

Immigration Law Nuts and Bolts

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4 ADMISSION CATEGORIES FOR LEGAL IMMIGRANTS

I. Family-Based Categories (480,000 visas available each year, some backlogs)

Immediate Relatives of U.S. Citizens (spouse, minor child, or parent)

Adult children of U.S. citizen, unmarried

Spouses and children of Lawful Permanent Residents

Adult children of U.S. citizen, married

Brothers and Sisters of U.S. citizen

II. Employment-Based Categories (140,000 visas available each year, some backlogs)

**Internationally recognized in science or arts, professors, business executives
(and supermodel Melania Trump)**

Persons with advanced degrees

**Skilled workers with experience, professionals with undergrad degree, and
“other”**

III. Refugees Overseas and Political Asylees in the U.S.

“Refugees” are overseas and “asylees” are in the United States

**Eligible if outside of your home country and have a “well-founded fear” of
persecution *on the basis of race, religion, nationality, political opinion or membership
in a social group***

**Overseas refugee admissions were 85,000 in 2016 but are capped at 15,000 for 2021;
Joe Biden has pledged to raise the number to 125,000**

**The law provides that any individual present in the U.S. or at the border has the right
to request political asylum within one year of entry and have their request considered
by an Immigration Judge (there is no cap on grants of political asylum); the Trump
Administration attempted to discourage people from making claims in several ways,**

including family separation and forcing asylum seekers to wait in Mexico until their hearing date

Grants of political asylum in 2018 totaled 38,500 (the latest statistic available); there are currently about 360,000 political asylum cases pending and the average wait time for a hearing is estimated to be between 2 and 4 years

IV. Diversity Visa Lottery (50,000 visas available each year)

Key Takeaway: There is no “line” to wait in if you lack a close family connection to a U.S. citizen and if you have no college degree or specialized job skills (The “other” includes 5,000 visas per year theoretically includes unskilled workers but the backlog is enormous).

DEFERRED ACTION CHILDHOOD ARRIVAL (DACA) aka “the Dreamers”

I. Who is eligible?

You may request DACA if you:

- a. Were under the age of 31 as of June 15, 2012;
- b. Came to the United States before reaching your 16th birthday;
- c. Have continuously resided in the United States since June 15, 2007, up to the present time;
- d. 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;
- e. Had no lawful status on June 15, 2012;
- f. Are currently in school, have graduated or obtained a certificate of completion from high school, 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; and
- g. Have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

II. What does DACA do?

Recipients received deferred action for a period of two years, subject to renewal. They are also eligible for work authorization. Deferred action is a use of prosecutorial discretion to defer deportation for a certain period of time. Deferred action does not provide lawful status.

III. Who are the DACA recipients?

There are about 800,000 DACA recipients. *The median age at which they entered the U.S. is 6 years old.* About two thirds of them were born in Mexico. The vast majority currently live in Texas and California. Less than ¼ of one percent of recipients subsequently committed a crime. *No one who entered the U.S. after June 15, 2007 can receive DACA status.*

IV. Why is DACA necessary?

There is no avenue under the law for undocumented persons within the U.S. to become lawful residents. Without DACA, the recipients would be prohibited from employment and subject to deportation at any time to a birth country many never knew. If they leave the U.S. voluntarily, they are prohibited from seeking to legally enter the U.S. for at least ten years.