

June 19, 2015

MEMORANDUM

To: Rep. Cindy Ryu
From: Chris Thompson, House Democratic Policy Staff
Re: Undocumented Residents

This memo is a follow-up to your questions and request for more information about undocumented residents of Washington. First of all, I want to answer the question I think you were directly asking: Are people who came to the U.S. under the VISA Waiver Program and stayed beyond 90 days included in the estimates of the undocumented population that I reported in my Paper on that topic?

VISA Waiver Program (VWP) and Undocumented Resident Population Estimates

For estimates on the undocumented population in the U.S. and in Washington state, I relied primarily on two sources:

“Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012,” by Bryan Baker and Nancy Rytina, Office of Immigration Statistics, U.S. Department of Homeland Security, published March 2013 <https://goo.gl/9gCNM4>

“DACA At The Two-Year Mark: A National and State Profile of Youth Eligible and Applying for Deferred Action,” by Jeanne Batalova, et al, Migration Policy Institute, published August 2014 <http://goo.gl/bgHP4N>

Neither of these source documents refer to the group of undocumented immigrants who arrived in the U.S. via the VISA Waiver Program and stayed beyond the allowed 90 days. Both publications describe the methodology used, and outline how they have defined their terms, as well as identified their sources of data. I can find no specific mention of this particular population; in other words, there is no mention of people in this particular circumstance being either included or excluded from any of their data.

As I interpret their definitions, however, and as far as I can determine, the population in question would be included in the data. The only explicit mention I have found so far that is relevant to this question is the following: the National Immigration Law Center, in a *Frequently Asked Questions* publication on the Expanded DACA (Deferred Action for Childhood Arrivals) and the new DAPA (Deferred Action for Parents of Americans and Lawful Permanent Residents) programs, they write that **to be eligible for DAPA:**

“You must have entered the U.S. without papers or, if you entered legally, your lawful immigration status must have expired before November 20, 2014; and you must not have a lawful immigration status at the time you apply.” <http://goo.gl/uyggWV>

This is not proof, but it is an indication, that the experts at NILC believe the federal government takes the position that once a VISA Waiver has expired, the person is considered undocumented, like all those undocumented residents who arrived in the country in any other manner.

Programs for Assisting VWP Undocumented Residents

You did not specifically ask about programs that might help adults who are undocumented but arrived in Washington via the VISA Waiver Program, but I had the sense this was implied in your messages, so I wanted to share a bit of what I learned through my research that might be relevant.

As mentioned in the Paper, the new Deferred Action for Parents of Americans and Lawful Permanent Residents Program (DAPA) announced by the Obama Administration last November is on hold, and will not be implemented before pending legal action against the program is resolved. Briefly, in a suit against DAPA and expanded DACA brought by Texas, a federal judge ruled in favor of Texas, and the appeals court refused to stay that ruling. So implementation is on hold until the appeal of the ruling in favor of Texas is decided by the appeals court.

Some analysts (who may also be described as advocates) have argued the appeals court is may be likely to rule in favor of the Administration, and against Texas, based on how the same appeals court ruled in the case against DACA brought by Mississippi (*Crane v. Johnson*).

For example:

<https://goo.gl/dfscLD>

And:

<http://goo.gl/8jyRpp>

So it may be that implementation is simply delayed. In view of that, advocacy groups have been working to inform the community how best to prepare for applying for DAPA (and expanded DACA) as soon as implementation is allowed to proceed.

DAPA

The DAPA program, if and when the temporary injunction is lifted, will offer successful applicants the opportunity to stay for three years in the U.S. without fear of deportation and to be considered for employment authorization, which, if granted, would allow individuals to work legally in the country. Undocumented residents who are in the U.S. after overstaying the 90-day period allowed under the VISA Waiver Program could become eligible for Deferred Action through DAPA if they meet the eligibility criteria:

- Lived in the U.S. continuously from at least Jan. 1, 2010 up to the present time
- Were physically present in the U.S. on November 20, 2014
- Had no lawful immigration status on Nov. 20, 2014
- Had, on Nov. 20, 2014, a son or daughter of any age who is a U.S. citizen or a lawful permanent resident

- Have not been convicted of a felony, significant misdemeanor, or three or more misdemeanors; and does not pose a threat to national security or public safety

Eligibility criteria for the DAPA program, as well as information and advice on how to prepare to apply if and when implementation begins, can be found at this link: <http://goo.gl/4uky6r>

Applying for DAPA

United States Citizenship and Immigration Services will consider each application on a *case-by-case* basis. For example, as I stated in the previous Paper, as of July 20, 2014, of those who had applied for deferred action under DACA, 86% of applications had been approved, 4% had been denied, and 10% of applications were still being processed at that time.

The application fee is \$465, and applicants will have to pass a background check (the cost of which is covered by a portion of this fee).

While further guidance on how to apply will be forthcoming, the National Immigration Law Center recommends that people can begin preparing to apply by gathering certain documents that will prove one's identity, a relationship as parent to a son or daughter who is a U.S. citizen or lawful permanent resident, and continuous residence in the U.S. since January 1, 2010. Examples of relevant documents include:

- Financial records (lease agreements, phone bills, credit card bills)
- Medical records
- School records
- Copies of one's U.S. citizen or lawful permanent resident son's or daughter's birth certificate or passport, naturalization certificate or green card

For those who have ever been arrested, they should request copies of:

- their criminal history from the state or the FBI
- from each court in which the person had a criminal case, a letter describing what the judge ultimately decided in each case

A number of online informational resources are available at links included in this document. Further information about preparing to apply for DAPA or expanded DACA is included in some of the links provided above.