



D-3 Waiver for U.S. College Graduates

The Biden Administration recently announced that it is taking steps to make it easier for individuals who have graduated from U.S. colleges or universities, specifically DACA recipients or Dreamers (an undocumented individual who came to the U.S. as a child), to obtain work visas, such as the H-1B specialty occupation visa, by utilizing the D-3 waiver process.

What Is a D-3 Waiver?

The INA 212(d)(3) waiver, also known as the D-3 waiver, can excuse some immigration violations, including unlawful presence in the United States. This waiver allows someone with previous immigration violations to obtain a temporary employment-based visa at a U.S. embassy or consulate abroad and return to the United States in lawful status.

Why Is this Important for DACA Recipients and Dreamers?

It offers a way for some DACA recipients, Dreamers, and other qualified applicants, to gain legal status and work authorization, potentially opening doors to further immigration benefits in the future. This may also allow for an individual to apply for permanent residence (a “green card”) while in the United States.

Many DACA recipients and Dreamers have been in the United States for an extended time without documents, which makes them ineligible to obtain lawful status without first leaving the United States. If they leave, they may be denied entry to the United States because of their past violation. This is where the D-3 waiver comes in – it provides a path to potentially be allowed to come back to the United States legally and may also let eligible persons obtain a green card in the future without having to leave the United States.

Am I Eligible for a D-3 Waiver?

In many cases, before you can apply for a D-3 waiver, you must first obtain an approval for a temporary worker classification such as an H-1B petition. Once those petitions are approved, an applicant must leave the United States and apply for a visa and D-3 waiver at the U.S. embassy or consulate. While D-3 waivers can take months and sometimes longer to process, new guidance encourages visa officers to recommend expedited D-3 processing when a person has a U.S. degree and is returning to work for a U.S. employer. This may minimize the amount of time visa applicants must remain outside of the United States while awaiting waiver approval.

To be recommended for an expedited D-3 waiver in addition to meeting all other D-3 requirements, the new guidance asks for the following additional evidence:

- A degree from a U.S. university or college, OR
- Credentials to engage in skilled labor in the United States; AND
- A job that you will continue or start from a U.S. employer that is related to your degree or credentials.

A consular officer will then recommend your eligibility for a waiver and expedited processing to Customs and Border Protection for a final decision.

We encourage you to contact the Law Offices of Timothy D. Widman at (408) 366-2801 if you have any questions.