

Management Alert



Possible Workforce Impact from DACA and TPS Elimination

By Leon Rodriguez

Seyfarth Synopsis: *The combination of the Trump Administration re-examination of grants of Temporary Protected Status to nearly 340,000 foreign nationals, and the recent threats by Texas and ten other States to challenge the Deferred Action for Childhood Arrivals policy in federal court, could lead to the exit from the legal workforce of nearly one million people over the next two and a half years.*

In shortening the grant of Temporary Protected Status for certain Haitian nationals to six months, rather than the statutorily authorized (and customary) eighteen months, the Administration explicitly signaled its intention to closely review and very possibly curtail all grants of Temporary Protected Status (“TPS”). TPS is a provision of the immigration code which affords temporary relief (in renewable cycles of 18 months) from deportation, along with work authorization, to nationals of countries that have suffered catastrophic events such as natural disasters and armed conflict. As of 2015, the latest year that the Department of Homeland Security submitted a report to Congress on TPS, 340,000 people were living in the U.S. under TPS, including 212,000 from El Salvador, 64,000 from Honduras and 58,000 from Haiti. Currently, El Salvador TPS is set to expire on March 9, 2018; Honduras on January 5, 2018; and Haiti on January 22, 2018. It is accordingly possible that most TPS recipients will have lost their status by the end of the second quarter of FY2018.

The administration’s reexamination of the TPS program coincides with pressures to either halt the Deferred Action for Childhood Arrivals (DACA) policy immediately or to cease accepting applications for either first-time or renewed DACA. The DACA policy announced by the Obama Administration in June 2012 has enabled nearly 780,000 individuals -- often called “Dreamers” who came to the U.S. as children, but were in the U.S. illegally, to remain, work and study in the U.S. for renewable periods of two years. Currently, it is estimated that 645,000 DACA recipients are working in the U.S.

President Trump campaigned aggressively on a promise to end DACA, and his administration has repeatedly said that the program is “under review.” Notwithstanding, since inauguration day, the DACA policy has continued in full force. Many have applied for and in most cases received either first-time DACA grants or renewals.

On June 29, 2017, Texas attorney general Ken Paxton and the attorneys general of ten other states sent a letter to U.S. Attorney General Jeff Sessions, giving the administration an ultimatum as to the DACA program. The letter notified the administration that if it did not cease accepting new DACA requests and DACA renewal requests, the signatory States would seek to amend the complaint currently pending before federal district court Judge Andrew Hanen in the Southern District of Texas which resulted in the halt of other Obama administration deferred action policies. The earlier challenges sought an injunction of the implementation of policies initiated by the Obama administration called the Deferred Action for Parental Accountability and expanded DACA that would have offered relief from deportation and work authorization for nearly 5,000,000 undocumented individuals in addition to those already receiving DACA. Judge Hanen moved swiftly and without

hesitation to impose a temporary restraining order on the programs. Judge Hanen's TRO was sustained by the 5th Circuit Court of Appeals and ultimately by the Supreme Court. Given Judge Hanen's decision as to the other deferred action policies and his reasoning underlying those decisions, there is a strong likelihood that he will ultimately decide that DACA should be halted as well.

It is not yet known how the administration will respond to the Texas DACA challenge, however, Homeland Security Secretary John Kelly has apparently advised the Congressional Hispanic Caucus that he does not believe that the program could withstand a legal challenge and has called on Congress to take action to provide direct statutory authority for the program if it wishes it to survive.

Should the administration acquiesce to Texas' demand, then significant numbers of recipients will begin immediately to lose their relief from deportation and their work authorization, with particularly large numbers losing their status throughout calendar year 2019. If on the other hand, the matter actually does end up in Court, then the administration could: 1) fight Texas' demand, attempting to distinguish the DACA program from other similar Obama era initiatives; 2) take no position which would essentially amount to an acquiescence to Texas' position; and 3) actually acquiesce to Texas' position. The latter two positions could very well result in an immediate end to the program, although it is likely that organizations advocating for DACA recipients will seek to intervene in the case in support of continuing the DACA policy.

In any event, the combination of the threats to TPS and to DACA mean that as many 1,000,000 workers could lose U.S. work authorization over approximately a two and one half year period.

On July 20, 2017, Republican Senator Lindsay Graham and Democratic Senator Richard Durbin introduced the "Dream Act of 2017" (S.1615) ("the Act") which if passed and signed would resolve the threat to current DACA holders. The Act provides conditional permanent residence for prior DACA recipients as well as those who in the future meet the eligibility requirements of the current DACA policy. It also provides for the removal of conditions on permanent residency for individuals who demonstrate written and oral English proficiency and who have either acquired a college degree, have completed two years in a degree program, have served honorably for two years in the military, or who have been employed for an aggregate of 13 years. It is not clear whether the ACT would pass either house of Congress. Additionally, President Trump has indicated that he is not prepared to sign legislation of this nature at the present time.

If you would like further information, please contact [Leon Rodriguez](mailto:lerodriguez@seyfarth.com) at lerodriguez@seyfarth.com.

www.seyfarth.com

Attorney Advertising. This Management Alert is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

Seyfarth Shaw LLP Management Alert | July 24, 2017

©2017 Seyfarth Shaw LLP. All rights reserved. "Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.