



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

May 30, 2017

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

Submitted via: www.regulations.gov
Docket ID No. USCIS- 2009-0020

Re: OMB Control Number 1615-0023

USCIS 60-Day Notice: Application to Register Permanent Residence or Adjust Status, Adjustment of Status under Section 245(i), and Confirmation of Bona Fide Job Offer or Request for Job Portability under INA Section 204(j)

To Whom It May Concern:

The American Immigration Lawyers Association (AILA) submits the following comments in response to the above-referenced 60-Day Notice and request for comments on the proposed changes to Form I-485, Application to Register Permanent Residence or Adjust Status, and associated Supplements A and J.¹

AILA is a voluntary bar association of more than 14,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on this 60-Day Notice and believe that our members' collective expertise and experience makes us particularly well-qualified to offer views that will benefit the public and the government.

Proposed Changes to “Public Charge” Questions on Form I-485

The “public charge” question on the current (1/17/17) version of Form I-485 that is posted on the USCIS website reads:

¹ 82 Fed. Reg. 16053 (Mar. 31, 2017).

2. *Have you received public assistance in the United States from any source, including the U.S. Government or any State, county, city, or municipality (other than emergency medical treatment) or are you likely to receive public assistance in the future?*

USCIS proposes to split the question into two parts to read as follows:

61. *Have you received public assistance in the United States from any source, including the U.S. Government or any state, county, city, or municipality (other than emergency medical treatment)?*
62. *Are you likely to receive public assistance in the future in the United States from any source, including the U.S. Government or any state, county, city, or municipality (other than emergency medical treatment)?*

Though the proposed changes modify the substance of the inquiry only slightly to clarify the scope of the question regarding likelihood of future receipt of public assistance, we'd like to take this opportunity to encourage USCIS to adopt a more narrowly tailored inquiry into the public charge inadmissibility grounds in an effort to ensure that immigrant communities are not inhibited in any way from accessing critical services such as emergency food and shelter, domestic violence services, and others.

Under INA §212(a)(4), an individual seeking admission to the United States or seeking to adjust status to lawful permanent resident is inadmissible if he or she “is likely at any time to become a public charge.” According to USCIS guidance, “[w]hen determining whether someone is likely to become a public charge, USCIS will consider whether the individual is likely to become primarily dependent on the government for subsistence as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense.”² The guidance goes on to state that “[n]on-cash or special-purpose cash benefits are generally supplemental in nature and do not make a person primarily dependent on the government for subsistence. Therefore, past, current, or future receipt of these benefits do not impact a public charge determination.”³ Examples of non-cash or special purpose cash benefits that are not considered for public charge purposes include Medicaid and related services, nutritional programs such as Food Stamps and school lunch programs, housing benefits, emergency disaster relief, job-training programs, and educational assistance.⁴

The questions on the proposed I-485 ask the applicant to paint a broad picture of all public benefits received, with the exception of emergency medical treatment, and fail to distinguish between cash and non-cash benefits. Questions pertaining to the use of public benefits should be phrased to inquire only into receipt of public assistance that is relevant to the public charge determination.

² See <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge>.

³ *Id.*

⁴ *Id.*

According to the Table of Changes, the current text of the two questions reads as follows:⁵

61. *Have you EVER been institutionalized for long-term care at government expense OR received any form of public cash assistance for income maintenance (for example, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), or state or local cash assistance programs)?*
62. *Are you likely to be institutionalized for long-term care at government expense in the future OR receive public cash assistance for income maintenance (for example, TANF, SSI, or state or local cash assistance programs for income maintenance) in the future?*

As noted above, the current version of the Form I-485 (1/17/17 Ed.) that is posted on the USCIS website does not reflect this language so it is unclear why the Table of Changes indicates that this is the “current text.” However, this language, which is more narrowly tailored toward USCIS guidance on the public charge determination is far preferable than the proposed questions which will take adjudicators on an unnecessary fishing expedition into the applicant’s entire history of public benefits use. We encourage USCIS to amend the proposed questions to something more akin to the two questions noted above (from the Table of Changes) to confine the inquiry to what is actually relevant.

Conclusion

AILA appreciates the opportunity comment on this notice, and we look forward to a continuing dialogue with USCIS on these issues.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

⁵ <https://www.regulations.gov/document?D=USCIS-2009-0020-0146>