

## Secondary Evidence

Secondary evidence may be submitted to prove a fact or satisfy a guideline when primary evidence is unavailable. Secondary evidence must lead the officer to conclude that it is more likely than not, in other words, probable, that the fact sought to be proven is true:

- **Examples of acceptable secondary evidence to prove date of birth:**  
Baptismal records issued by a church showing that an individual was born at a certain time.
- **Examples of acceptable secondary evidence to meet the CR guideline:**  
Rental agreements in the name of the DACA requestor's parent, if corroborating evidence in the file (such as school or medical records) points to the DACA requestor's residence at that address.



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## Affidavits (Continued)

Weigh the assertions in the affidavits in light of the totality of all the evidence presented. When evaluating what weight to give an affidavit, take the following into consideration:

- An affidavit needs to be signed and dated;
- The identity of the affiant needs to be readily ascertainable from the information in the affidavit;
- The affidavit should state the relationship between the affiant and the DACA requestor and contain facts that are relevant to the guideline the requestor seeks to meet; and
- The affidavit should state the basis of the affiant's knowledge and exhibit first-hand knowledge of the fact asserted.



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## Totality of the Evidence

Review the totality of the documentary evidence to determine whether the facts needed to establish a specific guideline have been demonstrated.

### **When one piece of evidence can satisfy more than 1 DACA guideline:**

- **Example:** School transcripts can show “currently in school”, CR, and presence on 6/15/12, and can also corroborate age.

### **When multiple documents viewed together can satisfy 1 DACA guideline:**

- **Example:** A DACA requestor could meet the “present in the U.S. on 6/15/12” guideline by submitting various forms of credible documentation evidencing that he/she was present in the United States shortly before and shortly after June 15, 2012, such as bank statements, phone records, with receipts with identifying information, etc. The officer could infer, based on the totality of the evidence, that the individual meets this guideline.



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# VI. Removal Proceedings



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# Charging Documents

Form I-862, Notice to Appear, initiates a removal proceeding under INA 240, and is the most common kind of charging document.

Other currently used charging documents includes:

- Form I-860, Notice and Order of Expedited Removal.



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## Underlying Removal Ground Impacts DACA

If the DACA requestor indicates in Question #3.a. in Part 1 of Form I-821D that he/she has been in removal proceedings, and/or routine systems, background, and fingerprint checks indicate that the requestor is in removal proceedings, proceed as follows:

- Review the underlying removal charges; and
- Review the derogatory information obtained through routine checks.



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## Underlying Removal Ground Does Not Impact DACA

A individual in proceedings can have his/her removal deferred under DACA if the underlying removal ground does not adversely impact the exercise of discretion.

- Review the results of all routine systems, background, and fingerprint checks.
- If those routine checks do not reveal any additional derogatory information (such as issues of criminality, national security, or public safety), proceed with adjudication.



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## Important Note

Do not rely solely on the grounds listed in the charging document and/or EARM.

- Not all issues may have necessarily been captured in the charging document.
- New issues may have arisen since the charging document was issued.

Review all derogatory information in its totality and then make an informed assessment regarding the appropriate exercise of discretion for DACA.



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## Reinstatement of the Prior Removal Order

When an individual reenters the United States illegally after having been removed or after leaving voluntarily under an order of removal, he/she is subject to reinstatement of the prior removal order from its original date. INA 241(a)(5)

To meet the DACA guidelines, the removal AND the subsequent illegal reentry had to occur before June 15, 2007.

- Requestor is to have at least 5 years CR before June 15, 2012 up to the date of filing.
- Removal is not a BCI departure – it interrupts the CR period.



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## Exercise

### Fact Pattern:

The requestor claims that he is 14 years old and indicates that his proceedings were administratively closed.

### Questions for Discussion:

How would you verify whether or not the requestor is currently in proceedings?

If the requestor is in proceedings, what impact does it have on his DACA request?



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# VII. Background & Security Checks



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# Module Objectives

The objective of this section is to provide a basic understanding of:

- Identify mandatory background checks
- Identify if a case needs to be referred to the BCU DACA Team
- Comprehend how to process various background-check elements



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# Background & Security Checks

Background checks refer to the analysis of the results of security checks or any other identified concern relating to national security of public safety and the actions required to resolve the concern.

