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Comment Submitted by Xuan Luo

The is a Comment on the **U.S. Citizenship and Immigration Services** (USCIS) Notice: **Agency Information Collection Activities; Revision of a Currently Approved Collection; Extension: Application To Register Permanent Residence or Adjustment of Status**

For related information, **Open Docket Folder**

ID: USCIS-2009-0020-0188

Tracking Number: 1k4-9hgr-4zwr

Document Information

Date Posted:
Jun 26, 2020

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Comment

I have several comments regarding items in the proposed I-485 form:

Part 1 items 33a-c and 34a-c ask about the applicant's I-94. In the case of an applicant who was granted Extension of Stay or Change of Status after the last arrival, it is unclear whether these questions ask about the I-94 from arrival or the I-94 from the last approval of Extension of Stay or Change of Status.

Part 2 item 9a asks, among other things, whether a relative filed the associated I-140 for you. It is unclear who "you" refers to in the case where the I-485 is being filed by a derivative beneficiary. Should it be answered with "you" being the principal beneficiary? Also, in a case where the principal beneficiary self-petitioned (e.g. EB1A or National Interest Waiver), should a derivative beneficiary answer Yes since the principal beneficiary (the applicant's relative) filed the I-140?

Part 2 item 13 is a duplicate of Part 2 item 1.

Part 3 item 1 added the redundant "to obtain U.S. permanent resident status" when it already said "to obtain permanent resident status".

Part 3 item 5 asks "Have you ever applied for permanent residence while in the U.S.?" It is unclear whether this only refers to Adjustment of Status applications or potentially other types of applications also.

In Part 8 item 72d, one of the conditions that needs to be met is "I am not a relative of the Form I-140 petitioner". Is this condition not met in the case where the I-485 is being filed by a derivative beneficiary, and the principal beneficiary self-petitioned (e.g. EB1A or National Interest Waiver), so that the petitioner (the principal beneficiary) is a relative of the I-485 applicant (the derivative beneficiary)?

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Comment Submitted by Jean Publieee

The is a Comment on the **U.S. Citizenship and Immigration Services** (USCIS) Notice: **Agency Information Collection Activities; Revision of a Currently Approved Collection; Extension: Application To Register Permanent Residence or Adjustment of Status**

For related information, **Open Docket Folder**

ID: USCIS-2009-0020-0189

Tracking Number: 1k4-9hik-3my7

Document Information

Date Posted:
Jun 29, 2020

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Comment

it is well past time to stop allowing permanent residence in the usa.we need to shut down all these foreigners flocking into the usa making troiuble for this country. between soros and his antifas terrorists runnig around burning looting and murdering, manhy of thse are simply trouble makers that come here to leach on american citizens. it is time to shut down this influx. they are hordes of people who all want to come here. we cdont need them h ere. let them go to argentina, or columbia or some other country. we dont need to keep inflicting this source of terrorism,criminality and such into this country. there is no benefit to allowiong in these hordes, who share absolutely nothing in common with most american citizens. hyou are bringing in people who want to turn the usa into what they left. if that was so good, let them stay there. we dont need to flood thsi country with all these poeople - these hordes of people. shut the damn door. they can go to canada or mexico, but shut the damn door to th eusa. we are bringing into this country too many differnet peoiple who cannot live together. they all have different ideas tand they arent melting into one anymore it is njust endless collision for eveyr american citizen to have the country they should have.
we are turning into no melting pot. we are turnign into the baltics where they fought continuously and that is what is happenign to america. we do need a more homogenous sociiety of epopel who have the same ideas of how to live. this continual assault on how we want to live is wearing, deadly and leads to endlless fatalities. we need to pay the way otu of america for alot of criminals we allowed into this country who had not idea of a melting pot. they didnt come here to meld with others and to live as an american.l they come here to leach and steal and play this ystem for all they can take it for. they all get on welfare withint a year of coming here. they arll are dead beats for american citizens. they may work underl the table but pay no taxex.the american people have been tolerating this incessant havoc and debacles becasue of these horrible people being let into this cojunty. its time to shut the damn door entirelhy. we dont need the chaos and haphazard endless protests

about everyting. it is kiling american citizens who are entitled to the country they all fought for in world war 2. we didnt fight for this crap going on in america with endlss protests burning, lotting, give us more more. its alwys give us more. we dont want to work for it. just gie it to us because we are here. what kind of country ethic is that. that is who we are letting into this country. the dreamers aer all afte rmoney- endless money. free this when we already paid half a millino dollars for their schooling. get that. we paid l/2 a million dollars to send them to school inamerica. why are we being aseked to pay for that. we have our own american children to pay for,. this is outrageous what is gong on. shut the damn door. it is bringing trouble, chaos and horror to this country.,

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Comment Submitted by Anonymous

The is a Comment on the **U.S. Citizenship and Immigration Services** (USCIS) Notice: **Agency Information Collection Activities; Revision of a Currently Approved Collection; Extension: Application To Register Permanent Residence or Adjustment of Status**

For related information, **Open Docket Folder**

ID: USCIS-2009-0020-0190

Tracking Number: kdn-ah01-piom

Document Information

Date Posted:
Aug 12, 2020

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Comment

The classification of immediate relative needs to be amended, as it is not a one way street. If a parent is an immediate relative regardless of the childs age of sponsership, that begs to say that the child will always be an immediate relative regardless of their age. In the medical field, if a person does not have an emergency contact, they go to the next of kin, their parent, or their child (ragardless of age but the child has to be over 18 as under 18 would be determined a minor who is not allowed to makes decisions for the adult parent. Does this make either category any more or less a direct / immediate relative? No, because they are referred to the direct relation of the parent or child...depending on who is admitted).

The same goes to say that this category or immdiate relative is misleading on one front and accurate the other, and in such, it contradicts each other because on one side it states, one is an immediate relative, and on the other it is saying, the other person isn't (makes no logical sense and can confus any non english speakers).

Same goes with the classification of what is considered minor, on one side it is shown to be under 18, yet on another its under 21. There should be a solid understanding of which is considered a minor. As we all know, 21 for most is still very young.

CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

8757 Georgia Avenue ● Suite 850 ● Silver Spring, MD 20910● Tel: 301.565.4800● Fax: 301.565.4824 ● Website: www.cliniclegal.org

Submitted online via regulations.gov

August 24, 2020

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

Re: Docket ID number USCIS–2009–0020; OMB Control Number: 1615–0023; Agency Information Collection Activities; Revision of a Currently Approved Collection; Extension: Application to Register Permanent Residence or Adjustment of Status

Dear Ms. Deshommes,

The Catholic Legal Immigration Network, Inc. (CLINIC) respectfully submits the following comments in connection with the Department of Homeland Security's (DHS) Notice of Information Collection published in the Federal Register on July 25, 2020.

Embracing the gospel value of welcoming the stranger, CLINIC promotes the dignity and protects the rights of immigrants in partnership with a dedicated network of immigration legal services programs. This network includes approximately 380 programs operating in 48 states and the District of Columbia. CLINIC's network employs roughly 1,400 attorneys and accredited representatives who, in turn, serve hundreds of thousands of low-income immigrants each year. Over 90 percent of CLINIC's affiliates offer family-based immigration services, including assistance with applications for adjustment of status to lawful permanent residency.

U.S. immigration policy reflects the importance of family reunification. Of the 1,096,611 foreign nationals admitted to the United States in FY2018 as lawful permanent residents (LPRs), almost 70 percent were admitted based on family ties. Similarly, the sanctity of the family is a dominant element of Catholic social teaching and a high priority of the Catholic Church. Accordingly, CLINIC supports immigration policies and procedures that promote and facilitate family unity and welcomes changes to the immigrant visa process that assist families in obtaining this immigration benefit. Our values are best expressed by Pope John XXIII who wrote in Pacem in Terris, "Now among the rights of a human person there must be included that by which a man may enter a political community where he hopes he can more fittingly provide a future for himself and his dependents. Wherefore, as far as the common good rightly understood permits, it is the duty of that state to accept such immigrants and to help to integrate them into itself as new members."

CLINIC provides the following comments to the proposed Form I-485, Application to Register Permanent Residence or Adjust Status:

Part 1. Information About You

Question #32b includes "Cuban parole" as an option in the parenthetical. All persons who are paroled for humanitarian reasons are paroled under INA § 212(d)(5). There is no separate classification for Cubans who are paroled into the country. Therefore, CLINIC recommends that USCIS delete the words "Cuban parole."

Part 2. Application Type or Filing Category

Question #4a, Religious Worker, contains a typo. The number "360" is written twice.

Questions #1 and #13 are duplicative. Questions regarding whether the applicant is a principal or derivative beneficiary, and questions about the principal, should all be in the same place on the form.

Part 3. Additional Information About You

Question #1 reads: "Have you ever applied for an immigrant visa to obtain permanent resident status at a U.S. embassy or U.S. consulate abroad *to obtain permanent resident status*" [added language in italics]. The proposed added language is redundant and should be deleted. USCIS should also delete the word "abroad," since all U.S. embassies and consulates are located abroad.

Part 8 – General Eligibility and Inadmissibility Grounds

Questions #29 – 33 relate to possible immigration violations in countries other than the United States and are not relevant to inadmissibility under INA § 212(a). They also use terms such as "employment authorization (or the equivalent)," "unlawful presence (or the equivalent)," "removal, deportation, or exclusion proceedings (or the equivalent)," and "ordered removed, deported, or excluded (or the equivalent)." It is unreasonable to ask applicants for adjustment of status whether terms used in U.S. law have any equivalency in the laws of other countries, especially when they have no bearing on the applicant's admissibility. CLINIC strongly recommends that these questions be deleted.

Question #71 asks if the applicant is exempt from the public charge ground of inadmissibility. It refers the applicant to the Form I-485 Instructions. The Instructions, on page 14, state that if the applicant is exempt from the public charge ground of inadmissibility, he or she does not need to submit either a Form I-944 or an I-864. It then lists the 19 categories of applicants who are exempt, from A through S. These include applicants granted U status, T status, and VAWA self-petitioners. This means that these applicants do not need to submit an I-864.

The current Form I-485 states that "if you answered 'Yes' to" the question of being exempt from public charge, then the applicant should skip the next questions regarding the affidavit of support (Questions #62a-n). This is logical, except on the current form the questions regarding exemption from the affidavit of support include categories exempt from public charge. If the applicant is

exempt from public charge, he or she is exempt from the affidavit of support and therefore should have skipped this question.

Many practitioners are therefore confused as to whether they need to indicate that the applicant is exempt from the I-864 if they are exempt from public charge. For example, one exemption from the affidavit of support is because "I am applying under the human trafficking victim (T nonimmigrant) immigrant category." (Question #62f). Another exemption from the affidavit of support is because "I am applying under the victim of qualifying criminal activity (U nonimmigrant) immigrant category." (Question #62h). As indicated in the Instructions, both T and U nonimmigrants are exempt from public charge and therefore should not be answering question #62. What compounds the confusion is that Question #62 does not include a similar I-864 exemption for VAWA applicants. They are also exempt from public charge and should not be included in #62, but it is inconsistent to include U and T nonimmigrants and not VAWA recipients. The simple remedy, therefore, would be to delete current Questions #62f and #62g rather than to add a separate category for VAWA applicants.

Unfortunately, the proposed I-485 misses this opportunity. Instead, the proposed Question #71 deletes the language from current Question #61 stating that if the applicant is exempt from public charge, he or she should skip over the next questions as to whether he or she should file an I-864. The result is that applicants who are exempt from public charge and who have stated that in Question #71 must now explain why they are exempt from filing the I-864. Again, everyone exempt from public charge is exempt from the affidavit of support. But Questions #72a-n include applicants who are both exempt from public charge and those who are subject to it but exempt from the affidavit of support. It merges two distinct requirements or exemptions. Rather than eliminating the confusion with the current form, it actually compounds it. CLINIC recommends maintaining the current language on the Form I-485 but eliminating questions #62f and g.

In the alternative, CLINIC recommends the following changes to the proposed Form I-485, Question #72, under the *Heading Affidavit of Support under Section 213A of the INA (Form I-864)*:

- Insert: "If you are exempt from public charge, you do not need to file a Form I-864" before the words "You may need to file Form I-864."
- Change: "You may need to file Form I-864" to "If you are subject to public charge, you need to file a Form I-864 unless you are exempt under one of these categories."
- Change: "I am EXEMPT from filing Form I-864 because:" to "I am subject to public charge but EXEMPT from filing Form I-864 because:"
- Delete all text contained in Questions #72f and h. These categories pertain to U and T nonimmigrants who are not subject to public charge.
- Delete all text contained in Questions #72g and i. To the extent there are any T and U nonimmigrants who are applying to adjust based on some other immigration category (e.g., an approved family-based petition), their exemption from public charge or the affidavit of support would be based on the immigration category they are applying under.
- Delete the text in Question #72j. If the applicant is exempt from public charge, it is unnecessary to indicate that he or she is also exempt from filing the affidavit of support.

- Delete the text in Question #72o. This pertains to Amerasians, who are exempt from public charge.

CLINIC provides the following comments to the proposed Instructions for Application to Register Permanent Residence or Adjust Status:

There is an inconsistency between proposed Instructions and the proposed I-485. On page 5 the Instructions it states that USCIS *may* require the applicant to complete biometrics. On page 10 of the proposed Form I-485 it states that the applicant *will* be required to appear for a biometrics appointment. If the Form I-485 will be changed, then the instructions should be consistent.

On page 18, under what documentation to include if an applicant is unable to obtain certified copies of court dispositions, the instructions are confusing. Being required to submit all three of the documents below is duplicative and overly burdensome. The language reads:

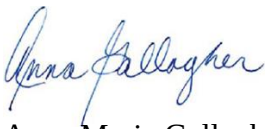
"If you are not able to obtain certified copies of any court disposition please submit ALL THREE items below:

- A written explanation on government letterhead from the custodian of the documents explaining why it is unavailable (unless generally unavailable);
- Written statement from the applicant that explains why the record is not available and describes the charge, arrest/conviction, and final outcome, rehabilitation; and
- Any other secondary evidence that shows the disposition of the criminal case; or if secondary evidence is not available, one or more written statements from someone other than the applicant with personal knowledge of the disposition."

If the custodian of the records provides a letter explaining why records are not available, there is no need to require a statement from the applicant explaining the same issue. Similarly, if the applicant can provide a statement explaining the charge and final outcome of the case, signed under penalty of perjury, the applicant should not be required to obtain a statement containing the same information from another witness.

Thank you for the opportunity to submit these comments. We appreciate your consideration. Please do not hesitate to contact Jill Marie Bussey, CLINIC's Advocacy Director, at jbussey@cliniclegal.org should you have any questions about our comments or require further information.

Sincerely,



Anna Marie Gallagher
Executive Director

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

August 24, 2020

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 of Comment Period: Revision of a Currently Approved Collection
Form I-485, Application to Register Permanent Residence or Adjust Status

Dear Ms. Deshommes:

The American Immigration Lawyers Association (AILA) respectfully submits the following comments in response to the above-referenced 60-day notice and request for comments published in the Federal Register on June 25, 2020, relating to proposed revisions to Form I-485, Application to Register Permanent Residence or Adjust Status and its instructions, as well as the Notification of Medical Service Requirements for National Interest Waiver Physicians.[1]

AILA is a voluntary bar association of more than 15,000 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 the proposed revisions to Form I-485 and its instructions, as well as the related forms noted above. We believe that our members' collective expertise and experience make us particularly well-qualified to offer views that will benefit the public and the government.

Form I-485 Instructions

Form I-485 Instructions, Page 5, Signature

[1] 85 Fed. Reg. 38151 (June 25, 2020).

USCIS is proposing to add the following language to page 5 of the Form I-485 instructions relating to signatures:

> If the request is not signed or if the requisite signature on the request is not valid, USCIS will reject the request. See 8 CFR 103.2(a)(7)(ii)(A). If USCIS accepts a request for adjudication and determines that it has a deficient signature, USCIS will deny the request.

AILA opposes this proposed revision to the Form I-485 instructions. The regulations at 8 CFR §103.2 are clear, unambiguous, and not subject to inference or interpretation that an applicant or petitioner must sign his or her benefit request, and that a benefit request will be **rejected** if it is not signed with a valid signature.[2] Nowhere in the regulations or in the Immigration and Nationality Act (INA) is USCIS granted the authority to deny a benefit request for the lack of a valid signature. The agency's proposed language is therefore beyond the agency's statutory and regulatory authority and must be withdrawn to ensure that USCIS does not exceed the scope of its authority.[3]

This proposal is also fundamentally bad policy. Applicants rely on the issuance of a Form I-797 receipt notice by USCIS as confirmation that their Form I-485 application has been properly submitted to USCIS and is therefore pending adjudication with USCIS. The agency's proposed policy to deny an adjustment of status application for a deficient signature after it has been accepted for adjudication by USCIS would create profound uncertainty among stakeholders during the adjudication process and transgress notions of fundamental fairness. USCIS should instead revert back to its previous policy that if the agency were to accept an adjustment of status application for adjudication that is later determined to contain a deficient signature, that USCIS will provide an applicant the opportunity to correct the signature (sometimes referred to as "to cure" the signature).[4]

Relatedly, AILA is concerned about the agency's use of the term "deficient signature" in its proposed language. This term is not defined in either the INA, the relevant regulations, nor the

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[2] *See* 8 CFR §103.2(a)(2); 8 CFR §103.2(a)(7)(ii) (emphasis added).

[3] AILA acknowledges that similar language regarding the denial by USCIS of a benefit request for deficient signature also appears in Volume 1, Chapter 2 of the USCIS Policy Manual. AILA raises similar objections to the inclusion of this language in the USCIS Policy Manual. *See* USCIS Policy Manual, Volume 1, Part B, Submission of Benefit Requests, Chapter 2, Signatures, Section A, Signature Requirement ("If USCIS accepts a request for adjudication and later determines that it has a deficient signature, USCIS denies the request.").

[4] *See* U.S. CITIZENSHIP & IMMIGRATION SERV., DEP'T OF HOMELAND SECURITY, INTERIM POLICY MEMORANDUM, PM-602-0134, SIGNATURES ON PAPER APPLICATIONS, PETITIONS, REQUESTS, AND OTHER DOCUMENTS FILED WITH U.S. CITIZENSHIP AND IMMIGRATION SERVICES (stating that "If a request has been accepted for adjudication and is determined to have a deficient signature, or USCIS has a reason to question the validity of the signature, or needs additional information to confirm that the individual is authorized to act on behalf of an individual, corporation, or other legal entity, USCIS may ask an individual, either via a Request for Evidence or other type of notice, or at the time of any interview, to sign the request and/or to verify that he or she is authorized to sign documents on behalf of an individual, corporation, or other legal entity.").

USCIS Policy Manual. As such, the usage of this term in the form instructions leaves stakeholders unclear about which types of signatures could subject a benefit request to a denial, infusing uncertainty and chaos into the adjudication process.

For these reasons, AILA objects to this proposed revision to the Form I-485 instructions and urges USCIS to withdraw this proposed language before finalizing the form instructions.

Form I-485 Instructions, Page 6, How to Fill out Form I-485

USCIS is proposing to add the following language to page 6 of the Form I-485 instructions relating to how to fill out Form I-485 (proposed language is in bold):

> **You must answer** all questions fully and accurately. If a question does not apply to you (for example, if you have never been married and the question asks, "Provide the name of your current spouse"), type or print "N/A," unless otherwise directed. If your answer to a question which requires a numeric response is zero or none (for example, "How many children do you have" or "How many times have you departed the United States"), type or print "None," unless otherwise directed. **If you do not respond to all the questions, we may reject or deny your application**.

AILA is opposed to the proposed language and urges USCIS to immediately withdraw this language from the I-485 instruction as well as rescind the agency's processing policy of rejecting or denying applications for blank spaces on forms.[5] The agency's proposed language would be a significant policy shift that would impose unnecessary burdens on I-485 applicants and the attorneys who represent them, create additional barriers to the I-485 application process, and needlessly drain agency resources at a time when USCIS is claiming dire financial straits.

For years, USCIS has accepted forms with blank spaces (or with crossed out spaces) for fields that did not apply to the applicant or the petitioner. In particular, USCIS (and its predecessor, the Immigration and Naturalization Service) have long applied a relevance test to information omitted from initial filings. If the initial submission was otherwise complete and the missing information was not material to the benefit request (e.g., a signature on a form or a failure to include proper filing fees), the filing was accepted and processing commenced. If necessary, a request for additional information would be issued to clarify any omissions. Rejections of filings before a substantive review were rare, except for reasons outlined in the regulations. Adjudicators were

[5] *See USCIS Accountability: An Examination of "Blank Space" Rejections,* AM. IMMIGRATION LAWYERS ASS'N (July 24, 2020), published on AILA InfoNet at Doc. No. 20072494; AILA and Partners Send Letter to USCIS on the Blank-Spaces Form Rejection Policy, AM. IMMIGRATION LAWYERS ASS'N (Aug. 13, 2020), published on AILA InfoNet at Doc. No. 20081362.

allowed to use their judgment, experience and discretion to review the submission in its entirety and determine whether the omission required clarification.

USCIS is now proposing to reject, and in some cases even deny, Form I-485 applications that contain blank spaces, even when those fields are optional or not applicable to the applicant, and even when the information sought is immaterial. This unnecessary and burdensome policy is currently being applied to Form I-589, Application for Asylum and for Withholding of Removal, Form I-918, Petition for U Nonimmigrant Status, and Form I-914, Application for T Nonimmigrant Status, among others, with devastating consequences. As outlined in an August 13, 2020 letter to USCIS, AILA and partners outlined how this policy, as currently applied to Form I-589, Form I-918 and Form I-914, has placed already-vulnerable victims further at risk of harm by delaying the adjudication of their applications.[6] Even worse, it has caused some individuals to lose their eligibility altogether.[7]

The idea that USCIS would propose to impose such a bureaucratic obstacle on applicants submitting the Form I-485 application is particularly unconscionable during a national pandemic, given the extreme difficulties that applicants may experience remediating and resubmitting applications that could be summarily rejected or even denied under the proposed policy. Moreover, applicants are acutely disadvantaged by USCIS' significant delays in issuing notifications. It is currently taking the agency between 4 to 6 weeks, and in some cases even longer, to reject or deny applications because of this new policy, thereby affecting filing deadlines and other eligibility requirements, like age-out provisions. Furthermore, delays caused by these rejections could impact an individual's eligibility if policies or regulations are revised in the interim (e.g. adjustment of status applicants whose applications are rejected for blank spaces may be subject to the new fee rule and incur additional costs to filing).

The timing for adopting this new processing policy of rejecting applications for blank spaces to Form I-485 is also unwise given that agency's alleged financial woes. Since May, USCIS has been alleging dire financial straits and using its financial situation to justify the threat of furloughing nearly 70 percent of its workforce on August 30.[8] Yet the adoption of this new policy to the Form I-485 would only make the agency's alleged financial situation worse by imposing additional and unnecessary obstacles for applicants to file Form I-485 with USCIS. This form alone generates between $750 to $1,140 in filing fee revenue for the agency per applicant. This policy would also

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[6] *See USCIS Accountability: An Examination of "Blank Space" Rejections,* AM. IMMIGRATION LAWYERS ASS'N (July 24, 2020), published on AILA InfoNet at Doc. No. 20072494; AILA and Partners Send Letter to USCIS on the Blank-Spaces Form Rejection Policy, AM. IMMIGRATION LAWYERS ASS'N (Aug. 13, 2020), published on AILA InfoNet at Doc. No. 20081362.

[7] *Id*.

[8] *See Deputy Director for Policy Statement on USCIS' Fiscal Outlook,* U.S. CITIZENSHIP & IMMIGRATION SERV. (June 25, 2020), https://www.uscis.gov/news/news-releases/deputy-director-for-policy-statement-on-uscis-fiscal-outlook.

impose additional and unnecessary administrative burdens on the agency to issue rejections notices and mail back rejected Form I-485 applications to applicants across the United States, at a considerable cost to the agency.

For these reasons, AILA urges USCIS to immediately withdraw the proposed language, as well as rescind the agency's recent processing policy of rejecting and denying applications for blank spaces on forms.

Form I-485 Instructions, Page 7, U.S. Mailing Address

USCIS is proposing to add the following language to page 7 of the Form I-485 instructions relating to the applicant's mailing address:

> You must provide a valid mailing address in the United States in Part 1., Item Numbers 12.a. - 12.f. You may list a valid U.S. residence, APO, or commercial address. You may also list a U.S. Post Office address (PO Box) if that is how you receive your mail. If your mail is sent to someone other than yourself, please include an "In Care of Name" as part of your mailing address. If your U.S. mailing address is in a U.S. territory and it contains an urbanization name, list the urbanization name in the "In Care of Name" space provided. Do not use your attorney's or other legal representative's address.

AILA is opposed to the proposed language that would prohibit applicants from using their attorney or other legal representative's address as a valid U.S. mailing address. This is bad policy and interferes with the attorney-client relationship. Applicants should be able to choose where to receive mail associated with their Form I-485 application, particularly if an applicant has issues receiving mail timely and securely. It may be that the applicant's attorney or other legal representative's U.S. mailing address is the best option to ensure that any notices sent by USCIS are received and timely responded to as needed. While AILA acknowledges that applicants with an attorney or accredited representative may direct USCIS to send correspondence to the business address of the applicant's attorney or accredited representative by selecting the applicable item(s) on Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, Part 4, in reality, USCIS has frequently ignored such requests and has instead mailed correspondence and secured documents directly to applicants in defiance of requests made by applicants on the Form G-28. This is a problem that AILA has raised to USCIS.[9] If the basis for this change is a concern regarding physically locating the applicant, the option for an applicant to use a P.O. Box in this section of the Form I-485 would vitiate that concern.

[9] *See Practice Alert: Improperly Delivered Secure Identity Documents and Original Notices*, AMERICAN IMMIGRATION LAWYERS ASS'N (Jan. 7, 2020), https://www.aila.org/advo-media/aila-practice-pointers-and-alerts/practice-alert-improperly-delivered-secure.

Form I-485 Instructions, Page 17, Report of Medical Examination and Vaccination Record (Form I-693)

USCIS is proposing to add the following instructions to page 17 of the Form I-485 instructions relating to the applicant's medical examination and vaccination record:

> You must submit Form I-693, in a sealed envelope, at the same time you file your Form I-485.

AILA opposes this proposed revision to the Form I-485 instructions. Current agency policy permits applicants to submit the Form I-693 medical examination report to USCIS either concurrently with the immigration benefit application or at any time after filing the immigration benefit application but before USCIS finalizes adjudication of the application.[10] The language currently being proposed by USCIS is in direct conflict with the USCIS Policy Manual and therefore must be withdrawn.

USCIS also offers no explanation for its proposed policy shift or how applicants or the agency will be better off by submitting the Form I-693 at the time of filing the Form I-485. It is fundamentally bad policy to require applicants to submit the Form I-693 at the time of filing the Form I-485 application because in many cases, due to the agency's own crisis-level backlogs[11] or due to shifts in visa availability, the Form I-485 application will not be adjudicated before the Form I-693 expires, necessitating the applicant to repeat the immigration medical examination. The proposed policy would infuse additional and unnecessary costs, delays, and administrative burdens into the adjudication of the Form I-485 application.

Further, the Visa Bulletin, which is issued monthly by the Department of State, often becomes current and retrogresses with little notice. If an applicant is unable to obtain a medical examination before the need to file the I-485 application based on the deadline of a visa retrogression, this proposed policy of requiring a medical to be submitted at the time of filing the I-485 application would needlessly harm applicants who have to wait for a third party medical professional to complete the medical exam.

For these reasons, AILA urges USCIS to withdraw this proposed language and to maintain the language in the current edition of the Form I-485 instructions (10/15/19 edition) which permits, but does not require, submission of the I-693 at the time of filing the adjustment application and

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[10] *See* USCIS Policy Manual, Volume 8, Part B, Health-Related Grounds of Inadmissibility, Chapter 4, Review of Medical Examination Documentation, Section 4, Validity of Periods of Form I-693 (Including Use of Prior Versions).

[11] *AILA Policy Brief: Crisis Level USCIS Processing Delays and Inefficiencies Continue to Grow*, AMERICAN IMMIGRATION LAWYERS ASS'N (Feb. 26, 2020), https://www.aila.org/advo-media/aila-policy-briefs/crisis-level-uscis-processing-delays-grow.

allows applicants to submit the Form I-693 after filing the Form I-485, including at an interview in a USCIS field office.[12]

Form I-485 Instructions, Page 18, Certified Police and Court Records of Criminal Charges, Arrests, or Convictions

USCIS is proposing to add the following instructions to page 18 of the Form I-485 instructions relating to the applicant's certified police and court records of criminal charges, arrests, or convictions:

> If you are not able to obtain certified copies of any court disposition relating to Items 11.A. - 11.D., please submit all three items below:
>
> - A written explanation on government letterhead from the custodian of the documents of why the documents are not available, unless the documents are generally unavailable from the custodian of the document;
>
> - A written statement from the applicant that explains why the record is not available and describes the criminal charge, arrest, or conviction, the final outcome or disposition, and any rehabilitation completed (including but not limited to compliance with court-mandated conditions (such as parole, probation, counseling, or payments), not violating any laws, and making an effort to positively contribute to your community since your last arrest or conviction); and
>
> - Any other secondary evidence that shows the disposition of the criminal case; or if secondary evidence is also not available, one or more written statements, signed under penalty of perjury under 28 U.S.C. section 1746 by someone other than the applicant, who has direct personal knowledge of the disposition of the criminal case.

AILA opposes this proposed language which would impose additional, duplicative, and unnecessary evidentiary burdens on applicants who are unable, due to no fault of their own, to obtain certified copies of court dispositions. Of particular concern to AILA is that it appears that USCIS is attempting to add a new evidentiary requirement to the I-485 adjustment of status process that a written explanation on government letterhead must be obtained from the custodian of the documents regarding why certified copy of a court disposition is not available. Neither the

[12] *See* Instructions for Application to Register Permanent Residence or Adjust Status (10/15/19 edition), https://www.uscis.gov/sites/default/files/document/forms/i-485instr-pc.pdf.

regulations nor the INA mandate such a narrow type of evidence in situations where a certified copy of a court disposition is not available.

Such a proposal is bad policy as it overlooks the reality that in some cases, particularly for criminal charges, arrests, or convictions that took place several decades ago or in foreign countries with nascent democratic institutions and judicial systems, obtaining a written explanation on government letterhead from the custodian of the documents regarding the unavailability of the document would be extremely difficult, time-consuming, or in some cases impossible, to obtain.

AILA urges USCIS to withdraw the proposed language and instead to maintain the language that is currently set forth in the current edition of the Form I-485 instructions (10/15/19 edition):

> If you are not able to obtain certified copies of any court disposition relating to Items 11.A. - 11.D., please submit:
>
> A. An explanation of why the documents are not available, including (if possible) a certificate from the custodian of the documents explaining why the documents are not available;
>
> B. Any secondary evidence that shows the disposition of the case; or
>
> C. If secondary evidence is also not available, one or more written statements, signed under penalty of perjury under 28 U.S.C. section 1746, by someone who has personal knowledge of the disposition.

The current language in the 10/15/19 edition of the Form I-485 instructions takes into consideration the challenges that exists in obtaining certified copies of court dispositions and provides much needed flexibility regarding the types of documentation that may be submitted if certified copies of any court dispositions are not available. AILA urges USCIS to continue to provide flexibility in the type of evidence that applicants may submit to demonstrate the unavailability of certified copies of court dispositions as this better reflect the current realities and challenges that exists in obtaining such documentation and would ensure that USCIS does not exceed the scope of its authority.

For these reasons, AILA urges USCIS to withdraw its proposed language and maintain the language that is currently set forth in the 10/15/19 edition of the Form I-485 instructions.

Form I-485 Instructions, Page 18, Foreign Police Certificates

USCIS is proposing to add the following instructions to page 18 of the Form I-485 instructions relating to the applicant's foreign police certificates:

> USCIS may issue a request for foreign police certificates from certain applicants (age 16 years and over), including, but not limited to, applicants with an arrest history in the United States or anywhere in the world. A foreign police certificate is an official letter from a foreign law enforcement agency stating the alien has no criminal history in that country or, alternatively, if the alien does have a criminal history, providing detailed information about their criminal history.

AILA believes that the proposal to include information about foreign police certificates in the Form I-485 instructions will cause confusion among some applicants, in particular about whether or not such police certificates are required as initial evidence. AILA recommends that USCIS update its language to make it clear that foreign police certificates are not required as initial evidence. In particular, AILA recommends adding the following wording at the beginning of the proposed language (suggested language is in bold):

> **Although not required as initial evidence**, USCIS may issue a request for foreign police certificates from certain applicants (age 16 years and over), including, but not limited to, applicants with an arrest history in the United States or anywhere in the world. A foreign police certificate is an official letter from a foreign law enforcement agency stating the alien has no criminal history in that country or, alternatively, if the alien does have a criminal history, providing detailed information about their criminal history.

Form I-485 Instructions, Page 18, Waiver of Inadmissibility

USCIS has been inconsistent regarding the timing of the filing Form I-601, Application for Waiver of Grounds of Inadmissibility. Some officers will deny adjustment where a ground of inadmissibility exists because the Form I-601 was not filed with the initial application; other officers will issue a Request for Evidence (RFE) for the waiver. There may also be instances where the applicant appears inadmissible, but after an interview, the officer finds that adjustment can be granted and no waiver is needed. Considering the considerable expense of filing a waiver - $930.00 in filing fees alone - AILA respectfully requests that USCIS clarify the instructions on the Form I-485 regarding the submission of waivers. In particular, AILA recommends the following revision to page 18 of the I-485 instructions in subsection 13 relating to waivers of inadmissibility:

> If USCIS (or the Immigration Judge, if you are in exclusion, deportation, or removal proceedings) determines that a ground of inadmissibility does apply to you and you qualify for a waiver, you will be given the opportunity to apply a waiver or other form of relief that would eliminate the inadmissibility.

AILA believes that by clarifying that a Form I-601 is not a required form and will only be required after a finding of inadmissibility has been made, resources for both the applicant and USCIS will be used more efficiently.

Form I-485

Form I-485, Page 1, Note to All Applicants

USCIS is proposing to add the following language to Page 1 of the Form I-485 (proposed language is in bold):

> If you **leave any fields blank on this form** or fail to submit required documents listed in the Instructions, U.S. Citizenship and Immigration (USCIS) may deny your application.

AILA opposes this proposed language. As outlined in more detail above on pages 3 – 5, the agency's proposal to deny Form I-485 for any blank spaces on the form would be a significant policy shift that would impose unnecessary burdens on I-485 applicants and the attorneys who represent them, create additional barriers to the I-485 application process, and needlessly drain agency resources at a time when USCIS is claiming dire financial straits. For the reasons outlined on pages 3-5 above, AILA opposes this proposed language and urges USCIS to immediately withdraw it from the Form I-485 as well as rescind the agency's recent processing policy of rejecting or denying applications for blank spaces on forms.

Form I-485, Page 2, Part 1. Information About You, Question 10

On page 2 of the Form I-485 in Part 1. Information About You at Question 10, USCIS requests the following information from the applicant:

> Any other Alien Registration Number (A-Number) assigned to you.
>
> If you have ever had other A-Numbers assigned to you include any additional A-Numbers in the space provided in Part 14. Additional Information. If you have never had other A-numbers assigned to you, write NA in the blank.

USCIS does not clarify whether or not the nine-digit "USCIS #" which appears on Form I-766 Employment Authorization Documents constitutes an "A#" and should be included by applicants in response to Question 10. We assume that USCIS is aware that this number was previously labeled on Form I-766 as an "A#". This raises several points which require further clarification, including whether or not USCIS wants an Employment Authorization Document "USCIS #" provided in response to Question 10 or not? Either way, the paragraph immediately below the

answer field text box or the Form I-485 instructions should be revised to clarify whether or not such a "USCIS #" or A#s listed on any of the applicant's Form I-766s should be included in response to Question 10.

Form I-485, Page 4, Part 1. Information About You, Recent Immigration History, Question 32.a.

The current edition of Form I-485 (10/15/19 edition) provides language on page 2 at Question 22 that allows applicants to indicate that they were waved through at a port of entry as an admission option:

> When I last arrived in the United States, I:
>
> 22.a. Was inspected at a port of entry and admitted as (for example, exchange visitor; visitor, waived through; temporary worker; student):
>
> [redacted]

In its proposed revisions to Form I-485, USCIS is proposing to remove the language "visitor, waived through" as an admission option it its proposed revisions for Form I-485. Specifically, USCIS is now proposing the following language to updated Question 32.a.

> When I last arrived in the United States, I:
>
> 32.a. Was inspected at a port of entry and admitted as (for example, exchange visitor; visitor, temporary worker; student):
>
> [redacted]

AILA recommends that USCIS add "waved through" language back into the Form I-485 at newly proposed Question 32.a. for greater clarity and to minimize confusion among applicants who were waved through a port of entry. The reality is that this is still common practice, particularly along the U.S.-Canada border[13], is a lawful admission[14], and should not be eliminated from the Form I-485.

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[13] *See e.g., AILA and the American Immigration Council File Amicus Brief with the BIA on "Wave Through" Entry*, AMERICAN IMMIGRATION LAWYERS ASS'N (OCT. 19, 2016), https://www.aila.org/infonet/amicus-brief-with-the-bia-on-wave-through-entry; U.S. GENERAL ACCOUNTING OFFICE, TESTIMONY BEFORE THE COMMITTEE ON HOMELAND SECURITY, HOUSE OF REPRESENTATIVES, BORDER SECURITY: DESPITE PROGRESS, WEAKNESS IN TRAVELER INSPECTIONS EXIST AT OUR NATION'S PORTS OF ENTRY (JAN. 3, 2008); U.S. GENERAL ACCOUNTING OFFICE, LAND BORDER PORTS OF ENTRY: VULNERABILITIES AND INEFFICIENCIES IN THE INSPECTION PROCESS, GAO-03-1084R LAND BORDER PORTS OF ENTRY (AUG. 18, 2003), https://www.gao.gov/products/GAO-03-1084R.

[14] *See Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010).

Form I-485, Page 6, Additional Alien Worker Information, Question 9.d.

On Page 6 of the Form I-485 in Question 9.d., USCIS asks applicants the following questions:

> Regardless of the immigrant category you are adjusting under, do you hold:
>
> VAWA self-petitioner status? Yes No
>
> Victim of Qualifying Criminal Activity (U nonimmigrant) status? Yes No
>
> Human trafficking victim (T nonimmigrant) status? Yes No

The placement of these questions on page 6 in the subsection entitled "Additional Alien Worker Information" is extremely confusing for applicants. The questions are visually poorly designed and misleading in the current version of Form I-485 (10/15/19 edition) and in the proposed version of Form I-485, the design is even worse. Although the subsection title indicates that the questions in this subsection involve "Additional Alien Worker Information" and directs applicants to complete Question 9a. "only if you selected Item Number 3.a. "Alien worker, Form I-140," the Questions at 9.d. pertain to **all applicants**, so the subtitle is in fact misleading. Moreover, the way the question is presented looks like a continuation of Questions 9.a., 9.b., and 9.c. which only apply to one class of applicants, i.e., foreign workers with a Form I-140. To reduce confusion among applicants and to prevent the Questions at 9.d. from being overlooked, AILA recommends that USCIS remove Questions 9.d. from the "Additional Alien Worker Information" subsection of the Form I-485 and either place these questions under a newly created subsection or move these questions to another part of the form where they are more relevant.

Form I-485, Page 13, General Eligibility and Inadmissibility Grounds (continued)

USCIS is proposing to add the following questions to page 13 of the Form I-485:

> 29. Have you EVER worked in a country other than the United States without employment authorization (or the equivalent)?
>
> 30. Have you EVER entered a country other than the United States in violation of that country's immigration laws?
>
> 31. Have you EVER been unlawfully present (or the equivalent) in a country other than the United States?
>
> 32. Have you EVER been in removal, deportation or exclusion proceedings (or the equivalent) [sic] a country other than the United States?

> 33. Have you EVER been ordered removed, deported, or excluded (or the equivalent) from a country other than the United States?

AILA opposes these proposed questions and urges USCIS to withdraw them prior to finalizing the new edition of Form I-485. These questions are not relevant to an applicant's eligibility for adjustment of status and are beyond the scope of the inadmissibility grounds set forth at INA §212(a). Furthermore, this proposed information collection conflicts with the Paperwork Reduction Act's stated purpose of minimizing the paperwork burden for individuals resulting from the collection of information by or for the Federal Government.[15] USCIS provides no justification regarding how the merits of collecting this information outweighs the PRA's goal of minimizing the paperwork burden for individuals completing Form I-485. For these reasons, AILA opposes the addition of these proposed questions to the Form I-485 and urges USCIS to withdraw them prior to finalizing the new edition of Form I-485.

Notification of Medical Service Requirements for National Interest Waiver Physicians

For applicants with a pending I-485 application (or even those without), AILA recommends that USCIS create a process by which applicants can submit the information outlined in the Notification of Medical Service Requirements for National Interest Waiver Physicians affirmatively to USCIS and not have to wait for USCIS to directly ask for it. AILA is aware of cases where proof of completed service has been submitted to USCIS without a RFE and USCIS does not acknowledge it, and other cases where applicants or attorneys have attempted for months to get USCIS to issue the RFE, which delays the date on which the applicant becomes a lawful permanent resident. If USCIS is going to cite to and enforce the requirement that the evidence of service completion must be submitted within 120 days after the service is complete, then USCIS should provide a way for applicants and attorneys to do that. Having a separate, standalone form by which applicants can provide this information directly to USCIS would be helpful.

Being able to supply this information to USCIS even when no Form I-485 application is pending with USCIS would be recommended. AILA understands that completion of service is most relevant to the adjudication of Form I-485, yet there are doctors stuck in the immigrant visa backlogs who are saving this evidence for years and years so that someday, in the distant future, it can be submitted to USCIS. The risk of documentation being lost and not being reproduceable is great, given that the people who could confirm years of service/employment might change jobs, pass away, etc., in that time period. As such, AILA recommends that USCIS develop and implement a process by which applicants can provide this information to USCIS even if no Form I-485 application is pending with USCIS. For example, USCIS could develop a process for issuing a confirmation letter to all PNIW physicians upon completion of the five years, regardless of

[15] The Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163, 44 U.S.C. §§3501-3520 (1996).

whether the I-485 application is filed. All physicians should receive this confirmation, as a matter of course, and USCIS should develop a reliable method to receipt and store this evidence in the physician's immigration file.

Conclusion

We appreciate the opportunity to comment on the agency's proposed revisions to Form I-485 and its instructions, as well as to the Notification of Medical Service Requirements for National Interest Waiver Physicians. We look forward to a continuing dialogue with USCIS on these issues.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

BOUNDLESS

Comments of Boundless Immigration Inc.
on the Department of Homeland Security's
60-Day Information Collection Notice Regarding the
Application To Register Permanent Residence or Adjustment of Status,
85 Fed. Reg. 38151 (June 25, 2020)

OMB Control Number 1615-0023
U.S. Citizenship and Immigration Services
Docket ID USCIS-2009-0020

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August 24, 2020

I. Background

These comments are submitted for the record to the United States Department of Homeland Security (DHS) and the Office of Management and Budget (OMB) on behalf of Boundless Immigration Inc. They are offered in response to the Department's 60-day information collection notice, related to the Application To Register Permanent Residence or Adjustment of Status (Form I-485), issued by U.S. Citizenship and Immigration Services (referred to in this comment as "USCIS" or "the agency"), which was published in the June 25, 2020 edition of the Federal Register.

II. Substantive Issues with Proposed Changes

A. New requirements to fill out blank fields

Throughout the proposed Form I-485, USCIS adds new requirements for applicants to fill in fields, even when a reasonable person would leave such fields blank:

Page 1: NOTE TO ALL APPLICANTS

[Current text:]
If you do not completely fill out this application or fail to submit required documents listed in the Instructions, U.S. Citizenship and Immigration Services (USCIS) may deny your application

[Proposed text:]
If you leave any fields blank on this form or fail to submit required documents listed in the Instructions, U.S. Citizenship and Immigration Services (USCIS) may deny your application.

Page 1, Part 1: *Other Names Used Since Birth*

[Proposed text:]
If you have never used another name, write none or equivalent in the blanks.

Part 1, Part 1: *Other Information About You*

[Proposed text:]
If you have never used another date of birth, write none or equivalent in the blank.

Page 2, Part 1: *Other Information About You*

> [Proposed text:]
> If you have traveled to the United States without a passport or travel document, write NA in the blanks.

At best, these changes are picayune and unnecessary. At worst, they are a pretext to deny applications for adjustment of status for no legitimate reason, as has recently become the agency's well-documented practice with regard to certain humanitarian visa applications.

USCIS should not demand that applicants fill out every field, even when a reasonable person would leave such fields blank—and the agency should certainly not *deny applications* for failure to "write none or equivalent in the blanks."

B. New burden on applicants to provide prior administrative information

The proposed Form I-485 adds the question, "Have you ever applied for permanent residence while in the U.S.?" This is followed by an additional demand for the following information (Page 7, Part 3):

> USCIS Field Office or Service Center that adjudicated your application

It is incumbent on USCIS to know which of its own field offices or service centers adjudicated a prior Form I-485. Requiring the applicant to provide this information would serve only to increase the complexity of the form, the burden on the applicant, and the likelihood of errors, for no legitimate reason.

Such adjudications may have happened years in the past, and while an applicant may be reasonably expected to retain documentation of the result and date of the adjudication, only USCIS need retain records of the specific bureaucratic unit that adjudicated the form.

If USCIS makes this proposed change, it will effectively force many applicants to submit a FOIA request to acquire this information—a process that is expensive, complex, and slow. By the time USCIS responds to such a FOIA request, the applicant may no longer be eligible to adjust status.

C. New burden on applicants to provide educational information

In addition to requiring a detailed employment history, the proposed Form I-485 adds an entirely new requirement for an equally detailed educational history (Page 7, Part 3):

> Provide ALL of your employment and educational history for the last five years, whether inside or outside the United States. Provide the most recent employment or school attended first.

USCIS provides no justification for this additional burden, and educational history does not appear to constitute necessary evidence for adjustment of status eligibility.

D. New burden on applicants to provide employment and financial information

In addition to listing employment history, the proposed Form I-485 adds the following new requirements (Page 7, Part 3):

> Include periods of self-employment or unemployment. For each period of unemployment, list source of financial support.

USCIS provides no justification for this additional burden. Periods of unemployment and sources of financial support do not appear to constitute necessary evidence for adjustment of status eligibility.

USCIS has already gone through a rulemaking process for public charge determinations, under which the agency demands redundant information about unemployment and financial support in its Form I-944 ("Declaration of Self-Sufficiency").

III. Defects Under the Paperwork Reduction Act

The Paperwork Reduction Act (PRA) is intended, among other things, to "ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government" and to "improve the quality and use of Federal information to strengthen decision-making, accountability, and openness in Government and society."

The proposed changes, however, violate both the spirit and the letter of the PRA.

1. Responses to questions posed in the information collection notice

The information collection notice states that "[w]ritten comments and suggestions from the public and affected agencies should address one or more of the following four points":

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

None of the proposed changes to the collection of information are necessary for the proper performance of the functions of the agency, as the status quo Form I-485 already allows the agency to obtain more than enough information to comply with its regulatory and statutory obligations.

Likewise, the proposed collection of information will have limited-to-no practical utility for the agency in the performance of its statutorily authorized duties. If the agency believes otherwise, it has provided no basis for this belief in the information collection request that was made available as the sole basis for public comment.

(b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

The agency has made no effort to provide transparency about its methodology or the assumptions underlying its estimate of the burden of the proposed collection.

(c) Enhance the quality, utility, and clarity of the information to be collected.

As described above, the proposed information collection does nothing to enhance the quality, utility, or clarity of the information to be collected. On the contrary, each of the proposed changes would substantially *impair* the clarity of the information to be collected, as they are phrased in a way that is more ambiguous than the status quo.

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Nothing in the proposed changes would reduce, let alone minimize, the burden of the collection of information on those who are to respond.

The proposed changes would be comparably onerous whether the information is collected via traditional or electronic means, because the burden stems from the nature of the information demanded, not the relative difficulty of transmitting this information in paper format.

2. Additional PRA Concerns

The proposed changes implicate a number of additional concerns under the Paperwork Reduction Act, above and beyond the questions asked in the information collection notice.

a. Absence of the required description of agency's need and use

DHS Management Directive 142-01 establishes the department's policy implementing the provisions of the Paperwork Reduction Act concerning collections of information.

This management directive (referred to here as "DHS policy") prohibits an information collection unless the Federal Register notice includes "a brief description of the need for the information and proposed use of the information" (§ 1320.5(a)(1)(iv)(B)(3)).

In fact, the agency's notice provides no such description, and does not provide the public with any way to ascertain the agency's need for, or proposed use of, the additional information under the proposed changes.

The notice states simply, "The information on Form I-485 will be used to request and determine eligibility for adjustment of permanent residence status." This is so brief as to be meaningless.

b. Failure to comply with the "least burdensome" standard

DHS policy requires that, "[t]o obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that the proposed collection of information … is the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives" (§ 1320.5(d)(1)).

As described in detail above, the proposed changes would create significant new burdens and are wholly unnecessary for the proper performance of the agency's functions. The agency has not demonstrated otherwise to the public, and it is difficult to conceive of how it has demonstrated otherwise to the DHS Chief Information Officer or to OMB.

c. Violation of three-year record retention limit

DHS policy states that, "[u]nless the agency is able to demonstrate, in its submission for OMB clearance, that such characteristic of the collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve a collection of information … requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years" (§ 1320.5(d)(2)).

There is certainly no statutory requirement or substantial need for USCIS to effectively force applicants to retain records of prior adjustment of status adjudications for any number of years, placing the burden on the applicant to remember which field office or service center adjudicated the form.

d. Inadequate agency review

DHS policy provides that the agency designate a "Senior Official" to carry out its responsibilities under the Paperwork Reduction Act, that such official shall "review each collection of information before submission to OMB for review," and that such review shall include, among other things:

- an evaluation of the need for the collection of information, which shall include, in the case of an existing collection of information, an evaluation of the continued need for such collection;
- a functional description of the information to be collected;
- a plan for the collection of information; and
- a specific, objectively supported estimate of burden, which shall include, in the case of an existing collection of information, an evaluation of the burden that has been imposed by such collection (§ 1320.8(a)).

Based on the flawed assumptions and scant justifications provided in the information collection notice, there is no evidence that the agency's Senior Official adequately conducted these elements of the required review.

e. Inadequate disclosure of agency plans

DHS policy requires that the Senior Official "shall ensure that each collection of information … informs and provides reasonable notice of the potential persons to whom the collection of information is addressed of," among other things:

- the reason the information is planned to be and/or has been collected; and
- the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency (§ 1320.8(b)).

The information collection notice includes no such disclosures, and there is no evidence that the agency's Senior Official plans to make such disclosures in the future.

f. Apparent failure to provide OMB with required certifications

Section 1320.9 of the DHS Management Directive ("Agency certifications for proposed collections of information") states in its entirety:

> As part of the agency submission to OMB of a proposed collection of information, the agency (through the head of the agency, the Senior Official, or their designee) shall certify (and provide a record supporting such certification) that the proposed collection of information-
>
> (a) is necessary for the proper performance of the functions of the agency, including that the information to be collected will have practical utility;
>
> (b) is not unnecessarily duplicative of information otherwise reasonable accessible to the agency;
>
> (c) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601(6)), the use of such techniques as:
>
> > (1) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;
> >
> > (2) the clarification, consolidation, or simplification of compliance and reporting requirements; or
> >
> > (3) an exemption from coverage of the collection of information, or any part thereof;
>
> (d) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;
>
> (e) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;
>
> (f) indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;
>
> (g) informs potential respondents of the information called for under § 1320.8(b)(3);
>
> (h) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

(i) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

(j) to the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public.

The information collection notice does not inspire public confidence that the agency has fulfilled its own certification requirements. In particular:

- As described in detail above, there is no evidence that the proposed changes are "necessary for the proper performance of the functions of the agency, including that the information to be collected will have practical utility."

- The proposed changes would require applicants to information that is "unnecessarily duplicative of information otherwise reasonable accessible to the agency," i.e. the correct USCIS office with jurisdiction over a prior adjustment of status adjudication.

- The proposed changes certainly do not "reduce[] to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities." In fact, the agency makes no mention of the great many nonprofit organizations and small law firms that help immigrants complete their naturalization forms, almost all of which are small entities under the Regulatory Flexibility Act that would be unduly burdened by the proposed changes, including the new education and unemployment history requirements.

- The proposed changes would not "be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond." The proposed changes would, retroactively and with harm to reliance interests, require a substantial change to these reporting and recordkeeping requirements, as many respondents would need to locate prior immigration records going back years or even decades.

IV. Conclusion

Section 1320.5(f) of the DHS Management Directive states that, "to the extent that OMB determines that all or any portion of a collection of information is unnecessary, for any reason, the agency shall not engage in such collection or portion thereof. OMB will reconsider its disapproval of a collection of information upon the request of the agency head or Senior Official only if the sponsoring agency is able to provide significant new or additional information relevant to the original decision."

In light of the discussion above, the agency has only three options that are fully consistent with this DHS policy, along with relevant OMB policies, Executive Orders, agency regulations, and statutes:

(1) Rescind this information collection notice and retain the status quo Form I-485.

(2) Rescind this information collection notice and publish a new information collection notice that actually *reduces* the paperwork burden of the status quo Form I-485.

(3) Rescind this information collection notice and publish a proposed rule under the Administrative Procedure Act that provides a full explanation for public comment as to why the proposed changes are consistent with relevant regulations and statutes.

Commenter: Rachael Grant

A. Comment to all forms.

1. Denial threat for blank fields.

The proposed I-485 forms begin with a new note warning that applications may be denied—not even rejected, but fees accepted and kept by USCIS but then denied on a formality/procedural error without consideration of the merits—if any fields are left blank.

This recent policy shift has affected many more forms that just the I-485, but I would like to take this opportunity to point out the senselessness and malevolence of this policy. It is entirely at odds with the mission of a benefit granting agency, which should not be looking for new and inventive ways to deny legitimate applications. There is no reasonable justification for this policy. It doesn't make things more efficient; it doesn't improve adjudication or lead to more accurate results. It causes confusion and is designed to take advantage of unsophisticated individuals who may not be able to afford legal representative. The fact that this "blank fields" policy was first implemented on asylum petitions and applications for U and T visas reflects the heinousness of this policy and the hidden intent to target those who are the most vulnerable and most likely to be people of color. Now, expanding the policy to I-485 broadens the policy from its racist roots to encompass broader anti-immigrant attitudes that are incompatible with the mission of USCIS.

The confusion and unjust consequences of this policy are obvious to those of us who work in the field. What happens to applicants who have no middle name? Are they required to write "none" in the field? Does that mean they will end up with a green card that has "None" as their middle name? And then there's the fact that this form has over 200 questions, and at least 35 of them begin with or contain the word "if"—meaning the question should only be answered if certain conditions are satisfied. Does that mean those questions can be left blank? Or are applicants supposed to somehow indicate—in a way other than leaving the question blank—that it is not applicable to them? (See, *e.g.*, Part 1, #22 and #39.b.) This is particularly challenging on questions that are not free-form fields but only have "Yes" and "No" check boxes. Are applicants supposed to manually add an "N/A" since you did not give that as an option? (See, e.g., Part 2, #9.a – 9.d; and Part 8, #43.b, #54.b, #73.b, #84.) Then there is the fact that this form is being released as a fillable PDF form with instructions to fill it out using Adobe Reader. However, the format of many of the fields is restricted by your own design. It is not possible to tell from the draft posted with this regulatory notice, because it was not released in fillable format, but assuming the fields are similar to the current Form I-485, it will be impossible to comply with the instructions to put "none or equivalent" in many of the date- and number-based fields. For example, Part 1, #5 requests any other date of birth used or "none or equivalent" if no other date of birth used. The DOB field on the current Form I-485 only permits numerals and slashes. Same for Part 1, #10 — this field in the current Form I-485 only permits numbers, so it's impossible to "write NA in the blank" as instructed in your proposed draft. Again in Part 1, #26 and #29. Those are just a few examples I found in Part 1. Undoubtedly there are more date or number-based fields that have similar restrictions in the 200 items that follow.

Furthermore, there are some entire sections that may not be applicable, such as interpreter information or preparer information. There is also an optional section at the end for "Additional Information," as needed. Are you suggesting that every single field in these sections must be populated with "none" or "N/A" when they are inapplicable or else you will deny an application? What purpose does that serve?

The bottom line is that this policy does not further the ends that USCIS is supposed to be pursuing. It does not foster better adjudication of applications. It simply makes the process of applying more difficult, stressful, time-consuming, and expensive for no reason. The cost benefit analysis that is supposed to be done as part of regulatory rule making process must include some sort of justification for changes that are made. What is the justification for this policy? Applicants already have every incentive to provide all necessary information. Time-consuming Requests for Evidence simply slow down the adjudication process. If you have some sort of objective analysis that can establish blank fields are an actual problem, it should be made public, and you should rewrite the conditional questions so that there is a clear "none" or "N/A" option for every question. You also need to go through the restrictions on every single blank field and make sure that if you've instructed an applicant to put "none" or "NA" in a field, that alphabetic characters can actually be entered in those fields. Otherwise, it just looks like you're trying to trick and trap vulnerable applicants into a procedural denial that is unwarranted.

B. Form I-485.

1. Part 1, item numbers 14-15 (page 2).

Item number 14—"is your physical address the same as your mailing address"—has no purpose. You've already threatened the applicant with denial if any fields are blank. Item #12 asks for the current mailing address, and #15 asks for the current physical address. There is no indication that an affirmative answer to #14 means that #15 can be left blank, and it will be plainly obvious to anyone whether #12 and #15 are the same. So why is there a separate question asking about it?

2. Part 1, item numbers 21-24 (page 3).

What is the purpose of the word "officially" in this question? Can the SSA unofficially issue cards? Isn't what you are trying to ascertain is whether the applicant has ever been assigned a Social Security number? At least based on the instructions, it doesn't seem to matter whether the applicant received a card but whether a number was assigned. The question would be more precise as "Has the Social Security Administration (SSA) ever issued a Social Security card or assigned you a Social Security number?" For #23, the Instructions indicate that this question can be used to request a new SSN or have a card reissued, so it would be more precise if phrased as "Do you want the SSA to issue or re-issue you a Social Security card?" Also, in #24, you use the abbreviation "SSN" without ever having defined it, which you could most logically do at #22—in which case you could use the abbreviation in #23.

3. Part 1, item number 33 (page 4).

The instructions for these questions are "Provide the information on your Form I-94 Arrival-Departure Record Number. But the word "Number" should not be here. You are asking about information from the Arrival-Departure Record. That is also what this item number is called in the Instructions

4. Part 1, item number 34 (page 4).

This is another example of where the blank fields policy discussed above causes confusion. It asks for the name that appears on the applicant's I-94, but to write "NA" in the fields if the applicant was not issued an I-94. What about applicants who have no middle name? Can they leave item number 34.c. blank, since that is "exactly as it appears" on the I-94? Or will that

risk a denial? Do they put "NA" even though they were issued an I-94, just to avoid this absurd result, even though that conflicts with the directions for this question?

5. Part 2, item number 2.b. (page 4).

The subparts of this question should be indented the way they are in #2.a. and #2.c.

6. Part 2, item number 4.a. (page 5).

There is a typo in this question—"360" appears twice.

7. Part 2, *Additional Alien Worker Information* (page 6).

The instructions here say that #9.a. should only be answered if #3.a. was selected. (That instruction is also present at #3.a, referring to #9.a.) But #9.b. and #9.c. also need conditional instructions, because they only need to be answered if the applicant selects "Yes" to #9.a. This instruction exists in the current Form I-485 and it's unclear why it would be removed, as the condition hasn't changed. Those questions would still only be answered if #9.a. is "Yes."

8. Part 2, item number 13 (page 7).

How is this question any different from what is asked in Part 2, #1? If you're asking whether the I-485 applicant is also the principal beneficiary of the underlying immigration petition, then this needs to be rephrased and not use the word "applicant." If this question is a duplicate of #1, it should be removed.

9. Part 3, *Additional Information About You* (page 7).

The new draft proposes to add words to #1 that are already present, making the addition redundant. In addition, you have removed the instructions to only answer #2.a. - 4. if the answer to #1 is "Yes." Why? Those questions are still only applicable if the individual selected "Yes" to #1. Is this part of your "blank fields" policy discussed above where you're trying to trap people into a procedural denial? Many practitioners have been completing Form I-485 for years and would reasonably skip over these questions. You should restore the instructions and—if you insist on keeping the blank fields policy—add instruction to write NA in the fields if the answer to #1 was "No." The same principle applies to #5, because #6-#8 are only applicable if the answer to #5 is "Yes."

10. Part 6, item numbers 7, 14, and 21 (page 11).

These questions are unnecessary and only serve to cause additional confusion. "Biological child" is not a "legal relationship" between a parent and a child. A child born in wedlock is a legal child, irrespective of biology. There are sufficient regulations that define the parent-child relationship, in all of its permutations, for the purposes of immigration and. There is absolutely no reason to require an applicant to provide invasive information about the way in which each of his or her children came to be, particularly since this form requires identification of all children, including adults and those who are not even applying for any immigration benefit. The supporting evidence required to be produced to establish the parent-child relationship for any derivative applications will sufficiently demonstrate the nature of the parent-child relationship, to the extent it is relevant.

11. Part 8, item numbers 17 & 18 (page 13).

First, these questions have a grammatical error because it should be "three or more persons WHO acted together," not "three or more persons THAT acted together." More importantly,

though, these questions are confusing, subjective, and unnecessary. There are enough questions asking about criminal activity and membership in organized groups. This also risks requiring victims to disclose information about their associations with criminal groups who victimized them, which has no bearing on an applicant's admissibility to the United States.

12. Part 8, item numbers 29-33 (page 13).
These questions do not seem relevant. Participation in the immigration system of another country does not make an applicant inadmissible to the United States. Not all countries have a system of work authorization, particularly third-world countries, and the idea of being "unlawfully present" is a very American concept that may or may not have a direct equivalent in other places. Furthermore, it is unfair to ask applicants to have an understanding of the immigration systems of every country they have ever been in. The current state of global migration, the ever-expanding refugee crisis, and the fluctuating boundaries of some younger nation-states makes all of this subjective and difficult to ascertain. We should not be requiring anyone to make such determinations when it has no bearing on their admissibility to the United States.

13. Part 8, item number 34 (pages 13-14).
You removed the instruction that states the 2nd and 3rd subpart of this question only need to be answered if the first subpart is answered "Yes," but these are still items that are not applicable to most applicants. This is the same situation described in Point #9 above. Don't try to trap people into making a mistake. Restore the instruction or add an "N/A" check box to these questions so that they can be answered if you're going to require it of everyone.

14. Part 8, item number 44 (page 14).
Why did you remove the exclusion for purely political crimes? There are an increasing number of authoritarian regimes around the world that punish dissidents for such crimes. In fact, China's new national security law imposed on Hong Kong so severely punishes political crimes that our own government has moved to sanction China and U.S. universities are taking steps to project Chinese students. Your removal of this exclusion suggests that you intend to consider purely political crimes as potential reasons for inadmissibility or exclusion. That is reprehensible and contrary to the foundational principles of our country.

15. Part 8, item number 51 (page 15).
First, you have two typographical errors in this question. There is a closing parenthesis in line 3 instead of an opening parenthesis, and in line 9, you have "soliciting BE any means" when it should be "soliciting BY any means." More importantly, this question—to the extent that it would indicate inadmissibility due to criminal acts—should more explicitly exclude victims of sex trafficking.

16. Part 8, item numbers 59.b. and 61.b. (pages 15-16).
This question is too broad and vaguely worded. Anyone who has ever shot a gun would likely have to answer "yes" to this question. Even target practice has the intent to cause damage to a target, which is someone's property. Anyone who has ever used pepper spray to defend herself from a violent attacker would have to answer "yes" to this question, because pepper spray is a dangerous device and the intent was to harm the attacker, albeit in self-defense. Any inquiries in this Part of the Form need to be limited only to those activities that would actually make someone inadmissible.

17. Part 8, item number 61.d. (page 16).

There is a typographical error in this question. It says "death OF bodily injury" when it should say "death OR bodily injury."

18. Part 8, item number 62 (page 16).

This question is also too broad and encompasses lawful activity. Anyone who lawfully sold handguns to a police department would have to answer "yes." Again, this section is supposed to be about criminal activity, so it should be limited to activity that is actually criminal.

19. Part 8, item number 84 (page 19).

It appears that you are missing a space between "83.b.," and "was a severe…"

C. Instructions for Form I-485.

1. Instruction #14 on page 9 seems incredibly broad and burdensome. Why do you need to know about someone's membership in Boy Scouts, or Student Council, or the Drama Club, or Future Farmers of America, or their Homeowner's Association, or a particular church, or the Delta frequent flyers club? What about registration as a member of a political party? Or donating to the ASPCA—that's an association with a group. (It gets me on their mailing list, at least.) As a country that put freedom of association in our Constitution's Bill of Rights, it's incredibly hypocritical and borderline unconstitutional to suggest that an individual's association with others would be a reason he or she would be ineligible for permanent residency.

2. The filing fees and biometric fees on page 19 do not reflect the new fees that will be in effect by the time this revised form is finalized. Similarly, page 20 indicates that a returned check fee will be charged, but the most recent Final Rule on USCIS's new fee schedule indicates that there will no longer be a returned check fee.

3. The instructions for derivative applicants at the top of page 12 fails to consider the situation in which derivative applications are submitted together with the principal's concurrently filed immigration petition and I-485. In that case, no approval or receipt notice yet exists, either for the principal's immigration petition or the principal's adjustment application.