



## Documented Dreamers: An Overview

Most noncitizens who come to the United States on temporary work visas do not have a clear path toward permanent legal status. If their minor children come with them, those children face a dilemma. After turning 21 years old, they “age out” of the temporary legal status derived through their parents’ visas and confront the difficult choice of having to depart the United States or face potential deportation unless they can obtain a different temporary or permanent status themselves. These young people—some of whom have already aged out of the temporary status derived from their parents’ visas and many of whom will do so in the future without a legislative fix to their predicament—often refer to themselves as “Documented Dreamers.”<sup>1</sup> There are more than 200,000 Documented Dreamers in the United States, predominantly from India and China, although they can come from any country in the world.<sup>2</sup>

Due to their lawful status in the United States until they turn 21, Documented Dreamers are excluded from the temporary deportation protections and work authorization afforded by the Deferred Action for Childhood Arrivals (DACA) initiative, which requires a recipient to have “no lawful status on June 15, 2012.”<sup>3</sup> By extension, federal legislative proposals that seek to permanently protect DACA recipients do not necessarily offer protection to this group of individuals. This fact sheet provides an overview of Documented Dreamers, explains how children who grow up in the United States can age out of immigration status at 21, and summarizes the current federal legislative proposals to protect them from deportation.

### Who are Documented Dreamers?

The parents of Documented Dreamers enter the United States under many different temporary, nonimmigrant visa categories. Many of these parents later pursue permanent residency in the United States (a green card), but their applications remain stuck in years-long backlogs. Children who enter the country under a temporary, nonimmigrant visa category together with their parents are only eligible to obtain permanent resident status through a parent if it occurs before they turn 21. At age 21, if permanent residency has not yet been attained, the children lose their temporary dependent status and are removed from the green card queue. In other words, they age out.<sup>4</sup>

The H-1B category, which allows employers to petition for foreign professionals to work in certain “specialty occupations” that require a bachelor’s degree or higher, is one of the most widely utilized of the temporary visa categories.<sup>5</sup> The minor children of an individual in H-1B status can come to the United States as H-4 dependents, which is a temporary, nonimmigrant visa category that allows them to legally remain in the United States for a limited period of time. The H-4 status would be valid for the same length of time as the approved H-1B status, unless shortened by the child reaching the age of 21.<sup>6</sup>

In April 2020, there were an estimated 253,293 children waiting to obtain permanent residency based on their parents' employment-based immigrant visa petitions and at risk of aging out.<sup>7</sup> But many of these parents face enormous wait times before a green card will become available. Because of numerical limits and restrictions by country of origin for receiving a green card, there are particularly large backlogs—and, thus, lengthy wait times—for individuals born in India and China.<sup>8</sup> One study estimates that certain Indian nationals will have to wait somewhere between 39 and 89 years for a green card if visas continue to be made available at the current rate.<sup>9</sup>

Without a legal status to remain in the United States, children who age out must attempt to transition to a new temporary status (such as a student visa classification), self-deport, or become undocumented and risk being subjected to enforcement action. Those who manage to obtain temporary status often find themselves without any path to permanent status unless they can graduate college, qualify for temporary employment (such as being sponsored for an H-1B visa), and then be sponsored for an immigrant visa and re-enter the green card queue from the back of the line.<sup>10</sup>

### **Why are Documented Dreamers not included in DACA protections?**

DACA is an exercise of prosecutorial discretion, providing temporary relief from deportation (deferred action) and work authorization to certain young undocumented immigrants. Unlike federal legislation, DACA does not provide permanent legal status to individuals and must be renewed every two years. To be eligible, DACA applicants must meet several requirements, including a requirement that the individual must have “had no lawful status on June 15, 2012.”<sup>11</sup> This requirement disqualifies the vast majority of Documented Dreamers who generally have lawful—but temporary—status.

### **Would the proposed Dream Act permanently protect Documented Dreamers?**

The Dream Act would permanently protect certain immigrants who came to the United States as children but are vulnerable to deportation. There are two versions of the bill currently before Congress, each with different implications for Documented Dreamers.

