



REQUESTING ADVANCE PAROLE AND TRAVELING OUTSIDE THE UNITED STATES UNDER DEFERRED ACTION FOR CHILDHOOD ARRIVALS

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The Deferred Action for Childhood Arrivals (DACA) program has undergone many changes since it was announced in 2012. On his first day in office, President Biden released a memorandum directing the Department of Homeland Security (DHS) to preserve and fortify the DACA program.¹ Although more changes to DACA may come in the future², as of the date of this writing, the DACA program remains opened in its entirety. This means that persons who have received approval of their DACA case can request advance authorization to travel and re-enter the United States through Advance Parole if the travel is for a humanitarian, educational, or work-related purpose.

This practice advisory provides a comprehensive overview of advance parole and the requirements and suggestions to successfully apply under the DACA program. We also cover some of the risks to consider before traveling outside the United States, including prior removal orders, common grounds of inadmissibility, and unauthorized travel.

I. What is Advance Parole?

Advance parole is an administrative procedure to allow a person inside the United States, who seeks to travel abroad, to receive advance authorization to re-enter the United States (to be “paroled”) upon their return.³ The authority for advance parole stems from the general “parole” authority under INA § 212(d)(5)(A).⁴ “Parole” is the authorization to allow a person to physically proceed into the United States under certain prescribed

¹ Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA), 86 FR 7053 (Jan. 20, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/preserving-and-fortifying-deferred-action-for-childhood-arrivals-daca/>.

² There is also pending lawsuit brought by Texas and other states challenging the legality of the DACA program and requesting a preliminary injunction in *Texas et al. v. United States*, Case No. 1:18-cv-00068.

³ USCIS Adjudicator’s Field Manual, § 54.1. See also USCIS’ definition of “Parolee” and “Advance Parole,” stating that advance parole “may be issued to [noncitizens] residing in the United States in other than lawful permanent resident status who have an unexpected need to travel and return, and whose conditions of stay do not otherwise allow for their readmission to the United States if they depart,” available at www.uscis.gov/tools/glossary/refugee-parolee.

⁴ See 8 CFR § 212.5(f) and USCIS Adjudicator’s Field Manual, § 54.1 (“... the use of advance parole is an outgrowth of administrative practice stemming from the general parole authority at section 212(d)(5)”). See also *Matter of Arrabally & Yerrabelly*, 25 I&N Dec. 771, 777 (BIA 2012).

conditions.⁵ DHS has the discretionary authority to parole an individual into the United States for “urgent humanitarian reasons or significant public benefit.”⁶ Parole is not an “admission”⁷ to the United States for immigration purposes, and a person granted parole (a “parolee”) is still considered “an applicant for admission.”⁸ A parolee will be subject to inspection at a U.S. port of entry upon their return, at which point Customs and Border Protection (CBP) will make the final decision regarding whether to “parole” the person back into the United States. CBP can, at that inspection, find the person inadmissible and deny the reentry.

USCIS has the authority to grant advance parole and to issue an advance parole document (Form I-512L).⁹ Typically, advance parole is granted prior to the individual’s departure from the United States.¹⁰ USCIS usually approves advance parole for a specific period of time, and the recipient must return to the United States before its expiration. The advance parole document may be accepted by an inspecting immigration official at a U.S. port of entry as an authorization to return to the United States. Additionally, airlines and other common carriers should accept Form I-512L as a substitute for a visa.

II. Requesting Advance Parole as a DACA Recipient

Individuals that have already received deferred action under DACA may request permission to temporarily travel outside of the United States through advance parole. Those that have not yet been granted DACA or are waiting for USCIS to process their DACA applications cannot apply for advance parole until they receive approval of their DACA application.

