

# Deferred Action for Childhood Arrivals (DACA)



- On June 15, 2012 the Department of Homeland Security announced Deferred Action for certain undocumented youth in the United States
- This deferred action means that qualifying individuals are considered for relief from removal/deportation
- Qualifying individuals are also eligible to apply for work authorization

# Deferred Action

- Deferred action is discretionary
- It postpones removal action/deportation
- Deferred action does not grant lawful status
- Although deferred action will stop the unlawful presence clock, it does not forgive any previous or later periods of unlawful presence

# Deferred Action Qualifications



1. Entered United States under the age of sixteen. “Fifteen and under.” (“Before your 16<sup>th</sup> birthday.”)
2. Continuously resided in the United States for at least five years before June 15, 2012.
3. Were present in the United States on June 15, 2012; and on date of application.

# Deferred Action Qualifications

4. EWI or Status expiration before June 15, 2012
5. Currently in school, graduated from high school, obtained a general education development certificate, or are honorably discharged veterans of the Coast Guard or Armed Forces of the United States
6. Not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise pose a threat to national security or public safety
7. Not above the age of thirty (“under 31”) on June 15, 2012.

# Deferred Action Qualifications



- When applying individuals will be subject to a background check
- If not subject to an order of removal, must be 15 to apply

# DACA Considerations



- DACA is a policy; not the law
- DACA can be terminated at any time
- Household members have not been called to Immigration Court
- DACA is granted in two-year increments

# Applying for DACA



- Form I-821-D
- Form I-765 for employment authorization
- Form I-765WS
- Upon issuance of EAD, applicant may apply for a Social Security Card
- May apply for a Driver's License
- Upon DACA Approval, applicant may apply for Advance Parole, Form I-131

# DACA Representation Best Practices



- Be wary of Notarios
- Not a valid status
- Not a path to permanent residence
- Must prove economic hardship for employment authorization
- Only trust information from the government and from an experienced immigration lawyer.



# DACA Statistics

As of August 31, 2013:

- 588,725 DACA applications received
- 21,162 Rejected
- 9,578 Denied
- 455,455 Approved
- 120,000 under review (Approximately)

**Texas** - 93,277 accepted; 72,408 approved

**Oklahoma** - 4,783 accepted; 3,893 approved

**New Mexico** - 4,217 accepted; 3,089 approved

# Defense of Marriage Act (DOMA)



- On June 26, 2013, the U.S. Supreme Court issued a decision in *United States v. Windsor* holding that Section 3 of DOMA is unconstitutional
- Although *Windsor* involved federal estate taxes, the Court's ruling applies broadly to all federal programs impacted by DOMA
- With this decision, the US government began implementing federal benefits, including immigration benefits, for same-sex legally married couples

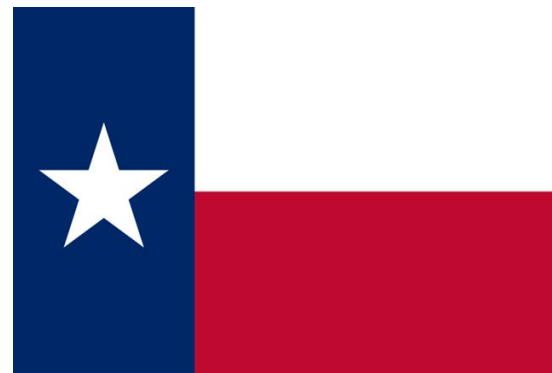
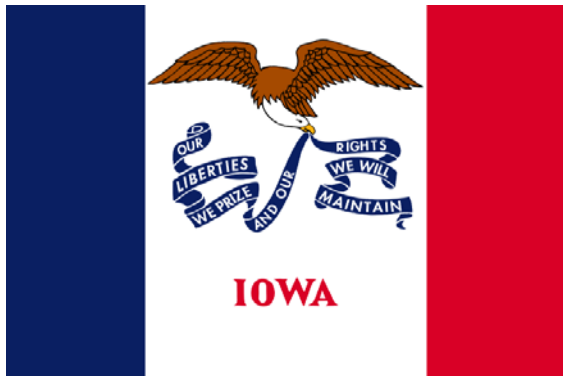
# Legal Marriage and Immigration Law

- Many types of immigration benefits depend on the existence of a valid marriage.
  - Dependent for a nonimmigrant visa
  - Adjustment of status on a family-based petition
  - Adjustment of status as a dependent on an employment-based petition
  - Derivative beneficiary of an asylum application
  - Waivers or cancellation of removal requiring a qualifying relative
  - Fiancé/e petition
  - VAWA self-petition



# Place of Celebration Rule

- 13 States and D.C. have legal same-sex marriage
- 35 States ban same-sex marriage
- When evaluating the validity of a marriage, DHS generally employs a Place of Celebration rule
- Under this rule, “the validity of a marriage is determined by the law of the State where the marriage was celebrated”
- EXAMPLE: A same-sex couple married in Iowa who live in Texas at the time the visa petition is filed would be considered a bona fide marriage



# Civil Unions & Domestic Partnerships?

- Some states and several countries recognize civil unions but may not recognize same-sex marriages
- To date, many of the agencies have not addressed the issue of whether Civil Unions and Domestic Partnerships would qualify
- DOS released FAQs that indicate civil unions will not be treated as marriages



# Foreign Marriages & Partnerships

- Many couples may not legally be married, but in a cohabitating partnership relationship that is equally recognized by the government where they reside
- Non-married couples, regardless of the local laws, will still not qualify for these immigration benefits
- The official, legal marriage certificate or document will be required



# Proving Bona Fides of the Marriage

- The couple must demonstrate that the marriage is bona fide and not entered into for the sole purpose of receiving immigration benefits
- Evidence commonly used with opposite-sex marriages, may not be easily available and for same-sex married couples and proving a bona fide marriage may be more challenging



- Tax Documentation: Prior to June 26, 2013, same-sex couples were prohibited from jointly filing federal taxes
- Joint Assets & Liabilities: Often not available for same-sex couples
- Same-sex couples may not be “out” to family, friends and co-workers



# Marriage Fraud and Misrepresentation

- As with opposite-sex marriages, the INA has several marriage fraud and related provisions that would equally impact same-sex marriages
- Often times, previous marriages can create greater scrutiny on the validity of a marriage
- Practitioners should explore fully the factual background of possibly more complex cases
  - A prior opposite-sex marriage, even a prior petition based on that marriage, should not be cause to suspect marriage fraud
  - Same-sex divorces from a prior marriage may complicate the case as many states have residency requirements for divorces



# When Can Couples Apply?

- **NOW !!**
- USCIS and DOS were directed to review cases filed on behalf of same-sex couples in the same manner as opposite-sex couples effective immediately after the ruling
- USCIS and DOS have issued FAQs specifically addressing same-sex marriage issues
- Previously denied cases: USCIS will reopen cases that were denied solely based on DOMA after February 23, 2011 (the date the DOJ stopped defending DOMA in Court)
  - Includes any concurrently filed I-485
  - Contact [USCIS-626@uscis.dhs.gov](mailto:USCIS-626@uscis.dhs.gov) before March 31, 2014 to request reopening.