From: Jose Magana-Salgado [mailto:jmagana@ilrc.org]
Sent: Wednesday, June 1, 2016 5:07 PM
To: USCIS FR Comment <USCISFRComment@uscis.dhs.gov>
Subject: Docket No. USCIS-2009-0020; OMB Control Number 1615-0023.

Hello:

Please find attached the below comment for:

Agency Information Collection Activities: Application To Register Permanent Residence or Adjust Status, Form I-485, and Adjustment of Status Under Section 245(i), Supplement A to Form I-485; Revision of a Currently Approved Collection (March 31, 2016); Docket No. USCIS-2009-0020; OMB Control Number 1615-0023.

Thank you!
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Jose Magaña-Salgado
Managing Policy Attorney
Immigrant Legal Resource Center
O: 202-777-8999
C: 480-678-0040
jmagana@ilrc.org

Washington, DC Office:
1016 16th St., NW, Suite 100
Washington, DC 20036

San Francisco, CA Office:
1663 Mission Street, Suite 602
San Francisco, CA 94103

Electronically Submitted to via Regulations.gov

May 31, 2016

Samantha Deshommes
Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, DC 20529-2140

RE: Agency Information Collection Activities: Application To Register Permanent Residence or Adjust Status, Form I-485, and Adjustment of Status Under Section 245(i), Supplement A to Form I-485; Revision of a Currently Approved Collection (March 31, 2016); Docket No. USCIS-2009-0020; OMB Control Number 1615-0023.

Dear Ms. Deshommes:

The Immigrant Legal Resource Center (ILRC) submits the following comments in response to the notice of revisions to Form I-485, Application to Register Permanent Residence or Adjust Status, Form I-485 Supplement A, and Instruction Booklet for Filing Form I-485 and Supplement A.

Founded in 1979, the Immigrant Legal Resource Center is a national resource center that provides training, consultations, publications and advocacy support to individuals and groups assisting low-income persons with immigration matters. The ILRC works with a broad array of individuals, agencies, and institutions including immigration attorneys and advocates, criminal defense attorneys, civil rights advocates, social workers, law enforcement, judges, and local and state elected officials.

With respect to Adjustment of Status, our organization provides training, written resources, and technical assistance to practitioners on eligibility for Adjustment of Status. We operate a national technical assistance line to assist immigration attorneys as they navigate through the USCIS application process for their clients and write some of the only national manuals on immigration law including on Adjustment of Status. In particular, we specialize in the immigration consequences of criminal convictions. Because of our focus on this complex area of the law, we have a distinct interest in ensuring that the Form I-485 and accompanying instructions are clear and understandable to applicants. Further, we have extensive experience providing training and technical assistance on Special Immigrant Juvenile-based Adjustment of Status and focus

San Francisco
1663 Mission Street
Suite 602
San Francisco, CA 94103
t: 415.255.9499
f: 415.255.9792

Washington D.C.
1016 16th Street, NW
Suite 100
Washington, DC 20036
t: 202.777.8999
f: 202.293.2849

some of our comments on the Form and Instructions' treatment of this category of persons eligible for Adjustment of Status. With respect to Form I-485 and the Instructions Booklet, we express the following concerns:

I. Eliminate All Unnecessary Questions to Shorten Both Form I-485 and the Instructions.

The length of the proposed Form contravenes the intent of the Paperwork Reduction Act. The agency has shown through its use of prior Form I-485s that it can gather the information needed for an Adjustment of Status with a less burdensome form. This form is overwhelmingly detailed, complex, and calls for extraneous information and legal conclusions that are not necessary to the document collection. Further, the Instructions Booklet is unwieldy and not organized in an intuitive manner. The time burden on an applicant to read the over 100 pages of instructions will be well over the 6 hours estimated by the agency.

