

“Deferred Action, Deferred Dreams” by Adam Edward Rothwell, Esq.

Deferred action, the immigration program allowing certain foreign citizens in the US who arrived without status as children to receive work authorization, is not as inclusive a program as media outlets originally reported. When deferred action was first passed, I received many calls from foreign citizens desperate for a chance to receive lawful immigration status after entering the US as children, only to find out deferred action would not be available to them.

That being said, deferred action under the black letter law does not provide any lawful immigration status. Officially a foreign citizen in the US approved for deferred action with related work authorization and an issued social security number has no more lawful immigration status than a foreign citizen approved for nothing related to immigration. And this does not make much sense in my view.

In my opinion if a foreign citizen has been in the US without any so-called “papers” for many years, issuance by the US of any papers to that same foreign citizen logically provides at least a degree of status. Regardless of the situation, if someone has nothing and afterwards receives something of value, the person then at least holds more than nothing. Based on this logic, a foreign citizen with approved deferred action, work authorization and an issued social security number logically has at least a higher degree of status than foreign citizens not in the immigration system. However, rule under the law again is that deferred action does not provide any legal status.

If deferred action does not provide any legal status, what action is officially being deferred? Is the action being deferred eventual active removal proceedings against the foreign citizen by the US Government? Or is the action being deferred from a practical standpoint just the ability of an approved foreign citizen to fully thrive in the US, which hopefully will still result in self-removal by choice?

Policy would have to completely change before foreign citizens approved for deferred action in the US find themselves placed in removal proceedings for no reason other than to cancel deferred action. There would be incredible backlash among immigrant communities if foreign citizens approved for deferred action were suddenly put en masse into active removal proceedings. Additionally, I have heard of many foreign citizens approved for deferred action with work authorization who have since left the US permanently due to hardship. In other words, if for example a foreign citizen has lived in the US without work authorization for 12 years, he/she is not going to then easily throw in the towel and leave the US by choice shortly after receiving work authorization and a social security number through deferred action.

For all the above reasons, in my opinion deferred action mostly amounts to deferring opportunities for young foreign citizen adults to move their lives forward in the US. Deferred action places foreign citizens in a legal gray area, where they have immigration benefits but are still told they are here without status in violation of the law. Similarly I think it’s safe to say, if the goal is immigration reform, that deferred action has not helped move forward comprehensive immigration reform on any level. In fact deferred action has likely at least on some level stymied immigration reform momentum, as the passing of deferred action by Executive Order rather than through Congress has only upset some individuals in Congress who might otherwise support comprehensive immigration reform.

Adam Edward Rothwell is a US Immigration lawyer based in Baltimore, Maryland. He may be followed on Twitter at: USAImmigration