

# EMPLOYMENT-BASED RELIEF

A Guide for DACA Recipients

## **THIS DOCUMENT PROVIDES A BRIEF SUMMARY OF EMPLOYMENT-BASED IMMIGRATION FORMS OF RELIEF, SPECIFICALLY THE H-1B VISA.**

As many DACA-recipients are educated and professionally trained, work-based employment could be relevant for them to know. That said, many DACA-recipients are unlikely to be eligible for or even necessarily should consider applying for employment-based relief, because of certain considerations, such as having unlawful entry or accumulated unlawful presence.

**THIS DOCUMENT IS ONLY FOR GENERAL INFORMATIONAL PURPOSES AND DOES NOT CONSTITUTE LEGAL ADVICE. PLEASE CONSULT WITH AN IMMIGRATION ATTORNEY REGARDING YOUR CASE.**



For up-to-date information on DACA and screening for referral eligibility for an immigration legal consultation, please contact the Nebraska Immigration Legal Assistance Hotline (“NILAH”) at (855) 307-6730.



## H-1B VISA

DACA-recipients who have:

- earned at least a bachelor's degree;
- a job offer from an employer seeking to sponsor;
- initial lawful entry; **and**
- less than 6 months of unlawful presence since their last entry;

may be eligible for employment based relief. DACA-recipients who first received DACA when they were 18.5 years old or older, do not qualify because they have accumulated more than 6 months of unlawful presence.

H-1B status is an employment-based immigration form of relief, that can be either temporary or permanent as an immigration solution, depending on the sponsored immigrant's experience, intent, and the employer's willingness to sponsor. Generally speaking, the H-1B visa provides up to 3-years of status with work authorization for foreign national workers in specialty occupations, which require use of special knowledge and a bachelor's degree or higher (or equivalent) in the relevant field. The visa can be extended for an additional three years, providing up to 6-years of status. Additionally, while on an H-1B visa, an employer may choose to sponsor the immigrant for an employment-based green card, ultimately leading to permanent resident status.

The government has an annual cap on the number of H-1B visas it makes available, and the current cap is 65,000 for this category, plus an additional 20,000 visas for individuals who have earned a master's degree from an accredited U.S. college or university. While not all H-1B visa applications are subject to the cap, this form of relief can be particularly challenging to secure. For one, whether the government even processes an application depends on the fortune of being selected in a lottery-style for consideration. Application also depends not only on job availability, but also on an employer having resources to sponsor and fund the application as an employer must.

The H-1B petition process is cyclical. The government begins accepting H-1B petitions that are subject to the following year's H-1B cap in the spring (generally March/April). Individuals whose H-1B petitions that are selected in the lottery and are ultimately approved can begin working for the sponsoring employer on the H-1B visa on October 1 of the same year. In planning, it is also worth noting that preparation of the petition can be time consuming and involves evaluation by the Department of Labor. Ergo, individuals and employers interested in H-1B visas should be keen to plan any intended applications sooner than later

While DACA is considered lawful presence, it is technically not a "status," and so a sponsored immigrant will not be eligible to change status to that of an H-1B visa holder. The employer may file an H-1B petition while the sponsored immigrant is in the U.S., but the immigrant will have to leave the U.S. and consular process before re-entering the U.S. on their H-1B visa. Thus, it is important to be sure that the sponsored immigrant has not accrued unlawful presence before leaving to consular process.

