FAQ: DACA, DAPA and SCOTUS U.S. v. Texas Decision

About the Decision:

On June 23, 2016, the U.S. Supreme Court (SCOTUS) issued a one-sentence per curium ruling in *U.S. v. Texas*, simply stating "The judgement is affirmed by an equally divided court". This 4-4 decision left in place the Fifth Circuit ruling blocking the expansion of the Deferred Action for Childhood Arrivals (DACA+) and Deferred Action for Parents of American and Lawful Permanent Residents (DAPA).

How does the court ruling affect people who are waiting to apply for this benefit and what can they do about it?

They will need to continue to wait for other potential solutions and/or explore other potential immigration options. Research shows that 14.3% of the DACA eligible population may also be eligible for other types of immigration benefits. For example, USCIS is expected to announce the expansion of the I-601A hardship waiver program.

What is the hardship provisional waiver and what are the expected changes?

The provisional waiver allows certain unlawfully present applicants who are immediate relatives (spouses, children, and parents) of U.S. citizens to apply for a provisional unlawful presence waiver before leaving the U.S. for their consular interview to apply for a green card. The waiver allows the applicant to remain in the U.S. waiting on the waiver decision. Among other factors, the applicant needs to establish extreme hardship to a qualifying relative.

The new rule should clarify the process and standard of adjudication. Some factors that are expected to "strongly suggest and support a finding of 'extreme hardship'" include: substantial displacement of care of applicant's children, travel warnings against travel to country of residence, active military duty of qualifying relative, and prior grant of asylum or refugee status.

The proposed rule would expand who may be considered a qualifying relative for purposes of the extreme hardship determination to include lawful permanent resident spouses and parents. USCIS reports that this expansion would benefit an estimated 10,000 foreign nationals per year.

Does the Court's ruling impact DACA 2012?

No, the ruling does not directly impact the original program launched in 2012. The Obama Administration is expected to continue with their current policy of using our immigration enforcement resources on persons convicted of crimes, illegal border crossings, and persons who fail to appear at their removal hearings.

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Could the benefits of current DACA beneficiaries change in the future?

Yes. The next Administration can change those benefits including the value of applying for an Employment Authorization Document (EAD).

Will DACA+ (the proposed enhanced program) and DAPA ever be implemented?

The Supreme Court is not likely to rehear this case or render a new decision until as late as 2018. Prospective applicants will have to wait at least two more years for any potential benefit from this proposal. The future of the program likely depends on who is elected President in November 2016 and whether that person would continue to pursue this strategy or not.

Does DHS still have the authority to grant deferred action?

Yes. Although DACA+ and DAPA are stopped from moving forward in the court system, the Supreme Court's decision does not preclude DHS from the review and grant of individual requests for deferred action OR to establish a different deferred action initiative that applies to a category of individuals who are not enforcement priorities.

What can individuals who may be eligible for DACA+ or DAPA do in light of this decision?

They should seek advice from an experienced immigration lawyer on any other options for legal status and make a careful determination as to how to proceed.

For more information about this ruling or to learn how the Marks Gray Immigration team led by **Giselle Carson** may assist you today, please email ImmigrationGroup@marksgray.com.

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