



505 Fifth Avenue, Suite 901
Des Moines, IA 50309-2316
www.aclu-ia.org

October 17, 2012

Paul Trombino III, Director
Iowa Department of Transportation
800 Lincoln Way
Ames, Iowa 50010

Re: Driver's License Eligibility for Individuals Granted Deferred Action status by DHS-USCIS

Dear Director Trombino:

As you are aware, on June 15, 2012, President Barack Obama announced that the U.S. Department of Homeland Security (DHS) would not deport certain young people who entered the U.S. before age 16 and meet certain additional requirements ("DREAMers"). Under a directive from the Secretary of DHS, Janet Napolitano, which was issued the same day, these eligible youth will be granted "deferred action" status. Deferred action will be valid for two years and may be renewed at the end of the two years. Qualifying young people granted deferred action status under this directive will be eligible to obtain a Social Security number, and obtain an employment authorization document.

We are writing to seek confirmation that the young people granted deferred action status pursuant to this exercise of the Secretary's prosecutorial discretion will be eligible to obtain Iowa driver's licenses or IDs during the approved deferral period.

According to the directive from Secretary Napolitano, to qualify for deferred action, applicants will have to satisfy the following criteria:

- (1) Must have come to the United States under the age of 16;
- (2) Must have continuously resided in the United States for at least five years before June 15, 2012, and have been physically present in the United States on June 15, 2012;
- (3) Must currently attend school, have graduated from high school, obtained a G.E.D. certificate, or be an honorably discharged veteran of the U.S. Armed Forces or Coast Guard;

- (4) Must not have been convicted of a felony offense, significant misdemeanor offense, multiple misdemeanor offenses, or otherwise pose a threat to the community or national security; and
- (5) Must have been under the age of 31 on June 15, 2012.

Under Section 202(c)(2)(B) of the REAL ID Act of 2005, which requires states to verify an applicant's legal status in the United States before issuing a driver's license or personal identification card, an "alien" who has approved deferred action status is a person with lawful status.

In addition, Section 202(c)(2)(C) of the REAL ID Act establishes a system of temporary licenses and identification cards that can be issued by the states to applicants who can present evidence that they:

- (1) have a valid, unexpired non-immigrant visa or non-immigrant visa status for entry into the United States;
- (2) have a pending or approved application for asylum in the United States;
- (3) have entered into the United States in refugee status;
- (4) have a pending or approved application for temporary protected status in the United States;
- (5) have approved deferred action status; or
- (6) have a pending application for adjustment in status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.

As you know, REAL ID was recently implemented through amendments to the Iowa Administrative Rules as published in ARC 0201C and will take effect January 15, 2013. Under the Iowa DOT's new REAL ID rules, a person who applies for a new driver's license or nonoperator's identification card must submit proof of identity, date of birth, social security number, Iowa residency and current residential address, and lawful status in the United States. Iowa Admin. Code r. 601.5(1)(e) (Jan. 13, 2013).

The new rules provide that verification of lawful status in the United States to obtain a driver's license or non-operator's identification card marked as REAL ID compliant may be made by presenting both "[a]n unexpired employment authorization document issued by the U.S. Department of Homeland Security (Form I-766 or Form I-688B)", Iowa Admin. Code r. 601.5(1)(e) (Jan. 13, 2013), and "another United States Department of Homeland Security-approved document." Iowa Admin. Code r. 601.5(4) (Jan. 13, 2013).

Having analyzed both the federal and state laws and regulations, we believe that both the work authorization and the official letter from the US Citizenship and Immigration Services (USCIS) indicating that the applicant has been granted approved deferred action status is sufficient to establish lawful status consistent with the REAL ID act and state law, and Iowa Department of Transportation regulations. The same documentation also provides verification of identity and date of birth under Iowa Admin. Rule 601.5(1) with the REAL ID amendments noticed as ARC 0201C to take effect January 15, 2013. Because Iowa DREAMers granted deferred action status under the

new policy will be provided Social Security account number cards, they will be able to satisfy the application documents required by Iowa Code Section 321.182 (2011) and Iowa Administrative Code r. 601.5(2) (Jan. 13, 2013).¹

Accordingly, we ask you to confirm that, if DHS approves deferred action status for an individual who qualifies under the DHS Secretary's June 15, 2012 memorandum, that person will be eligible to obtain an Iowa driver's license or ID for the period for which deferred action status is granted so long as they meet the final requirement of Iowa residency and current residential address.

In addition, we ask you to confirm that the official letter from the US Citizenship and Immigration Services (USCIS) indicating that the applicant has been granted approved deferred action status will be sufficient to document lawful status consistent with the REAL ID act and state law, and Iowa Department of Transportation regulations.

Other states that have implemented federal REAL ID legislation have already recognized that DREAMERS granted deferred action under the new policy will be eligible for drivers licenses in those states. Among those states which have already officially confirmed that DREAMERS will be eligible for state drivers licenses and non-operator IDs are Michigan, Illinois, Indiana, and Ohio.

Thank you in advance for your assistance in this matter. I look forward to receiving your assurance that the Department of Transportation will issue Iowa driver's licenses and ID cards to qualified young people granted deferred action by the DHS pursuant to the terms of the Secretary's June 15, 2012 memorandum.

If you have any questions or comments, please do not hesitate to contact me via email at rita.bettis@aclu-ia.org or at my office at (515) 243-3988 ext. 15.

All the best,



Rita Bettis
Legislative Director and Staff Attorney

¹ The deferred action status granted to DREAMERS comes with an official letter granting deferred action status, work authorization documentation, and a Social Security card, making their situation unlike the undocumented foreign nationals seeking drivers licenses whose state statutory claims were rejected on grounds of lack of documentation in *Sanchez v. State*, 692 N.W.2d 812 (Iowa 2005).