A DACA recipient must request and receive advance parole approval before traveling outside of the United States.¹¹ If a DACA recipient travels outside the United States without advance parole, their deferred action will automatically be terminated.¹²

DACA recipients interested in traveling abroad can apply for advance parole by filing Form I-131 (Application for Travel Document), a copy of a photo identity document, proof of DACA status, supporting documents regarding basis for travel, two passport photos taken within 30 days of filing the application, and the \$575 application fee.¹³ Consult the form instructions for the most up-to-date filing fee. The updated instructions to Form I-131 include information to help DACA recipients properly fill out the form. The instructions also explain what additional documents DACA recipients must submit with their application. If the reason for travel is an emergency, DACA recipients have had success in calling USCIS to schedule an appointment (known as an InfoPass appointment) at a local USCIS office.¹⁴ At the scheduled appointment, applicants can bring the

⁵ DACA SOP v.2, p. 135.

⁶ INA § 212(d)(5)(A).

⁷ INA §§ 101(a)(13)(A)-(B), 8 USC § 1101(a)-(b). See also INA § 212(d)(5).

⁸ Form I-131, Application for Travel Document, Instructions (updated 04/24/19), p. 5 available at www.uscis.gov/sites/default/files/files/form/i-131instr.pdf.

⁹ USCIS Adjudicator’s Manual, § 54.1. See also 8 CFR § 212.5(f).

¹⁰ Although advance parole may be requested abroad or at a port of entry, in cases of DACA recipients, advance parole must be requested and granted before departing the United States. See USCIS FAQs Question 58.

¹¹ USCIS FAQ #57 explains that a DACA recipient will be permitted to travel outside of the United States *only if* she applies for and receives advance parole from USCIS.

¹² *Id.*

¹³ Form I-131, Application for Travel Document, is available at www.uscis.gov/i-131.

¹⁴ Visit <https://www.uscis.gov/contactcenter> for the latest contact information.

completed Form I-131 and supporting evidence. If approved, applicants have been able to pay the application fee at their appointment.

USCIS will currently only grant advance parole to DACA recipients if the travel abroad is in furtherance of one of the following categories:

- **Humanitarian purposes**, including travel to obtain medical treatment, attending funeral services for a family member, or visiting an ailing relative;
- **Educational purposes**, such as semester-abroad programs and academic research; or
- **Employment purposes** such as overseas assignments, interviews, conferences, training, or meetings with clients overseas.¹⁵

Travel for purely vacation purposes is not a valid basis for advance parole for DACA recipients.¹⁶

USCIS will review all advance parole requests on a case-by-case basis, determine whether the DACA recipient's purpose to travel abroad is justifiable, and if it falls within one of the above three categories. In evaluating the advance parole request, USCIS will look at the evidence submitted by the applicant to support their reason for travel outside of the United States. Any documents submitted in support of the application in a language other than English must be translated. The instructions to Form I-131 and the Standard Operating Procedure for DACA list some examples of appropriate evidence for requesting advance parole under each of the three categories.¹⁷

- **Evidence to support a request for humanitarian purposes** should show “emergent, compelling or sympathetic circumstances,”¹⁸ and might include:
 - Documentation of a family member's serious illness or death, such as a letter from a hospital or treating physician explaining the family member's illness or a death certificate of a deceased relative, or
 - A letter from the applicant's physician explaining the nature of the applicant's medical condition, the specific medical treatment sought outside of the United States, and a brief explanation of why travel outside of the U.S. is medically necessary.
 - *Note: If the reason for traveling is connected to a family member, it is generally advisable to also include evidence proving the family relationship between the DACA recipient and the person they are visiting.
- **Evidence to support a request for educational purposes** may include:
 - A letter from the applicant's educational institution, or from an employee of the institution acting in their official capacity explaining why the travel is required or beneficial; or
 - A document showing enrollment in a specific program or class requiring travel.

¹⁵ USCIS FAQ #57.

¹⁶ *Id.* Please note that advance parole is available in other contexts apart from DACA, such as for those with pending adjustment applications or those with TPS. Those with TPS or pending adjustment applications may travel for purposes outside those approved for the DACA program. The requirements for advance parole are distinct for DACA.

