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**PATH TO A GREEN CARD FOR DACA HOLDERS
OPENED BY COURT DECISION**

A recent court decision has opened a door for persons with DACA who marry a US citizen to adjust their status in the US, without a pardon and without going through a foreign consulate. This is limited to certain DACA holders without prior orders of deportation or other grounds for inadmissibility, and only after obtaining with permission to travel under DACA.

Nonetheless, this is big news for certain immigrants with DACA who have a US citizen spouse – now they can get their green card in a few months, without going through either the pardon procedure or consular processing abroad.

DACA and Permission to Travel.

On June 15, 2012, the Deferred Action for Childhood Applicants (“DACA”) program was created for certain individuals under age 31 who entered the United States before turning sixteen and who meet certain guidelines. Over 500,000 immigrants have DACA status, and many thousands in the North Bay.

One of the benefits of DACA is that the recipient may seek permission to travel abroad temporarily for humanitarian, educational, or employment purposes. A DACA recipient who seeks to temporarily leave and re-enter the United States must apply for advance parole. *Advance parole* gives a person with DACA advance authorization to enter the United States after temporary travel abroad.

The rules expressly provide that travel abroad for vacation is not a valid purpose for advance parole. Also, DACA recipients who have a deportation or removal order cannot travel on advance parole without a court re-opening and nullifying their deportation order.

Court decision helps DACA holders wanting to travel and adjust status.

In the recent court decision of *Matter of Arrabally and Yerrabelly*, the Board of Immigration Appeals held that travel on advance parole does not constitute a “departure” for purposes of the 10-year-bar for unlawful presence. USCIS views *Matter of Arrabally and Yerrabelly* as applicable to DACA recipients traveling on advance parole.

It is also important to note that a DACA recipient who has previously triggered various unlawful presence bars or has other inadmissibility grounds such as criminal charges should not travel on Advance Parole.

Applying for Adjustment of Status following travel with Advance Parole.

Under the government’s current interpretation, advance parole makes some DACA recipients eligible for adjustment of status to the U.S. without a pardon and without going through consular processing outside the US. For example, a DACA holder with a US citizen spouse.

This means that if a DACA recipient travels abroad and returns under a grant of advance parole, he or she can apply for adjustment of status in the US. This is a much faster and simpler procedure than the prior pardon procedure, which required the applicant to obtain a pardon (which were often denied) and to go through a lengthy procedure at a Consulate abroad, like Ciudad Juarez.

Now, DACA holders with a US citizen spouse in the North Bay can apply for permanent residence in San Francisco and generally obtain it in four months. There have already been cases of DACA recipients successfully adjusting status after traveling abroad on advance parole. CIS has confirmed that they are accepting applications for adjustment of status for eligible DACA holders re-entering the US with advance parole.

Of course, anyone contemplating travel outside the US or applying for permanent residence should get competent legal advice before doing so.

CHRISTOPHER A. KEROSKY of the law firm of KEROSKY PURVES & BOGUE has practiced law since 1984 and has been recognized as one of the top immigration lawyers in Northern California for the last seven years by San Francisco Magazine “Super Lawyers” edition (2006-2012). He graduated from University of California, Berkeley Law School and was a former counsel for the U.S. Department of Justice in Washington D.C.

WARNING: The foregoing is an article discussing legal issues. It is not intended to be a substitute for legal advice. We recommend that you get competent legal advice specific to your case.

If you would like such advice from our office, call (415) 777-4445 (San Francisco); (916) 349-2900 (Sacramento); (707) 224-2272 Napa; (925) 222-5074 (Walnut Creek); (707) 433-2060 (Santa Rosa); (707)376-1010 (Ukiah) or (408) 963-0355 (San Jose).