The Dream Act of 2021 (S. 264), introduced in the Senate on February 4, 2021, by Senators Dick Durbin and Lindsey Graham,<sup>12</sup> does not provide Documented Dreamers with a path to lawful permanent resident status.<sup>13</sup> This is due to a provision stating that the law would only apply to an individual “who is inadmissible or deportable from the United States” or who is in “temporary protected status.”<sup>14</sup> Due to their legal status in the United States, any Documented Dreamer who was under 21 or who was still present in another legal status would be excluded from the bill.

By contrast, the American Dream and Promise Act of 2021 (H.R. 6), introduced in the House of Representatives on March 3, 2021, by Representative Lucille Roybal-Allard,<sup>15</sup> expands the language of the Senate bill to provide a path to lawful permanent resident status for most Documented Dreamers.<sup>16</sup> This is due to an additional provision stating that the law would also apply to anyone who “is the son or daughter of an alien admitted as a nonimmigrant” under the E-1, E-2, H-1B, and L-1 temporary work visa programs, if the parent and child entered

the United States on or before January 1, 2021, and the child meets other requirements.<sup>17</sup> It does not protect all Documented Dreamers, however, given that the children of workers under temporary statuses such as R-1 (religious workers visa category) and O-1 (extraordinary ability visa category) are excluded from the bill language.<sup>18</sup>

The American Dream and Promise Act of 2021 would allow the eligible children of a parent who was admitted to the United States based on an E-1, E-2, H-1B, or L visa to obtain conditional permanent resident (CPR) status, which provides legal status and work authorization. They could then apply to remove the conditions and obtain permanent resident status after satisfying additional requirements.<sup>19</sup>

### **What other current federal legislation would protect Documented Dreamers?**

The America's CHILDREN Act (H.R. 4331) was introduced in the House of Representatives on July 1, 2021, by Representative Deborah Ross, and co-sponsored by Representatives Mariannette Miller-Meeks, Raja Krishamoorthi, and Young Kim.<sup>20</sup> The bill would create a new uncapped category for lawful permanent residence and provide a path to lawful permanent resident status and eventual citizenship for most Documented Dreamers.<sup>21</sup>

To be eligible for lawful permanent residence, the individual would have to meet the following requirements:

- Cannot be inadmissible under section 212(a) (public health risk) or deportable under section 237(a) (unlawful presence in the United States)
- Was admitted to the United States as a dependent child of a parent who was admitted to the United States in a nonimmigrant category (such as H-1B) with USCIS approval of an employer's petition OR with status under the E visa category and was legally present in the country under such status for at least 4 years
- At the time of application, must have been present in the United States for an aggregate period of at least 10 years
- Graduated from an institution of higher education as defined in section 102(a) of the Higher Education Act of 1965

The bill includes permanent protections for the current and future child dependents of parents admitted to the United States under a variety of temporary work visa programs including E, H, I, J, L, O, P, and TN.<sup>22</sup> The American Dream and Promise Act of 2021 (H.R. 6), on the other hand, limits protections to child dependents of a parent who was admitted to the United States on an H-1B, L-1, E-1, or E-2 visa on or before January 2021.<sup>23</sup>

The America's CHILDREN Act would also amend the Immigration and Nationality Act to prevent a child from aging out as long as an immigrant visa petition or labor certification application was filed (whichever is earlier) on the parent's behalf before the child turned 21.<sup>24</sup> Therefore, children waiting with their parents for green cards would not age out.<sup>25</sup> If impacted by this change, child dependents with previously denied

green card applications could have their case reopened if they file a motion no later than two years after the law takes effect.<sup>26</sup> The bill would authorize dependents to extend their temporary nonimmigrant status and obtain employment if a properly filed immigrant visa petition on behalf of the child or the parent is pending or approved (until either the petition is denied or the child receives permanent resident status).<sup>27</sup>