Recommendations: The following sections of Form I-485 should be deleted because they request extraneous information that is not required for adjudication, create an additional burden on the applicant, and may confuse applicants:

A. Part 2, page 3-4, Application Type or Filing Category: It is not necessary to require the applicant to list the receipt number and priority date of the underlying petition, or to separate out whether he or she is the principal applicant or a derivative applicant, as this information will all be readily available on the face of the Form I-797 Approval Notice for the underlying petition that must be attached to the Form I-485. Requesting this information on Form I-485 creates an additional burden on the applicant. Further, making the applicant distinguish between principal and derivative applicant status introduces a legal distinction that may serve to confuse the applicant.
B. Part 3, page 6, Information About Your Parents: The additional information that the revised proposed Form I-485 requests about the applicant's parents is not necessary for the adjudication of the I-485 and creates an additional burden on the applicant.
C. Part 5, pages 7-8, Information About Your Children: The additional address details of children that are requested on the revised Form are not necessary to the Form's adjudication and create an additional burden on the applicant to complete this unnecessary information.

II. Keep the Current Version of Part 2, Application Type, Rather than Revising This Section as Set Forth in the Proposed Form I-485, Part 2, Application Type or Filing Category.

Asking for immigrant categories as set forth in Part 2, pages 5 to 6, Application Type or Filing Category is unnecessary and complex. The questions employ technical terms and are thus potentially confusing to an applicant. Further, the adjudicator can easily determine the category based on the facts of the application, so requiring that an applicant respond to this overly technical section is unnecessary. In addition, the confusion created by this section would not be

easily resolved by looking at the Instruction Booklet. There is no clearly marked section in the Instruction Booklet to help an applicant understand how to complete this section of the Form I-485.

Recommendation: Keep the version of Part 2, Application Type that appears on the current Form I-485, which asks the applicant to choose from one of eight clearly explained bases for why he or she is applying for Adjustment of Status and is much easier for the applicant to understand.

III. Delete Question 14 in Part 8, on Page 12, Which Employs Legal Terminology and is Unnecessary.

This question asks whether the applicant has ever been denied admission to the United States. "Admission" is a legal term of art, and will be confusing to non-lawyers. Further, this question is irrelevant to eligibility for Adjustment of Status. It is inappropriate and confusing for USCIS to add questions to Form I-485 that are beyond the scope of the Form I-485's purpose.

Recommendation: Delete this question.

IV. Delete Question 23 in Part 8, on Page 9, Which is Irrelevant and Will Create Confusion for Applicants.

This question asks whether the applicant has ever applied for any kind of relief from removal. This requires the applicant to understand what is meant by the term "relief," which is a legal term of art. Other questions on the form get to the heart of the issue around removal. This question is unnecessary and creates additional burden for the applicant.

Recommendation: Delete this question.

V. Delete Question 25 in Part 8, on Page 10, Which is Overbroad and Requests Unnecessary Information.

This question asks: "Have you EVER used any illegal or abused legal drugs?" This question is vague and overbroad in that it refers to drugs rather than federally controlled substances. Further, the information requested in this question is not necessary to the USCIS adjudicator, who must rely on the health determinations made by a Civil Surgeon or Panel Physician that are submitted to USCIS in the sealed I-693 along with Form I-485. USCIS adjudicators are not trained in identifying health-related grounds of inadmissibility, which requires medical professionals to make determinations based on existing medical standards, as determined by the current version of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM).[1]

Recommendation: Delete this question in its entirety. In the alternative, use the phrase "federally controlled substances" rather than "drugs."

[1] Centers for Disease Control and Prevention, *Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-Related Disorders* (Dec. 18, 2013), *available at* http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/technical-instructions-civil-surgeons.html.

VI. Revise the Instructions in Part 8: Criminal Acts and Violations on Page 10 to Clarify that Applicants Who Were Arrested as Juveniles in States Where Juvenile Records are Confidential Do Not Need to Provide Any Information Beyond the Fact of the Arrest.

