



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

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OAG—02—12

Mr. Mark Gottlieb
Secretary
Wisconsin Department of Transportation
4802 Sheboygan Avenue, Rm. 120B
Madison, WI 53705

Dear Mr. Gottlieb:

¶ 1. You have asked for advice concerning the applicability of a new federal policy, the U.S. Department of Homeland Security’s “Deferred Action for Childhood Arrivals” (“DACA”), to the issuance of an operator’s license under Wisconsin law. I conclude that an applicant for a standard driver’s license may prove legal presence in the United States by providing evidence of approved deferred action status under the new policy. The license expires two years from the date when deferred action status was granted.

¶ 2. The immigration laws have long given the U.S. Attorney General discretion to permit certain otherwise-removable aliens to remain in the United States. *Holder v. Martinez Gutierrez*, 132 S. Ct. 2011, 2015 (2012). Deferred action represents an exercise of prosecutorial discretion to defer removal action against an individual who is unlawfully present in the United States:

[T]he INS may decline to institute proceedings, terminate proceedings, or decline to execute a final order of deportation. This commendable exercise in administrative discretion, developed without express statutory authorization, originally was known as nonpriority and is now designated as deferred action. A case may be selected for deferred action treatment at any stage of the administrative process. Approval of deferred action status means that . . . no action will thereafter be taken to proceed against an apparently deportable alien, even on grounds normally regarded as aggravated.

Reno v. American-Arab Anti-Discrimination Comm., 525 U.S. 471, 484 (1999) (quotes and citation omitted).

¶ 3. On June 15, 2012, Secretary of U.S. Homeland Security Janet Napolitano issued a new policy making certain illegal immigrants eligible for “Deferred Action Status.”

Secretary Napolitano detailed this policy in a memorandum entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,” issued to U.S. Customs and Border Protection, U.S. Citizenship and Immigration Services, and U.S. Immigration and Customs Enforcement. The memorandum sets forth a specific list of criteria for deferred action, including (1) arrival in the U.S. before the age of sixteen; (2) continuous residence in the U.S. for at least five years prior to the date of the memorandum; (3) current student, high school graduate, recipient of a general education development certificate, or honorably discharged veteran; (4) not convicted of a felony, significant misdemeanor, multiple misdemeanors, or otherwise a threat to national security or public safety; and (5) not above the age of 30. *See* Secretary Napolitano Memo (June 15, 2012), available at www.uscis.gov/childhoodarrivals (last visited Sept. 12, 2012).

¶ 4. On August 15, 2012, the Department of Homeland Security began accepting applications for deferred action status under the new criteria. A successful applicant will receive a notice of decision from Homeland Security reflecting that the individual has approved deferred action status. An applicant’s status under the program expires two years from the date of the decision. *See* DHS Secretary Napolitano’s Memo at 2-3.

¶ 5. Wisconsin law requires an applicant for a driver’s license to prove citizenship or legal presence in the United States. Wisconsin Stat. § 343.14(2)(er)1. provides that an application must include “[d]ocumentary proof that the individual is a citizen of the United States or documentary proof that the individual is legally present in the United States.” One of the ways an applicant may prove legal presence is by providing documentary proof of “approved deferred action status.” Wis. Stat. § 343.14(2)(er)2.

¶ 6. I conclude that a notice of approved deferred action status issued pursuant to the Deferred Action for Childhood Arrivals program constitutes satisfactory proof of legal presence under Wis. Stat. § 343.14(2)(er)2. A successful applicant under the federal program will have proof of deferred action status, which tracks the deferred action status permitted to serve as proof of legal residence under Wis. Stat. § 343.14(2)(er)2.

¶ 7. I also conclude that a license issued by the Department of Transportation based on such notice will expire two years from the date when the notice was issued. Wisconsin Stat. § 343.20(1m) provides that any person who provided documentary proof under Wis. Stat. § 343.14(2)(er)2., such as proof of approved deferred action status, must be issued a license that expires on “the date that the person’s legal presence in the United States is no longer

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authorized[.]” If an applicant relies on approved deferred action status to prove legal presence, the license must expire two years from the date when that status was approved.

Sincerely,

J.B. VAN HOLLEN
Attorney General

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