## Endnotes

1. Improve the Dream, last accessed August 19, 2021, <https://www.improvethe dream.org/>.
2. David Bier, "100,000 Children in the Employment-Based Green Card Backlog at Risk of Family Separation" (Washington, DC: Cato Institute, November 20, 2020), <https://www.cato.org/blog/100000-children-employment-based-green-card-backlog-risk-family-separation>.
3. U.S. Citizenship and Immigration Services, "Consideration of Deferred Action for Childhood Arrivals (DACA)," last updated July 19, 2021, <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca>.
4. The Child Status Protection Act enables some children to preserve their age as under 21, even if their immigrant visa application or adjustment of status application is processed when they are older. Pub. L. No. 107-208, 116 Stat. 927 (Aug. 6, 2002). However, because of the requirements for calculating the age, this law does not protect most children when the parent's immigrant visa petition is employment-based.
5. U.S. Citizenship and Immigration Services, "H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers and Fashion Models," last updated February 5, 2021, <https://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-dod-cooperative-research-and-development-project-workers-and-fashion-models>.
6. David Bier, "Huge Fiscal Benefits of Including Legal Immigrant Dreamers in the DREAM Act" (Washington, DC: Cato Institute, October 23, 2017), <https://www.cato.org/blog/huge-fiscal-benefits-including-legal-immigrant-dreamers-dream-act>.
7. David Bier, "100,000 Children in the Employment-Based Green Card Backlog at Risk of Family Separation" (Washington, DC: Cato Institute, November 20, 2020), <https://www.cato.org/blog/100000-children-employment-based-green-card-backlog-risk-family-separation>. The immigrant visa petition is filed by an employer on the parent's behalf; approval of the petition by U.S. Citizenship and Immigration Services is a necessary step before agency approval of permanent residency applications.
8. U.S. Department of State, "Visa Bulletin for August 2021," <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2021/visa-bulletin-for-august-2021.html>.
9. David J. Bier, *Backlog for Skilled Immigrants Tops 1 Million: Over 200,000 Indians Could Die of Old Age While Awaiting Green Cards* (Washington, DC: Cato Institute, March 30, 2020), 5, <https://www.cato.org/sites/cato.org/files/2020-03/irpb-18-updated.pdf>.
10. David Bier, "New Bill Prevents Forced Departure of Documented Dreamers" (Washington, DC: Cato Institute, July 1, 2021), <https://www.cato.org/blog/new-bill-prevents-forced-departure-documented-dreamers>.
11. U.S. Citizenship and Immigration Services, "Consideration of Deferred Action for Childhood Arrivals (DACA)," last updated July 19, 2021, <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca>.
12. S. 264, 117th Cong. (2021).
13. David Bier, "Dream Act Inexplicably Excludes Legal Immigrant Dreamers, Requires Applicants Violate the Law" (Washington, DC: Cato Institute, September 15, 2017), <https://www.cato.org/blog/dream-act-inexplicably-excludes-legal-immigrant-dreamers>.
14. Ibid.
15. H.R. 6, 117th Cong. (2021).
16. David Bier, "House Bill Provides Path to Citizenship for Most Legal Dreamers" (Washington, DC: Cato Institute, September 15, 2017), <https://www.cato.org/blog/house-bill-provides-path-citizenship-most-legal-dreamers>.
17. Ibid.
18. Ibid.
19. H.R. 6, 117th Cong. (2021) at Section 104(a)(1)(C); S. 264, 117th Cong. (2021) at Section 5(a)(1)(C).
20. H.R. 4331, 117th Cong. (2021).
21. David Bier, "New Bill Prevents Forced Departure of Documented Dreamers" (Washington, DC: Cato Institute, July 1, 2021), <https://www.cato.org/blog/new-bill-prevents-forced-departure-documented-dreamers>.
22. Ibid. The bill fails to recognize that E is not the only category in which USCIS approval of an employer petition is not required for admission to the United States. For example, a parent could be admitted to the United States in TN status without a USCIS-approved employer petition. As currently drafted, children admitted as dependents of this TN parent would not be eligible for permanent residence.
23. Ibid.
24. Ibid.

25. Ibid.
26. Ibid.
27. Ibid.