



State of North Carolina

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January 17, 2013

J. Eric Boyette
Acting Commissioner
Division of Motor Vehicles
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Raleigh, North Carolina 27699-3101

Dear Commissioner Boyette:

Former Commissioner Michael Robertson has asked this office for a legal opinion as to whether, under North Carolina law, drivers licenses can be issued to individuals who have been granted deferred action under the Deferred Action for Childhood Arrivals ("DACA") program announced by the Department of Homeland Security on June 15, 2012. Commissioner Robertson's letter states the Division of Motor Vehicles ("DMV") will not issue licenses to individuals participating in the DACA program unless North Carolina law requires them to be issued.

North Carolina's Uniform Driver's License Act is codified as Chapter 20, Article 2 of the North Carolina General Statutes. General provisions concerning the issuance of driver's licenses are set out in N.C. Gen. Stat. §20-7. Subsection (b1) of that section contains the requirements for a license application, which must include proof of residency in the state and the applicant's valid social security number. Subsections (b3) and (b4) describe types of documentation that are considered acceptable proof of residency.

Subsection (f), which delineates the requirements for duration and renewal of licenses, states that a license of shorter than normal duration should be issued "when the applicant holds valid documentation issued by, or under the authority of, the United States government that demonstrates the applicant's legal presence of limited duration in the United States. In no event shall a license of limited duration expire later than the expiration of the authorization for the applicant's legal presence in the United States." Subsection (s) further states, in part:

(s) Notwithstanding the requirements of subsection (b1) of this section that an applicant present a valid social security number, the Division shall issue a drivers license of limited duration, under subsection (f) of this section, to an applicant

present in the United States who holds valid documentation issued by, or under the authority of, the United States government that demonstrates the applicant's legal presence of limited duration in the United States if the applicant presents that valid documentation and meets all other requirements for a license of limited duration.

These provisions, read together, reflect a legislative intent that, assuming all other statutory requirements are met, DMV is required to issue licenses of limited duration to applicants presenting valid documentation demonstrating the applicant's legal presence of limited duration in the United States. It is therefore necessary to review the legal posture of individuals participating in the DACA program to respond to the question posed.

The DACA program was initiated through a policy directive dated June 15, 2012, from Director of Homeland Security Janet Napolitano to U.S. Customs and Border Protection, U.S. Citizenship and Immigration Services and U.S. Immigration and Customs Enforcement regarding the exercise of prosecutorial discretion in the enforcement of immigration laws against certain young people brought to the United States as children. Under the criteria established, individuals who came to the United States under the age of sixteen and are presently under the age of thirty; have continuously resided in the United States for five years; are currently in school, graduated from high school, or an honorably discharged veteran; have not been convicted of any serious criminal offense; and meet several other requirements are now eligible for classification as low priority individuals for whom removal action will be deferred for two years. Individuals who are approved for deferred action under the DACA program may also apply for employment authorization in accordance with 8 C.F.R. §274a.12 and a Social Security number and card. Deferred action under the DACA program does not provide lawful, permanent, immigrant status or lawful nonimmigrant status such as a tourist visa. See U.S. Citizenship and Immigration Services, "Frequently Asked Questions About DACA" - Questions 1, 6 and 7.

The specific question posed is whether individuals accorded deferred status pursuant to the DACA program, and present valid documentation issued by the United States government that demonstrates "legal presence of limited duration in the United States," must be issued a North Carolina drivers license of limited duration in accordance with N.C. Gen. Stat. §20-7(s). Based upon our review of the historical background and legal concepts applicable to prosecutorial discretion and deferred status in the enforcement of immigration laws, we believe that individuals who present documentation demonstrating a grant of deferred action by the United States government are legally present in the United States and entitled to a drivers license of limited duration, assuming all other criteria are met.

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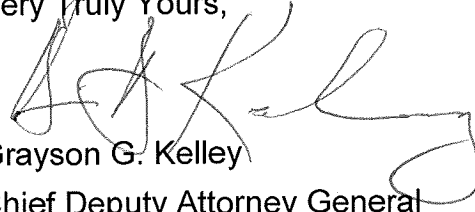
This conclusion should not be construed to suggest that individuals granted deferred status under the DACA program have "lawful status" in the United States. Lawful immigration status is generally understood to refer to specific formal classifications for immigrants who have been granted permanent resident status, or temporary, non-immigrant status for certain purposes. Secretary Napolitano's memorandum, in fact, specifically states: "This memorandum confers no substantive right, immigration status or pathway to citizenship."

There exists, however, a recognized legal distinction in immigration law between "lawful status" and "lawful presence." See U.S. Citizenship and Immigration Services, "Frequently Asked Questions" - Question 6 ("There is a significant difference between "unlawful presence" and "unlawful status"). Formal lawful immigration status is generally considered to refer to specific classifications through which individuals are granted permanent immigrant status; temporary permission to be in the United States for specified purposes; or other limited classifications established by law. Deferred status, on the other hand, is a grant of permission to remain in the country for a specified period of time without receiving formal immigration status. The grant of deferred status therefore establishes lawful presence for the period of deferment. An informative description of this distinction is included in the Expert Report and Declaration of Former Immigration and Naturalization Service General Counsel Bo Cooper, and that of Professor Stephen W. Yale-Loehr, which were prepared in connection with the lawsuit *Arizona Dream Act Coalition, et al. v. Brewer, et al.* (U.S. District Court for the District of Arizona, No. 2:12-cv-02546-DGC).

It is therefore our opinion that individuals who have been granted deferred action under the Deferred Action for Childhood Arrivals policy directive are lawfully present in the United States during the period of deferment. As such, N.C. Gen. Stat. §20-7(s), which states that DMV shall issue a drivers license of limited duration to persons who present valid documentation demonstrating deferment and meet all other statutory requirements, requires that such licenses be issued.

Please contact me if we can provide additional assistance.

Very Truly Yours,



Grayson G. Kelley
Chief Deputy Attorney General

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