The routine background and security checks to be performed on DACA are:

- TECS queries; and
- FBI fingerprint checks.

Conduct the resolution in accordance with current NaBISCOP and CARRP policies.



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## Background & Security Checks (Continued)

The CARRP process will guide the resolution of all TECS hits with national security issues.

- The BCU will process all non-KST / KST national security concerns.
- The CARRP unit will route cases for supervisory review before the decision is issued.

Cases with issues of criminality should be handled per standard protocols according to whether Egregious Public Safety (EPS) issues are present, as described in the November 7, 2011 NTA memorandum.



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## Routing and Handling of TECS Hits and IDENTs

For DACA, a specialized adjudication team has been established at each center within the BCU. This team, BCU DACA, will process and adjudicate all DACA requests that have issues of criminality.

TECS hit and IDENTs with issues of criminality will be routed directly to the BCU DACA.

When an officer conducts a backend TECS query and the SQ-11 returns an issue of criminality that relates, the officer will route the case to the BCU DACA team for further processing.

- If an officer inadvertently receives a DACA request with a criminal TECS hit and/or an IDENT, the officer must route the case to the BCU DACA.
- Officers will receive DNRs and non-criminal resolutions from the BCU.

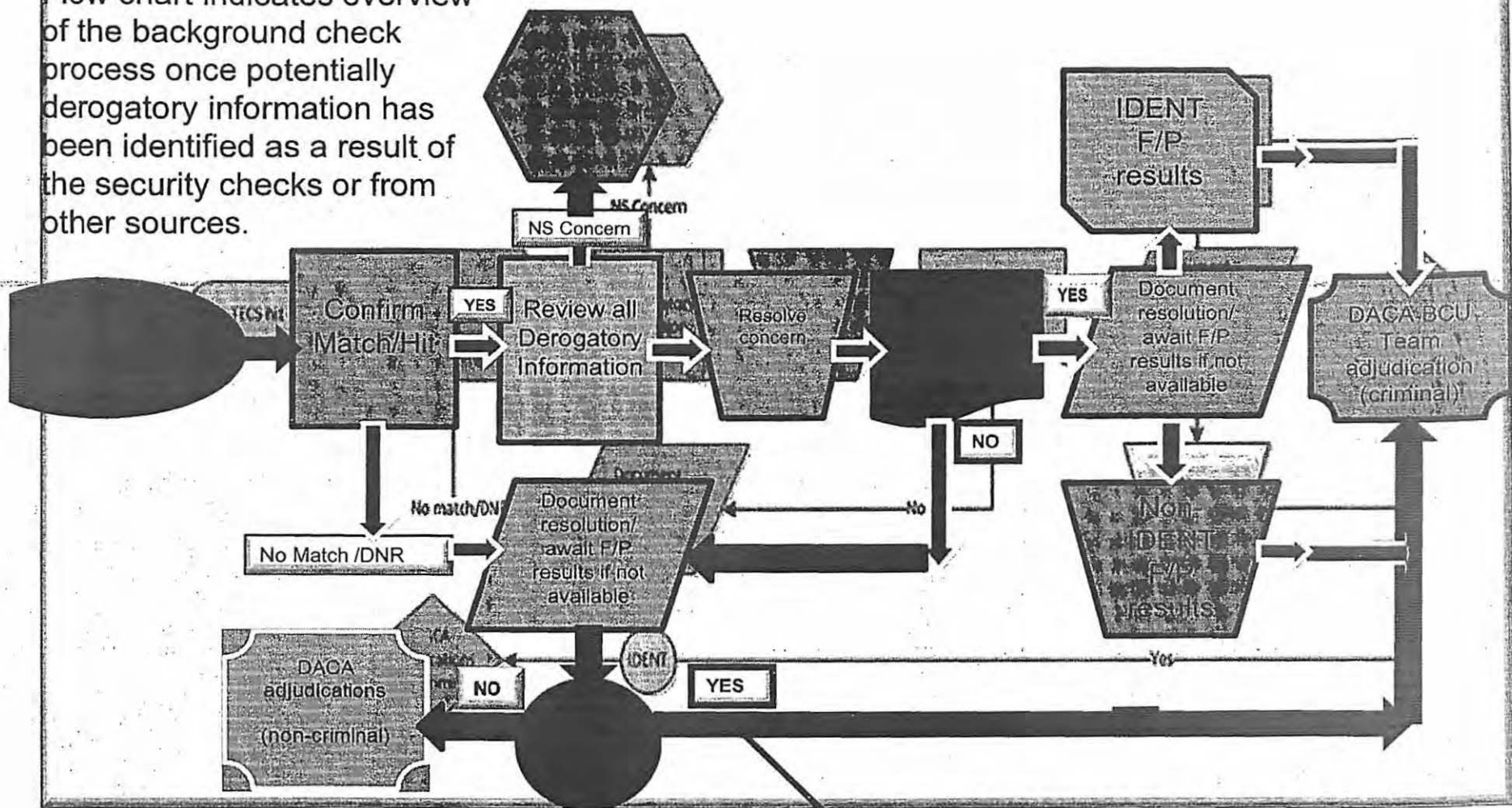


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Flow chart indicates overview of the background check process once potentially derogatory information has been identified as a result of the security checks or from other sources.



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# Alias and Date of Birth Search

## Confirming a Hit/Match

- Post-discovery of potentially derogatory information:
  - Determine if the derogatory information “belongs” to the requestor
    - Compare the derogatory information to information of the requestor
  - Uncertain whether the derogatory information belongs to the requestor? – consult with your supervisor
  - Persistent uncertainty? – supervisors may work through their chain of command and BCU DACA Team

*continued . . .*



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## Background & Security Checks (Continued)

### Does the Information Belong to the Requestor?

- **Conclusive Match** – determine the appropriate categories:
  - National Security
  - EPS or other criminal cases
    - Forward to the BCU DACA Team if NS or criminal
  - Immigration related or other non criminal