The instructions to Part 8, Criminal Acts and Violations, which appear on page 10 of the proposed revised Form state: "If you answer "Yes" to Item Numbers 26. - 46., use the space provided in Part 13. Additional Information to provide an explanation that includes why you were arrested, cited, detained, or charged; where you were arrested, cited, detained, or charged; when (date) the event occurred; and the outcome or disposition (for example, no charges filed, charges dismissed, jail, probation, community service.)" Requesting this kind of detailed information without clarifying that it is not required in cases where the applicant was arrested as a juvenile in a state with confidentiality laws that prevent disclosure of such information invites violations of state juvenile confidentiality laws which may carry both civil and criminal penalties. Further, the Department of Homeland Security is clearly prohibited by federal regulation from obtaining and using confidential information.[2]

Recommendation: Revise the instructions in this section as follows (additional language in bold and italics):

> If you answer "Yes" to Item Numbers 26. - 46., use the space provided in Part 13. Additional Information to provide an explanation that includes why you were arrested, cited, detained, or charged; where you were arrested, cited, detained, or charged; when (date) the event occurred; and the outcome or disposition (for example, no charges filed, charges dismissed, jail, probation, community service)***, unless your case was handled in juvenile court and state confidentiality laws prevent disclosure of such information.***

This approach is consistent with USCIS's approach in Form I-821D Deferred Action for Childhood arrivals and should be used in all USCIS applications.

VII. Delete Question 29 in Part 8, on Page 10, Which is Overbroad and Unnecessary.

This questions asks: "Have you EVER been ordered punished by a judge or had conditions imposed on you that restrained your liberty (such as a prison sentence, suspended sentence, house arrest, parole, alternative sentencing, drug or alcohol treatment, rehabilitative programs or classes, probation, or community service)?" The wording of this question is so broadly phrased that it could be interpreted to include all kinds of situations that are not relevant to the determination of the applicant's eligibility for Adjustment of Status, for example, a child's being sent to detention or being put on trash pick-up duty at school. Further, this question is unnecessary given the plethora of other questions that seek information about the existence of a criminal history.

Recommendation: Delete this question.

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[2] *See* 5 C.F.R. 2635.703(a) (forbidding "the improper use of nonpublic information to further [an employee's] own private interest . . . by knowing unauthorized disclosure.").

VIII. Revise Questions 61 and 62 in Part 8, on Page 13 to Inquire Only About Cash Aid.

Questions 61 and 62 are overly broad and unnecessary. Both questions should be limited only to cash aid, as other forms of public assistance will not affect eligibility for Adjustment of Status, or, in the alternative, the questions should track USCIS's own guidance as stated in the Public Charge Fact Sheet.[5]

Recommendations: Revise Question 61 to read (additions in bold and italics; deletions in strikethrough): Have you EVER received public assistance ***in the form of cash aid*** in the United States from any source, including the U.S. Government or any state, country, city or municipality ~~(other than emergency medical treatment)~~? Revise Question 62 to read: Are you likely to receive public assistance ***in the form of cash aid*** in the future? Or, in the alternative, revise both questions to track USCIS's own guidance as stated in the Public Charge Fact Sheet.[6]

IX. Delete Question 63 in Part 8, on Page 13, Which is a Compound Question That Requests Extraneous Information.

This question asks whether the applicant has failed or refused to attend, or to remain in attendance at his or her removal, exclusion, or deportation proceeding. This question is overly complex and will likely cause confusion to the reader.

Recommendation: Delete this question, or in the alternative, revise it to read: "Have you EVER failed to attend your removal, exclusion, or deportation proceeding?"

X. Revise the Instructions Booklet on Page 11, Which Requests Certified Police Records.

The instructions state that everyone must provide "[c]ertified police and court records of criminal charges, arrests, or convictions." Requiring certified police records of criminal charges is unnecessary and creates an extra burden on the applicant. First, for most inquiries, police records are irrelevant to determine whether a criminal conviction causes inadmissibility under the categorical approach. Second, even where the question is about the person's conduct rather than the conviction, police records and even charging documents are considered not reliable. Arrest records and charging documents are by definition *allegations* of criminal conduct; they are not proof of such conduct. A conviction does not mean that the conviction was a result of the information contained in the arrest report or charging document, or that information alleged in those documents is accurate. When the arrestee is an immigrant who may have limited English skills, police reports may involve dramatic miscommunications with the defendant that further undermines their reliability.[8] Accordingly, in criminal court, arrest records (police reports) are excluded by rule as inherently untrustworthy hearsay. Consulting inherently unreliable police reports will only lead to inaccurate assessments of the offense.

