

EMPLOYER ALERT:

Deferred Action As A "New" Employment Status for Non-Citizens?

After Congress rejected President Obama's DREAM Act, through which he sought to provide permanent residency (i.e., green cards) for certain young illegal immigrants, the President has now decided to act unilaterally. At a press conference this month, President Obama announced a new immigration policy directive that is expected to allow approximately 800,000 young illegal immigrants to not only stay in the U.S., but to work here as well.

The Department of Homeland Security ("DHS"), which is the federal agency that oversees U.S. immigration and enforcement, announced the particulars of the President's new policy. Framing the issue as one of prosecutorial discretion, this new policy expands upon DHS's deferred action authority, which Congress gave to DHS to postpone removal (i.e., deportation) proceedings.

Effective immediately, this new policy is focused upon ensuring that DHS's limited resources are not spent on "low priority" cases, which DHS now sees as anyone who is:

- Currently under the age of 30 and came to the U.S. illegally before the age of 16;
- Has lived in the U.S. for the past 5 years;
- Is in school or otherwise has a high school diploma (or is a military veteran); and
- Has no significant criminal record.

Although DHS warns that this policy does not create a new non-immigrant classification (which DHS lacks the authority to do anyway), this new deferred action "status" is granted for two years with no apparent renewal limits. Thus, in reality, it offers *more* than most temporary visas.

Of most interest to employers is that a young illegal immigrant who is granted deferred action "status" is also eligible to work in the U.S. This should not complicate the I-9 verification process, as any deferred action beneficiary can apply for an Employment Authorization Card (Form I-766), which is a proper List C document. Employers should be aware, however, that this new deferred action policy creates the possibility that an applicant who was previously denied employment because of his or her illegal status could return with proper work authorization, and should not be discriminated against based upon that prior status.

The process for applying for deferred action is still being ironed out, but employers should anticipate seeing these new workers enter the job market later this year. Unfortunately, the threat of further document fraud inevitably follows all such policy changes, once again leaving employers in a precarious position on the front lines of America's illegal immigration struggle.



Jason M. Van Dam is an associate in the firm's litigation practice group, and counsels both individuals and employers on immigrant and non-immigrant issues.



Toledo
Four SeaGate, Ninth Floor
Toledo, Ohio 43604
419-249-7900/phone
419-249-7911/fax

Findlay
220 W. Sandusky Street
Findlay, Ohio 45840
419-423-4321/phone
419-423-8484/fax

Waterville
204 Farnsworth
Waterville, Ohio 43566
419-878-2931/phone
419-878-4727/fax

Tecumseh
105 Brown Street, Suite 100
Tecumseh, Michigan 49286
517-423-5404/phone
517-423-5647/fax

Monroe
23 East Front Street, Suite 101
Monroe, Michigan 48161
734-457-1092/phone
734-457-1094/fax

This publication is designed to provide general information prepared by professionals in regard to the subject matter covered. Although prepared by professionals, this publication should not be utilized as a substitute for professional service in specific situations. If legal advice or other expert assistance is required, the services of a professional should be sought.