- **Inconclusive (TECS/IBIS) Match** –consult your chain of command for appropriate follow-up action
  - Process all DNRs
  - Process all Immigration related or other non criminal inconclusive matches
  - Forward all criminal or NS inconclusive matches to BCU DACA Team



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# Background & Security Checks (Continued)

## Resolving the Concern

- Sample activities of BCU resolution process
  - Contact with other components and/or agencies
  - Referral to ICE
  - Deconfliction
- BCU DACA Team documents findings on each resolution
- BCU DACA Team ISO reviews request following resolution
- All DNR hits identified in the normal adjudicative process will remain in the normal adjudicative workflow
- The BCU DACA Team will review all related hits that will result in a denial due to criminal or NS concerns



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# Systems Checks – TECS

- Conduct batch TECS queries on primary name and DOB within 15 days
- Conduct a separate query for each name and DOB (alias) combination
  - Some files may contain multiple names and/or DOBs
  - TECS query results are valid for 180 calendar days
- TECS views include:
  - records of wants and warrants
  - lookouts from the NCIC (National Crime Information Center)
- USCIS has access to other types of records



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## Systems Checks – TECS (Continued)

- Review the following in the A-file for name and DOB combinations and aliases:
  - Form I-821D
  - Form I-765 and I-765WS
  - All supporting documents filed with the I-821D and I-765
  - Other DACA-related documents in the A-file



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## Systems Checks – TECS (Continued)

### Possible Results of TECS Queries:

- **NO MATCH FOUND** – screen displays “No Match Found”
- **TECS RECORD** – system located one possible match
- **HIT LIST** – system located more than one possible match



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# Systems Checks – TECS (Continued)

## Types of TECS Hits

- **National Security (NS)** – may indicate an NS concern
- **Egregious Public Safety** – See Nov. 7, 2011 NTA memorandum
- **INTERPOL** – Indicates record of international want, warrant, etc.
- Examples of other TECS hits include:
  - Agricultural violations
  - Visa overstays
  - Marriage fraud
  - Absconders



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## Systems Checks – TECS (Continued)

- Determine if the result of a security check relates to the requestor
- Review and resolve security checks
- Complete the background checks
- NaBISCOP policy
  - SQ-11 procedures, search criteria, and best practices
  - Procedures and formats for resolving hits



