



OFFICE OF LEGAL AFFAIRS

ADVISORY OPINION  
AO-2012-002

**Subject:** Eligibility of Aliens and the DHS Deferred Action "DREAM Act" Policy

**Date:** August 22, 2012

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QUESTION PRESENTED

On June 15, 2012, the U.S. Department of Homeland Security (DHS) announced that aliens who were brought to the U.S. under the age of sixteen, and who meet certain other criteria based on the proposed DREAM Act, will be eligible for deferral of actual or potential deportation and for work authorization. The Office of Legal Affairs has been asked whether this policy provides a basis for LSC recipients to represent those aliens under one of the statutory exceptions to the general LSC prohibition regarding representation of aliens.

BRIEF ANSWER

No, the DHS deferred action policy regarding "DREAM Act" eligible aliens does not provide an independent basis for LSC recipients to represent those aliens. Instead, the general LSC prohibition on representation of aliens applies. An LSC recipient may represent an alien applying for relief under this DHS policy only if one of the existing statutory exceptions for permissible representation of aliens applies.

ANALYSIS

Under current law, LSC recipients are prohibited from representing persons who are not citizens of the United States unless one of the specific statutory exceptions applies. The general prohibition is set out at section 504(a)(11) of the *Omnibus Consolidated Rescissions and Appropriations Act of 1996*, Pub. L. 104-134, Title V, 110 Stat. 1321-50 (1996), as incorporated and modified by *Departments of Commerce, Justice, and State, and the Judiciary and Related Agencies Appropriations Act of 1998*, Pub. L. No. 105-119, § 502, 111 Stat. 2440-510 (1997), and incorporated by reference thereafter in subsequent LSC appropriations (*see, e.g., Commerce, Justice, Science, and Related Agencies Appropriations Act, 2012*, Pub. L. 112-55, Div. B, Title IV, 125 Stat. 629 (2011)). LSC implemented these provisions at 45 C.F.R. Part 1626. There have been other statutory modifications to the alienage restrictions, but those are not relevant to this question. *See LSC Program Letter 05-02* (victims of trafficking exceptions), *LSC Program Letter 06-02* (Violence Against Women Act exceptions), and *Commerce, Justice, Science, and Related Agencies Appropriations Act, 2008*, Pub. L. No. 110-161, § 540, 121 Stat. 1844, 1924 (2007) (H-2B forestry worker exception).

On June 15, 2012, Secretary of Homeland Security Janet Napolitano announced that aliens who were brought to the U.S. under the age of sixteen, and who meet certain other criteria based on the proposed DREAM Act, will be eligible for deferral of actual or potential deportation by U.S. Immigration and Customs Enforcement (ICE) or U.S. Citizenship and Immigration Services (USCIS). <<http://go.usa.gov/fFA>>. Additionally, USCIS will accept applications to determine whether these individuals qualify for work authorization. DHS invoked its general authority to exercise prosecutorial discretion as a basis for implementing this policy.

None of the statutory provisions permitting LSC recipients to represent non-U.S. citizens includes the general authority of DHS to exercise prosecutorial discretion. Thus, LSC recipients may not accept aliens as clients based on this DHS policy. Nonetheless, an LSC recipient may represent an alien seeking relief under this DHS policy if he or she otherwise qualifies under one of the statutory provisions permitting representation. For example, an alien married to a U.S. citizen may be represented by an LSC recipient if that alien has a pending application for permanent residence, which is a basis for eligibility under 45 C.F.R. § 1626.5(b) (implementing the statutory exception).

The Congressional requirements on representation of aliens by LSC recipients are very specific. For example, Congress permits LSC recipients to represent aliens who have been granted asylum in the United States, but Congress does not permit them to represent aliens who have been granted temporary protected status. Lawful status in the United States is not a determinative criterion.

Please contact Mark Freedman in the LSC Office of Legal Affairs with any questions regarding this issue.

Very truly yours,



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