



U.S. Citizenship
and Immigration
Services

Fresno Field Office: 1177 FULTON MALL– Fresno, CA 93721

July 14, 2010

MEMORANDUM TO WESTERN REGIONAL DIRECTOR

FROM: [REDACTED]
FOD/FRE

SUBJECT: Comments on Deferred Action SOP

The Deferred Action SOP leaves a great many questions unanswered. For example:

- Can anyone apply?
- What standard is used in making a recommendation?
- Is a personal interview required?
- What standards will be used in making a recommendation for approval?
- What factors will automatically make the applicant ineligible?
- If a FOD does not make a favorable recommendation, must the case be forwarded to the DD and RD?
- Does the filing of a letter at the Information Counter requesting Deferred Action mean the Field Office must follow through with biometrics and an interview even if it is known an unfavorable recommendation will be made?
- Since Deferred Action does not grant an immigration benefit but merely prevents deportation, should ICE be consulted?
- Past Deferred Action grants have had the time in Deferred Action count as unlawful presence. This SOP states the time will count as lawful presence. Does this change the policy for those previously granted Deferred Action?
- Appendix A contains significant space to report criminal activity or links to terrorism. Is it contemplated that persons convicted of crimes will be granted Deferred Action? What links to terrorism would be permitted, or is this included because it is an absolute bar?

Comments:

1. Appendix A – This appears to be very similar to the form used by the INS years ago. The INS collected the criminal information because one of the original uses of Deferred Action in the 1950s was to permit alien husbands to remain in the U.S. and support an American Citizen wife and children. In many cases the alien husbands could not qualify for an immigrant visa due to a criminal conviction. Deferred Action helped provide for the family in an era when women did not normally work outside the home. I worked my first Deferred Action case in 1975. By then a criminal conviction was considered a reason not to grant the case. Why do we need to report this? If the biometrics information includes a criminal conviction, the Field Office should be able to deny the case without having to conduct an interview and without having to complete Appendix A. Does the SOP envision a scenario in which Deferred Action would be granted despite a criminal conviction?
2. Discretion – Does a Field Office have the discretion not to complete Appendix A? I believe

this is necessary. Some Field Offices will receive many requests for Deferred Action. In the INS, Deferred Action was a discretionary benefit offered when the District Director believed a case merited the action. Aliens could not apply for the benefit. It was optional on the part of the INS. Requiring Field Offices to go through the motions of scheduling biometrics and an interview for everyone making a request at the Information Counter could overwhelm the office. No minimum standard for qualifying for Deferred Action is included in the SOP. I believe such a standard is needed and any request that does not meet the minimum standard should not require action, other than a letter stating that the applicant is not eligible.

3. The SOP 30 day time limit – The requirement to make a decision in 30 days is unreasonable. Some ASCs may not be able to schedule the applicant for a biometrics appointment in time to get results, obtain any relating file or create a file after a diligent search, schedule an interview for completion of Appendix A (after an officer has had time to review the initial request and any information in a relating file), and then take time to verify information given and consider the totality of the information and make a recommendation for the Field Office Director. Some of these cases could reasonably take six months, especially if the SOP envisions accepting applicants with a criminal history.
4. The lack of guidance in the SOP – The primary deficiency in the SOP is the lack of any standards, such as a minimum standard to qualify. The INS had several pages of Operating Instructions relating to factors to be considered when considering the grant of Deferred Action status. This SOP has none. For example, some type of extreme hardship on the part of the applicant or an immediate relative (with legal status) was a primary factor. Public opinion or adverse public reaction to deporting this particular person was another important factor to be considered. While the absence of guidance gives USCIS more discretion, it can also lead to abuse of the benefit. If the purpose of the SOP is to reduce the standard for Deferred Action, then the SOP should state this. Otherwise the field will have no idea what is expected.
5. The likelihood of mass filings for Deferred Action – without minimum standards and a clear understanding of Field Office discretion, many offices will receive hundreds or even thousands of requests. For example, most Field Offices now receive requests to issue NTAs to get applicants into removal proceedings in order to apply for Cancellation of Removal. These requests are denied because no application is pending with USCIS and the case rightfully belongs to ICE. ICE refuses to issue NTAs for these cases. These will be among the first of the requests for Deferred Action we will receive. Unless this is what is wanted, specific guidance is needed.