¹⁷ Form I-131, Instructions, p. 8. See also, DACA SOP v.2, pp. 136-137.

¹⁸ DACA SOP v.2, p. 136.

- **Evidence to support a request for employment purposes** must show that the travel relates to “fulfilling job requirements,”¹⁹ and may include:
 - A letter from the applicant’s employer describing the need for travel; or
 - A document showing a specific employment need, such as a conference program that also shows the applicant’s participation.

NOTE: The list of evidentiary examples provided by USCIS is not exhaustive. Therefore, advocates requesting advance parole for DACA recipients based on any of the three categories may submit evidence not specifically listed. Remember that advance parole is discretionary and USCIS will look to the circumstances described in the request (including supporting documents) to determine whether the purpose for international travel is justified. Remember that any documents in a language other than English, must be translated.

PRACTICE TIP: USCIS may grant very limited time for travel on Advance Parole. A DACA recipient whose flight is delayed could miss their advance parole deadline and be unable to return to the United States. Therefore, the applicant must plan carefully and should ask for sufficient time to complete the travel safely and allow for any unexpected delays. As of the date of this writing, there are also travel considerations based on COVID-19 restrictions. Ensure that applicants understand the travel rules and restrictions of the countries they are visiting and of the United States upon returning.

III. Risks to Consider Before Traveling Outside of the United States

A DACA recipient seeking to reenter the U.S. with advance parole is still considered an applicant for admission and can be denied entry for being inadmissible under immigration law.²⁰ Customs and Border Protection (CBP) may screen for inadmissibility, even though parole is not an admission, and the returning DACA parolee remains an applicant for admission.

Traveling outside the United States, even for DACA recipients who have been granted advance parole, may impact their ability to return to the United States or to obtain a permanent form of relief in the future. DACA grantees interested in traveling abroad through advance parole should consult with an expert immigration practitioner before leaving the United States to determine if there are any circumstances in their immigration case, such as a prior removal order, or other grounds of inadmissibility that may have potentially serious future immigration consequences or present risks to reentering successfully.

A. Exclusion, Deportation, and Removal Orders

A DACA recipient that has been previously ordered deported may still request and obtain advance parole.²¹ However, if they leave the United States after being ordered deported, their departure from the United States could result in executing that removal order, with potentially serious future immigration consequences,

¹⁹ DACA SOP v.2, p. 137.

²⁰ See Form I-131, Instructions, pg. 5.

²¹ USCIS FAQ #57.

including the inability to be lawfully admitted to the United States for many years.²² This is true even if the client has received deferred action from USCIS or ICE and has been granted advance parole. If a DACA recipient has an outstanding order of removal or is in proceedings, they should consult with an immigration attorney before leaving on advanced parole. It is generally not advised to travel in that situation.

B. Unlawful Presence Bars

In general, a person who leaves the United States after having been in the United States unlawfully for more than six months and then seeks admission may be subject to the unlawful presence bars at INA § 212(a)(9)(B).²³ Importantly, unlawful presence does not begin to accrue for purposes of the three and ten-year bars until the person is eighteen years old. Furthermore, these bars are triggered upon departure from the United States, they do not apply to people until they have left the United States. However, there is an important exception to the unlawful presence bars: they do not apply to a person traveling with advance parole. In 2012, the BIA ruled in *Matter of Arrabally and Yerrabelly* that travel on advance parole was not a “departure” for purposes of inadmissibility under 212(a)(9)(B)(i).²⁴

Matter of Arrabally involved applicants for adjustment of status who travelled on advance parole while their adjustment applications were pending. Their adjustment was then denied because USCIS determined that, notwithstanding their advance parole, their departure to India had triggered the unlawful presence bars to admissibility. In *Matter of Arrabally*, the BIA overruled this finding and held that it would be unreasonable to apply the unlawful presence bar when the applicants had specifically sought and received the government’s approval to travel.²⁵ As such, the BIA held that a departure with advance parole is not a “departure” that would trigger the unlawful presence bars.

