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August 22, 2012

The Honorable Nathan Deal
Governor
State of Georgia
The State Capitol
Atlanta, Georgia 30334

Re: Issuance of driver's license or identification card to persons granted deferred action status

Dear Governor Deal:

You have requested advice on whether persons granted deferred action status pursuant to President Obama's recent policy directive, Deferred Action for Childhood Arrivals, may apply for a Georgia driver's license or identification card under Georgia law. As you correctly note in your letter of request, the General Assembly has addressed the question in O.C.G.A. § 40-5-21.1(a)(5). That Code section, enacted in 2005, provides in pertinent part that

[n]otwithstanding any other provision of this title, an applicant who presents in person valid documentary evidence of . . . [a]pproved deferred action status . . . may be issued a temporary license, permit, or special identification card.

The Code section provides no additional guidance. The language "approved deferred action status" likely was taken from the federal REAL ID Act of 2005, Pub. L. 109-13, which was under consideration and ultimately enacted by Congress at the same time as O.C.G.A. § 40-5-21.1 was enacted by the General Assembly and approved by the Governor.

It is my understanding that the United States Citizenship and Immigration Services (USCIS), within the Department of Homeland Security, is the agency to which application is made under ordinary circumstances for consideration of deferred action status. I am informed that upon approval of such status USCIS issues to the applicant a Form I-797 (Notice of Action) indicating that the applicant has been approved for deferred action status. Under state law a person must present valid documentary evidence of approved deferred action status in order to be issued a temporary license or identification card, and Form I-797 would be such a document.

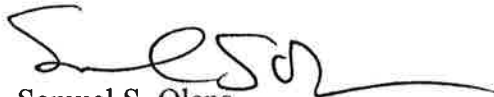
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While I do not agree with the actions of the President in issuing the directive, it has been implemented by the Department of Homeland Security, USCIS, and state law recognizes the approval of deferred action status as a basis for issuing a temporary driver's license or identification card.¹ State identification cards, however, unlike driver's licenses, are by statute made a public benefit and are subject to the additional administrative processes of O.C.G.A. § 50-36 (Supp. 2011).

I trust that the foregoing sufficiently addresses your question. Please let me know if I can be of any further assistance.

Sincerely,



Samuel S. Olens
Attorney General

SSO/DAR/rn

¹ The question has arisen whether the definition of "resident" in O.C.G.A. § 40-5-1(15) prohibits the issuance of licenses to those persons granted deferred action status since under that Code section no person may be considered a resident unless he is a "United States citizen or an alien with legal authorization from the U.S. Immigration and Naturalization Service," and deferred action status does not confer "legal authorization." The General Assembly in O.C.G.A. § 40-5-21.1 has provided a mechanism through which *nonresidents* may receive driver's licenses or identification cards. It does not impose a residency requirement on the applicant, and documentation of approved deferred action status is one of the authorized means to be granted a license. I also note that O.C.G.A. § 40-5-21.2 appears to require the Department of Driver Services to confirm the legal status of all noncitizen applicants either through SAVE or an alternative means of confirmation. The verification requirements of that Code section, however, constitute merely an alternative basis for satisfying the documentary evidence requirement of O.C.G.A. § 40-5-21.1, see O.C.G.A. § 40-5-21.1(a)(7), which the evidence of deferred action status also independently satisfies and thereby obviates the need for SAVE verification.