

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. Minor children who come with them often face a dilemma: after turning 21 years old, children “age out” of the temporary legal status derived through their parents’ visas. They must 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 their temporary status and many of whom will do so in the future without a legislative fix to their predicament—often refer to themselves as “Documented Dreamers.”¹ 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.²

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.”³ 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.

This fact sheet explains:

- Who Documented Dreamers are
- Why Documented Dreamers are not included in DACA protections
- If the proposed DREAM Act would permanently protect Documented Dreamers
- Other current federal legislation that would protect Documented Dreamers

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 often 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 before they turn 21. At age 21, if the parent cannot attain permanent residency, the children lose their temporary dependent status and are removed from the green card queue. In other words, they age out.⁴

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 temporary visa categories.⁵ 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 21.⁶

In March 2024, there were an estimated 228,271 children waiting to obtain permanent residency based on their parents' employment-based immigrant visa petitions.⁷ But many of these parents face enormous wait times before a green card becomes available, putting these children at risk of ageing out of eligibility. 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.⁸ One study estimates that new applicants from India for the second and third employment-based categories of green cards, which are the most sought after, will have to wait up to 134 years if these immigrant visas continue to be made available at the current rate.⁹

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), leave the United States, 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.¹⁰

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.¹¹ Unlike federal legislation, DACA does not provide permanent legal status to individuals, and must be renewed every two years.¹² However, new applications to the program have been suspended since July 2021. To be eligible for the program, DACA applicants had to meet several requirements, including a requirement that the individual must have “[b]oth on June 15, 2012, and at the time of filing of the

[DACA request], not have been in a lawful immigration status.”¹³ This requirement disqualified 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 main versions of the bill currently before Congress, each with different implications for Documented Dreamers.

The Dream Act of 2023 (S. 365), introduced in the Senate on February 9, 2023, by Senators Dick Durbin and Lindsey Graham,¹⁴ does not provide Documented Dreamers with a path to lawful permanent resident status.¹⁵ 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.”¹⁶ 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 2023 (H.R. 16), introduced in the House of Representatives on June 15, 2023, by Representative Sylvia Garcia,¹⁷ expands the language of the Senate bill to provide a path to lawful permanent resident status for most Documented Dreamers.¹⁸ 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.¹⁹ 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.²⁰

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.²¹

What other current federal legislation would protect Documented Dreamers?

The bipartisan America's CHILDREN Act was introduced in both chambers in the 118th Congress. On May 17, 2023, Representative Deborah Ross introduced the bill (H.R. 3442), co-sponsored by 15 others, in the House of Representatives.²² The same day, Senator Alex Padilla introduced a companion bill (S. 1667), co-sponsored by six others, in the Senate.²³ 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.²⁴

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

- Cannot be inadmissible under section 212(a) or deportable under section 237(a)
- Lawfully present for at least eight years in 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), except not on an A (ambassador or diplomat), G (foreign employee of an international organization), N (dependents of certain special immigrants) or S (informant in federal or state criminal case)
- 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 as long as the temporary visa program's purpose was to "engage in employment".²⁵ The American Dream and Promise Act of 2023 (H.R. 16), on the other hand, limits protections to child dependents of a parent who was admitted to the United States on an E-1, E-2, H-1B, or L-1 visa on or before January 1, 2021.²⁶

The America's CHILDREN Act would also amend the Immigration and Nationality Act to protect Documented Dreamers from aging out in the future. It would allow individuals who were dependents on a parent's work visa for at least eight years before turning 21 to be considered a child on their immigrant visa petition by using their age at the time their parent filed for their initial nonimmigrant employment-based petition or application. For other dependent children, it would prevent them from aging out by allowing them to use their age at the time an immigrant visa petition or labor certification application was filed (whichever is earlier).²⁷ Therefore, children waiting with their parents for green cards would not age out. If impacted by these changes, 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.²⁸ The bill would also allow 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).²⁹