WARNING: INA § 212(a)(9)(C) sets out a “permanent bar” to admissibility for those who re-enter or attempt to re-enter the United States unlawfully after accruing more than a year of unlawful presence in aggregate after April 1, 1997 or after a prior removal or deportation order. This provision also applies to minors. Therefore, if a child or adult had unlawful presence for more than a year in the United States, then leaves and re-enters or attempts to re-enter unlawfully, they will be inadmissible under INA § 212(a)(9)(C). Although the permanent bar does not make a person ineligible for DACA or advance parole, it can cause problems when traveling with advance parole if the DACA recipient has already triggered this bar.

USCIS does not consider parole pursuant to INA § 212(d)(5) to be an unlawful reentry without admission that would trigger the permanent bar. Therefore, reentry with advance parole would not make someone inadmissible under INA § 212(a)(9)(C). However, a previous departure and unlawful reentry or attempt to re-enter in the past could have already triggered the permanent bar. It is important to ask your client about all

²² See INA § 212(a)(9)(A). If the deportation order has already been executed in the past, and the DACA applicant subsequently reentered, departure on advance parole will not re-execute the order. However, it may be risky to travel in such a situation, where CBP could decide to reinstate that removal order rather than allow reentry on parole.

²³ INA § 212(a)(9)(B) includes two grounds of inadmissibility commonly referred to as the “three” and “ten year” bars. Generally, someone who remains more than 180 days without authorization may be subject to a three-year bar to legal re-entry and a person who has lived in the United States unlawfully for a year or more may be subject to the 10-year bar.

²⁴ *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012).

²⁵ *Id.* at 775.

prior departures and entries. It is not advisable for a client to leave the United States if they already triggered this bar with prior unlawful presence and unlawful re-entries or attempted re-entries.

C. Other Grounds of Inadmissibility

There are many other ways a person might be found to be inadmissible under the immigration laws. These include grounds based on smuggling (including helping a family member cross the border illegally), lying or making a material misrepresentation to an immigration official (such as using a false U.S. passport or green card to enter the U.S.), and criminal bars. Advocates should pay close attention to criminal history, drug use, past contact with immigration officials, and multiple entries to the United States. These are just a few examples of the many ways that a person can be found to be inadmissible, even though they were eligible for and received DACA.

Example: Two years ago, Sonja, a college student, was caught with tabs of ecstasy and convicted of misdemeanor possession of a controlled substance. In spite of this, Sonja was able to get DACA because her conviction was not a bar to eligibility and she presented evidence of her strong ties to the United States and excellent academic achievements. Sonja would like to get advance parole and participate in a study abroad program in India. Although Sonja is eligible for advance parole because she has DACA and wishes to travel for an educational purpose, it is very risky for Sonja to leave the country if she hopes to return. Even if she has advance parole, she could be found inadmissible under INA § 212(a)(2)(A)(i)(II) for her conviction involving a controlled substance and prevented from re-entering.

The example with Sonja illustrates the current conundrum of advance parole. While USCIS has authorized a re-entry for someone who is otherwise inadmissible, CBP may still exercise discretion in allowing this person to re-enter. Because CBP still inspects the person granted advance parole upon return, they may deny re-entry. While there is no requirement that a person is admissible to be granted advanced parole, indeed it is a mechanism to enter for those that are otherwise not admissible, CBP may still deny re-entry for those with admissibility issues. Advocates have been lobbying to reduce this uncertainty at the border for those granted advance parole. However, to date CBP still has final authority as to whether to allow the person to re-enter on parole.²⁶

Example: Manuel came to the United States without inspection in 1992, when he was ten years old, and lived in El Paso for nine years. In 2001, when he was nineteen, he went back to Mexico for the summer, and then reentered without inspection to start college. He got DACA two years ago. Manuel is a scientist and wishes to get advance parole for a conference in Montreal. Manuel can qualify for advance parole because he wishes to travel for employment purposes. If he goes to Montreal, he will not trigger the unlawful presence bars because he is not making a 'departure' for purposes of 212(a)(9)(B). However, when he returns, Manuel will still be inadmissible because he triggered the permanent bar when he went to Mexico and reentered unlawfully several years ago. As a result, he could be denied entry at the border.