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# Systems Checks – Fingerprints

- FBI Fingerprint Check – provides summary information of a U.S. administrative or criminal record
- ASC captures fingerprints for full biometrics capture
- Four results from FBI system:
  - NON-IDENT
  - IDENT
  - Unclassifiable
  - No Record



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# Systems Checks – Biometrics/Prints Collection

- All requestors must be scheduled for biometrics capture at an ASC
- Requestors younger than age 14 will have press print captured
- All other requestors require both biometrics and 10-prints



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## Interim Review

### Fact Pattern Number:

On his Form I-821D, a requestor listed his name and date of birth as John Chacon, May 17, 1988. An employer affidavit lists the requestor's first name as Johan with a DOB May 17, 1989.

What additional SQ11 queries must the officer conduct?



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# VIII. Issues of Criminality and Public Safety



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## Module Objectives

This module is geared more towards the BCU DACA Team, but all officers should be familiar with issues of criminality and case handling. Review fingerprint and RAP sheet handling

- Understand and be able to apply the criminality guidelines relevant to DACA
- Present and understand the criminal definitions to be used in DACA adjudications
- Understand the role of the centralized BCU DACA Team
- Understand when supervisory review is mandatory
- Review Process Handling



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# Introduction

The Secretary's memorandum identifies the issues of criminality and public safety that would, as a matter of discretion, result in a decision to not defer removal under DACA.

## Criminality

No conviction for:

- A felony offense;
- A significant misdemeanor; or
- Three or more non-significant misdemeanors.
  - Not occurring on the same day and not arising out of the same act, omission, or scheme of misconduct.

## Public Safety

Public safety concerns are evaluated under the totality of the circumstances by taking into account the DACA requestor's entire criminal record and any other relevant factors.



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## Fingerprints and Rap Sheets

At the time of adjudication, the file should contain a screen print of either the FBI Query with the RAP sheet (if applicable) or the C3 based Fingerprint Tracking System to indicate the present status of the fingerprint checks. A definitive fingerprint-clearance response is required before any DACA request for an individual 14 years of age and older may be approved.

- When there is a positive TECS hit and/or an IDENT, these cases will not be routed to the floor, but rather, to the dedicated BCU DACA team.
- Officers should not see these cases.
- If an officer does see such a case, or encounters issues of criminality in the course of adjudication or conducting the back-end TECS check, route the case to the BCU DACA Team.



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## Fingerprints and Rap Sheets (Continued)

### Validity of Print Results

While normally the response is valid for 15 months from the date the FBI processed the fingerprints, for DACA prior fingerprint results will not be accepted. Officers should utilize FD-258 to verify that the fingerprint check was completed specifically for the DACA request.

Although biometrics will not be cloned from other filings, if the requestor has a criminal history with an IDENT result and there are already RAP sheets in the file, request updated RAP sheets through the Fingerprint Refresh Resubmission Process.



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# Fingerprints and Rap Sheets (Continued)

## Getting Fingerprint Results

The fingerprint clearance should be complete before the case is sent for adjudication. However, if there is no fingerprint result printout in the file, the officer is responsible to perform a query of FBI Fingerprint Tracking in CLAIMS Mainframe and to also check SNAP to see if the requestor has been scheduled for an appointment at an ASC.

## A-number/Alias Information on the RAP Sheet

If any other A-numbers are found on the RAP sheet, the files must be requested, reviewed, and consolidated prior to any final action. If the RAP sheet indicates any aliases or alternate dates of birth, the officer must conduct required background and systems checks on all additional name/DOB combinations.



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# Understanding Fingerprint Query Results

There are four possible results of a fingerprint query:

- Non-IDENT - FBI possesses no administrative or criminal history
- IDENT - There is an administrative or criminal record listed in the FBI files relating to the individual. FBI will forward a copy of the RAP sheet to USCIS.
- Unclassifiable -The individual's fingerprints were unacceptable for fingerprint analysis. The Service Center must follow procedures to schedule a reprint appointment and any required follow-up verification in lieu of fingerprint results.
- No Record - No Record an FD-258 was sent to the FBI or no response from the FBI. The Service Center must follow procedures regarding ASC reschedules and no shows.



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