ENDNOTES

- 1** “About Us.” Improve the Dream, Accessed June 27, 2024, <https://www.improvethedream.org/aboutus>.
- 2** See Who Are Documented Dreamers? Section infra at 1-2.
- 3** 8 C.F.R. § 236.22(b)(4).
- 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** See U.S. Citizenship and Immigration Services, “H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models,” last updated March 25, 2024, <https://www.uscis.gov/working-in-the-united-states/h-1b-specialty-occupations>; U.S. Citizenship and Immigration Services, “H-1B Electronic Registration Process”, last updated April 29, 2024, <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process>.
- 6** 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>.
- 7** To estimate the number of child derivatives, the American Immigration Council used the Congressional Research Service method of computing the derivative immigrant multiplier using the most recently published figures from Principal Immigrant Petitions: USCIS, Form I-140, I-360, I-525 Approved Employment-Based Petitions Awaiting Visa Availability by Preference Category and Country of Birth As of March 2024, https://www.uscis.gov/sites/default/files/document/data/EB_1140_I360_I526_performancedata_FY2023_Q1_Q2.pdf, and the DHS Yearbook of Immigration Statistics 2022, Table 7, <https://www.dhs.gov/ohss/topics/immigration/yearbook/2022#:~:text=The%202022%20Yearbook%20of%20Immigration,refugee%20status%2C%20or%20are%20naturalized>. For example, each approved EB-1 petition represents an average of 63 derivative children. Multiplying this figure with the total EB-1 immigrant visas awaiting approval as of March 2024 equals an estimated 15,507 children awaiting an immigrant visa in that category.
- 8** U.S. Department of State, “Visa Bulletin for June 2024,” <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2024/visa-bulletin-for-june-2024.html>.
- 9** David J. Bier, “1.8 Million in Employment-Based Green Card Backlog” (Washington, DC: Cato Institute, August 29, 2023), <https://www.cato.org/blog/18-million-employment-based-green-card-backlog>.
- 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** See Deferred Action for Childhood Arrivals, 87 Fed. Reg. 53152 (October 31, 2022).
- 12** See 8 C.F.R. § 236.23(a)(4).
- 13** 8 C.F.R. § 236.22(b)(4).
- 14** S. 365, 118th Cong. (2023).

ENDNOTES

- 15** 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>. The Dream Act of 2023 continues to include the requirement that a noncitizen be “inadmissible or deportable from the United States or is in temporary protected status”. S. 365, 118th Cong. (2023) at Sec. 3(b)(1).
- 16** Ibid.
- 17** H.R. 16, 118th Cong. (2023). The DIGNIDAD (Dignity) Act of 2023, which was introduced on May 23, 2023, by Representative Maria Elvira Salazar, includes a version of the American Dream and Promise Act. See H.R. 3599, 118th Cong. (2023).
- 18** 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> (discussing the inclusion of documented dreamers in the American Dream and Promise Act (H.R. 6) introduced in the 117th Congress).
- 19** H.R. 16, 118th Cong. (2023) at Section 102(b)(1).
- 20** H.R. 16, 118th Cong. (2023) at Section 102(b)(1).
- 21** H.R. 16, 118th Cong. (2023) at Section 102(b)(1).
- 22** H.R. 3442, 118th Cong. (2023).
- 23** S. 1667, 118th Cong. (2023).
- 24** H.R. 3442, 118th Cong. (2023) at Section 2(a); S. 1667, 118th Cong. (2023) at Section 2(a).
- 25** 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.
- 26** H.R. 3442, 118th Cong. (2023) at Section 2(a); S. 1667, 118th Cong. (2023) at Section 2(a).
- 27** H.R. 16, 118th Cong. (2023) at Section 102(b)(1).
- 28** H.R. 3442, 118th Cong. (2023) at Section 3(a)(2)(B); S. 1667, 118th Cong. (2023) at Section 3(a)(2)(B).
- 29** H.R. 3442, 118th Cong. (2023) at Section 3(b); S. 1667, 118th Cong. (2023) at Section 3(b).