²⁶ See this FOIA for a 2008 CBP directive regarding parole and admissions procedures at the border: www.nationalimmigrationproject.org/PDFs/press_releases/2008_Sep_parole-authority.pdf.

An immigration expert should assess whether a DACA recipient is admissible to the United States and whether any of the inadmissibility bars apply.

D. Complications Related to Renewal of DACA

Individuals who travel outside the country on or after August 15, 2012 without advance parole are not eligible for DACA, including to renew a previously approved case.²⁷ Finally, USCIS may terminate a person's DACA if they leave the United States without advance parole (although it is more likely that the person will be denied DACA at the time of renewal).

Applicants must disclose travel on advance parole when filing for renewal using Form I-821D. Legal representatives should be sure to ask about any travel before filing a DACA renewal on their behalf provide the relevant dates and supporting documentation. When renewing DACA, USCIS will likely request documentation related to the applicant's travel. For this reason, DACA recipients should keep originals or copies of: (a) Form I-512L, *Authorization for Parole of an Alien into the United States*; (b) Form I-94, *Arrival or Departure Record* (if issued by CBP); (c) completed Form I-131, *Application for Travel Document*; (d) Form I-797, *Notice of Action* or document from ICE granting deferred action; (e) passport stamps; and (f) plane, bus, or other travel documentation.

DACA recipients should take photographs or make copies of all of the above documents as soon as they receive them because CBP may take these documents when the DACA recipient leaves or re-enters the country. When requesting renewal, DACA recipients should submit as much of the above documentation as possible with their request, *especially* Form I-512L.

When applying to renew DACA, the applicant should include a letter that clearly explains that they traveled on advance parole. They should state that they applied for and received advance parole, left within the periods of advance parole (if applicable), and list the supporting documents they are including in their renewal request verifying the travel.

IV. Parole Entry on Advance Parole and Adjustment of Status

When a DACA recipient travels abroad with a valid grant of advance parole and is paroled back into the United States, the parole entry has been recognized as a valid entry for purposes of adjustment under INA § 245(a). This means that someone who originally entered the United States without inspection (EWI) and later travels on advance parole can become eligible to adjust under 245(a). This is based on the BIA decision in *Matter of Arrabally and Yerrabally*.¹¹ These applicants must of course also have an approved visa petition and a current priority date and must not be barred from adjustment for other reasons found in INA § 245(c), such as having worked without authorization or overstaying a visa, unless they are immediate relatives.

However, on August 20, 2020 USCIS issued a new Policy Memorandum implementing *Matter of Z-R-Z-C-*, which found that Temporary Protected Status (TPS) recipients returning to the United States with advance parole *after August 20, 2020*, would no longer be able to be considered inspected and admitted or paroled for

²⁷ USCIS FAQ #56.

purposes of adjustment of status under INA § 245(a).²⁸ Although this policy was not about DACA, parole for TPS functions the same as it does for DACA and USCIS could apply the same reasoning to DACA recipients seeking to adjust solely on a parole through an entry on advance parole. While entry by a DACA recipient on advance parole is currently considered an admission for purposes of adjustment under 245(a), advocates should ensure they are informed about the latest USCIS policies before seeking adjustment of status based on travel after August 20, 2020.



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²⁸ USCIS, Policy Memorandum: Matter of Z-R-Z-C-, Adopted Decision 2020-02 (AAO Aug. 20, 2020), PM602-0179 (Aug. 20, 2020), <https://www.uscis.gov/sites/default/files/document/aao-decisions/Matter-of-Z-R-Z-CAdopted-AAO-Decision.pdf>.