



DEFERRED ENFORCED DEPARTURE ANNOUNCED FOR PALESTINIANS

By Peggy Gleason

On February 14, 2024, President Biden announced an 18-month Program of deferred enforced departure (DED) for Palestinians in the United States.¹ The executive action was taken to provide some relief to persons in the United States who are facing deteriorated humanitarian conditions in Palestine due to military actions by Israel which prevent the safe return of civilians. In addition to the DED announcement, the President urged DHS to consider suspending regulations related to Palestinian F-1 students during the humanitarian crisis.

I. Deferred Enforced Departure

Similar to Temporary Protected Status (TPS), but not supported by a statute or regulation, DED is an executive action that allows the specified nationals to remain in the United States and apply for employment authorization with an I-765 form.² Unlike TPS, it is not a specific status, and it does not have a particular application form. People with DED can, however, apply for travel authorization with an I-131 form.³ DED can also be extended if the President renews the order.

Once the DED notice is published in the Federal Register there will be specific instructions on how and where to apply for the employment authorization and travel authorization. Palestinians in the United States cannot apply for employment or travel authorization until the Federal Register notice is published. Effective immediately, however, eligible Palestinians are not to be removed from the United States.

Other examples of how DED has been applied include for populations from Hong Kong, Venezuela, and Liberia. In the case of Hong Kong, the executive granted DED in recognition of the humanitarian and political crisis created by the Peoples Republic of China in 2021 with the repression of democratic institutions and widespread arrests of dissidents in Hong Kong. The

1. The White House, Memorandum on the Deferred Enforced Departure of Certain Palestinians (Feb. 14, 2024), <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/02/14/memorandum-on-the-deferred-enforced-departure-for-certain-palestinians/> .

2. USCIS, Application for Employment Authorization, I-765. See instructions for filing under DED, (a)(11). However, these applications should not be filed until there is a notice in the Federal Register. See <https://www.uscis.gov/i-765> .

3. USCIS, Application for Travel Document, I-131 <https://www.uscis.gov/i-131> .

President extended DED for these nationals of Hong Kong again in 2023 as arrests and confrontations continued. It is currently valid through Feb. 5, 2025.⁴

For Liberians, DED was initially effective in 1991, most recently was extended by executive order in 2022, and is currently valid through June 30, 2024.⁵ For Venezuelans, DED was in effect from 2021 until it expired on July 20, 2022.⁶

II. DED for Palestinians

The presidential order designating DED for Palestine was issued on February 14, 2024. It directs the Secretary of the Department of Homeland Security (DHS) to implement the program. Eligible Palestinians who are in the United States as of the date of the order will qualify.

The following persons are ineligible for DED:

- Persons who have voluntarily returned to Palestine after February 14, 2024, or who have not continuously resided in the United States since February 14, 2024.
- Also ineligible for DED are persons who are inadmissible under INA 212(a)(3) or deportable under 237(a)(4). These are sections of the law that deal with security and related grounds as barriers to admitting someone to the United States or as grounds to deport someone from the United States.
- Further ineligibility for DED applies to persons convicted of a felony or two or more misdemeanors.
- Also barred from DED are persons who meet the asylum prohibitions included in INA 208(b)(2)(A). This section bars persons from asylum (and by inclusion here, DED) if they are persecutors of others, if they are convicted of a particularly serious crime and are a danger to the community, or where there are serious reasons to believe a person has been convicted of a serious non-political crime prior to arrival in the United States. Also, where there are reasonable grounds for regarding the person as a danger to the security of the United States, they will be ineligible for DED.
- Also prohibited by INA 208(b)(2)(A) are persons subject to terrorism prohibitions unless the Attorney General decides that they are not a danger to the security of the United States. The last prohibition under this section bars persons who are firmly resettled in another country prior to arriving in the United States.⁷
- Anyone subject to extradition is also ineligible for DED, as is a person whose presence the Secretary of DHS determines is not in the interest of the United States or is a danger to public safety, or someone whose presence here according to the Secretary of State

4. USCIS, Deferred Enforced Departure, <https://www.uscis.gov/humanitarian/deferred-enforced-departure>; 88 Fed. Reg. 28589 (May 4, 2023).

5. USCIS, Deferred Enforced Departure, <https://www.uscis.gov/humanitarian/deferred-enforced-departure>; 87 Fed. Reg. 54515 (Sept 6, 2022).

6. USCIS, DED Covered Country Venezuela (archives), <https://www.uscis.gov/ded-covered-country-venezuela>.

7. For more detail on the bars to asylum that also impact DED, see ILRC, Essentials of Asylum Law, Chapter 4 (2023).

poses reasonable grounds to believe there are potentially serious adverse foreign policy consequences for the United States.

ILRC will update materials on DED for Palestinians as more details are published.



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