Recommendation: Revise the Instructions to read (deletions in strikethrough): Certified ~~Police and~~ Court Records of Criminal Charges~~, Arrests,~~ or Convictions.

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[4] *Id.*
[5] *See* http://www.uscis.gov/news/fact-sheets/public-charge-fact-sheet.
[6] *Id.*

XI. Clarify the Instructions Booklet on Page 11 That State Juvenile Records Are Not Required Where Protected By State Confidentiality Laws.

It is inappropriate for USCIS to request state court records when it is aware that state confidentiality laws may, and often do, prevent disclosure of juvenile state court files without a court order. In the context of SIJS petitions, USCIS has recognized that state confidentiality laws may prevent disclosure of documents from the juvenile court file.[11] Further, in a different context – that of Deferred Action for Childhood Arrivals (DACA) – USCIS has also officially recognized that state court files may be confidential, and disclosure may be prohibited under state law.[12]

Recommendation: Revise this item as follows (additions in bold and italics; deletions in strikethrough): Certified ~~police and~~ court records of criminal charges~~, arrests,~~ or convictions***, unless disclosure is prohibited under state law.***

If you have any questions, please feel free to contact Alison Kamhi at akamhi@ilrc.org. Thank you for the opportunity to submit comments to improve the effectiveness of these forms.

Sincerely,

/s/

Alison Kamhi

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[9] Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008), § 235(d)(6) (providing that SIJS-based I-360s cannot be denied due to "age" so long as they are filed before the applicant turns 21).

[10] Stipulation Settling Motion for Class-Wide Enforcement of Settlement 1, *Perez-Olano v. Holder*, No. CV 05-3604 DDP (RZx) (C.D. Cal. Mar. 4, 2015) (preventing USCIS from denying SIJS to children who lost juvenile court jurisdiction due to age).

[11] *See* USCIS Memorandum, William R. Yates, "Regarding Field Guidance on Special Immigrant Juvenile Status Petitions, Memorandum #3," HQADN 70/23 (May 27, 2004), p. 5 (stating that "adjudicators must be mindful that confidentiality rules often restrict disclosure of records from juvenile-related proceedings, so seeking such records directly from the court may be inappropriate, depending on the applicable State law."); *see also* USCIS Policy Manual, Volume 6: Immigrants, Part H – Special Immigrant Juveniles, p. 8 (noting that "[a]n officer must be mindful of confidentiality rules that may restrict disclosure of records from juvenile-related proceedings.").

[12] *See* Form I-821D, page 4, part 4, Question 1: "Have you EVER been arrested for, charged with, or convicted of a felony or misdemeanor, including incidents handled in juvenile court, in the United States? Do not include minor traffic violations unless they were alcohol- or drug-related. [Yes] [No] If you answered 'Yes,' you must include a certified court disposition, arrest record, charging document, sentencing record, etc., for each arrest, unless disclosure is prohibited under state law."; *see also* Form I-821D Instructions, page 10, Question 12: "What evidence should I submit to demonstrate my criminal history? If you have been arrested for or charged with any felony (i.e., a Federal, state, or local criminal offense punishable by imprisonment for a term exceeding one year) or misdemeanor (i.e. a Federal, state, or local criminal offense for which the maximum term of imprisonment authorized is one year or less but greater than five days) in the United States, or a crime in any country other than the United States, you must submit evidence demonstrating the results of the arrest or charges brought against you. If the charges against you were handled in juvenile court, and the records are from a state with laws prohibiting their disclosure, this evidence.