

BEYOND DEFERRED ACTION:
LONG-TERM IMMIGRATION
REMEDIES EVERY
UNDOCUMENTED YOUNG
PERSON SHOULD KNOW
ABOUT



EDUCATORS FOR FAIR CONSIDERATION

Curran & Berger LLP
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INTRODUCTION

In January 2012, Educators for Fair Consideration (E4FC) and Curran & Berger LLP embarked on a program to offer in-depth legal consultations to undocumented young people. We considered every possible legal remedy - looking for the proverbial “needle in the haystack.” This is an essential strategy in immigration law.¹

We completed 121 consultations with undocumented young people, representing a wide range of nationalities, ages, geographic locations and fields of study.² Although that is not enough to make a statistically valid sample, we found six legal remedies that were by far the most common. We also found that many undocumented young people were unaware of their options, or did not understand their own immigration history. Lastly, we found that previous advice given to undocumented young people, even when well-intentioned, was sometimes skewed – an asylum clinic was more likely to see a potential asylum case, while a business lawyer was more likely to see a business immigration option.

As a result, in 2012, we created a self-assessment guide for those six remedies. Post-election, many undocumented young people and DACA recipients are looking for options for longer term status. We hope that this guide has been of help.

This guide is not intended as legal advice – do not make decisions about which category to apply for based just on this information. Rather, use this guide to spot

SIX MOST COMMON REMEDIES WE OBSERVED

1. EMPLOYMENT-BASED GREEN CARD (PERMANENT RESIDENCY) FOR UNDOCUMENTED YOUNG PEOPLE WITH LIFE ACT (245I) PROTECTION

This remedy is much more common than expected, and involves the intersection of two immigration law concepts – 245i protection and employment-based green card sponsorship. (A “green card” is also known as “Permanent Residency” or being a “Lawful Permanent Resident” or “LPR.”)

U.S. citizen parent) would suffer extreme hardship if you were forced to remain outside of the United States for the duration of your bar.

Note that leaving and re-entering the United States on Advance Parole through DACA does count as a lawful entry for applying for permanent residence through marriage to a U.S. citizen (without leaving the United States). The stateside waiver which could be changed by a new administration, allows people to file a

control.

It is not enough to say that you are afraid to go back to your country of origin because of general violence, or poor living conditions. An asylum application can be difficult to document if you left your home country quickly to escape a bad situation and do not have many documents to help show that you (or an immediate family member) were persecuted or otherwise in danger due to being a member of one of the five group classifications mentioned above.

Most undocumented young people do not come from countries where they are afraid for political or religious reasons. Rather, many fear domestic violence, mistreatment based on their sexual orientation, or gang or mafia violence. These cases (that fall in the “social group” category) are cutting edge in asylum law, and can be hard to document. Take a look at the U.S. State Department Human Rights reports and other reputable sources for supporting materials -

The Child Status Protection Act is VERY important
– usually children can only follow in their parents' applications if the children are still under 21 when the parents get their green cards. For older undocumented people, do the calculations carefully under the Child

6. TEMPORARY WORKING VISAS (SUCH AS THE H-1B) AND PROCESSING IN YOUR HOME COUNTRY

Earlier in this guide, we have

visa here in the United States. After it is approved, the file is sent to the U.S. consulates in the undocumented young person's country of citizenship, and he/she can then choose to leave and apply there for d3 permission to return in valid H-1B status.

As explained above, most undocumented young people who have been unlawfully present in the United States for one year or more face a 10-year bar to admission from the date of their departure or removal from the United States. Thus, departure from the United States – which is necessary for a d-3 application – is what triggers the 10-year bar, which starts clocking from the date of departure. A successful d-3 application removes the 10-year bar for temporary visa purposes only. In other words, the 10-year bar remains for green card purposes.

The law about the 3- and 10-year bars, INA §

ADDITIONAL REMEDIES TO CONSIDER FOR FAMILY MEMBERS UNDER AGE 18

We

) If you have had contact with a judge in a family law, dependency, probate, or delinquency

RESOURCES

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RESOURCES

E4FC'S FREE DREAMer INTAKE SERVICE



fields or sub-focus, so they are definitely a great resource to try to access.

To find immigration non-profit legal service agencies relevant to you, visit:



