case basis:

- Any state **immigration-related** felony or misdemeanor – to the extent any exist.
- **Traffic offenses** - minor traffic offenses, such as driving without a license (**VTL 509 traffic infractions**) will not be considered a misdemeanor for DACA purposes.
- **Juvenile delinquency adjudications** – such as **NY Family Court Dispositions.**
- **Expunged convictions.**

Additionally, any criminal history can result in a discretionary denial of DACA:

- Threats to public safety - applicant who DHS concludes presents a “public safety threat, such as, **gang membership or participation in criminal activities.**” Such an individual may receive deferred action only after showing “exceptional circumstances.”
- Threats to national security - any application where DHS concludes that the applicant has participated in activities that are a threat to national security, such as being on a terrorist watchlist. Such an individual may receive deferred action only after showing “exceptional circumstances.”
- Any criminal history - Even where no criminal bar is present, DHS may consider an individual’s total criminal history, including non-significant misdemeanor convictions, juvenile delinquency, and expunged convictions. DHS will determine under the “totality of circumstances” of the individual’s application whether to grant deferred action.

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