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## Comment Submitted by The Legal Aid Society

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Attachments 1



Comment of The Legal Aid Society on Proposed Form I-191 Changes



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March 7, 2023

Submitted via [www.regulations.gov](http://www.regulations.gov)

U.S. Citizenship and Immigration Services  
Office of Policy and Strategy  
Regulatory Coordination Division  
20 Massachusetts Avenue NW  
Washington, DC 20529

Twyla Carter  
Attorney-in-Chief  
Chief Executive Officer

Adriene L. Holder  
Attorney-in-Charge  
Civil Practice

Deborah Lee  
Attorney-in-Charge  
Immigration Law Unit

Re: **OMB Control Number 1615-0016; Docket ID USCIS-2006-0070**  
*Comments in Response to Revision, Application for Relief Under Former Section 212(c) of the Immigration and Nationality*

The Legal Aid Society submits these comments in response to the invitation of U.S. Citizenship and Immigration Services to comment upon the proposed revision of Form I-191, the Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA) posted on January 6, 2023.

The Legal Aid Society (LAS) was founded in 1876 to defend the individual rights of immigrants in New York City who could not afford counsel. LAS is the nation's oldest and largest not-for-profit legal services organization. Through three major practice areas—Civil, Criminal, and Juvenile Rights—the Society's attorneys, social workers, paralegal case handlers, support staff and volunteers handle approximately 300,000 cases a year in city, state, and federal courts.

Though LAS has broadened its practice over time, we have remained committed to our original mission: helping low-income immigrant communities. Attorneys, paralegals and social workers from LAS' Immigration Law Unit utilize their expertise to serve low-income immigrant New Yorkers seeking legal assistance before the U.S. Citizenship and Immigration Services (USCIS) and in immigration and federal courts. We regularly represent clients who are seeking immigration relief, including under Former Section 212(c) of the INA.

#### Recommendations Regarding the Proposed Changes

LAS supports the proposed revisions to the form, which are generally designed to make the form quicker and easier to complete. For example, we support including the opportunity to designate the information relating to an applicant's trips out of the United States as approximate as well as providing instructions on the form with regard to using N/A instead of leaving answers blank.

We also support the streamlining and reorganization of Parts 9, 10 and 11 of the application. The deletion of fields for interpreter's and the preparer's mailing addresses is logical and helpful since both individuals will provide a phone number and email address.

These minor proposed changes reflect a recognition by USCIS that the Form I-191 should be simplified and streamlined. We commend the agency for its interest in reducing the regulatory burden on individuals. We urge USCIS, however, to do far more.

Over the last two decades, the Form I-191 has grown from a simple, one-page application to the lengthy current version, which extends eighteen pages.<sup>1</sup> The questions are increasingly complex, and they call for detailed factual responses as well as legal analysis and judgment. USCIS estimates that completing the Form I-191 will take, on average, an hour and twenty-three minutes to complete. *See Proposed Instructions at 13 (estimating burden on applicants under the Paperwork Reduction Act).* Based on the experience of LAS attorneys, the form will require much more time. For example, USCIS estimates that the reporting burden for the current form is one hour and forty-five minutes, but in our experience, it is not atypical for an attorney to spend 10 to 30 hours completing this form and collecting all of the requested documentation. The burden on applicants is particularly taxing because this form is most typically prepared under short 30 or 60-day deadlines imposed by immigration courts. The proposed changes are welcome, but they reduce the burden on applicants only at the margins.

In light of LAS's serious concerns about the burdens placed on applicants by this form, we have identified certain issues and recommendations for the form and instructions. Additional changes in the instructions may be needed in order to ensure consistent implementation of the recommendations.

#### Recommendations Regarding the Instructions

- The instructions do not specify what type of signature would be accepted with the interpreter certification. This is an issue for applicants who may use telephonic or virtual language interpretation.
- On page 10, under "What Is the Filing Fee," the instructions note twice, in quick succession, that the filing fee and biometric services fee are not refundable. One of those mentions can be removed from the instructions.

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<sup>1</sup> The Cato Institute reports that from 2003 to 2022, "the total length of USCIS immigration forms grew from 193 pages to 701 pages—an increase of 501 pages," not including the length of form directions. *See* David Bier, USCIS Has Added 500 Pages to Its Immigration Forms Since 2003, *Cato Institute*, [www.cato.org/blog/uscis-has-added-500-pages-its-immigration-forms-2003](http://www.cato.org/blog/uscis-has-added-500-pages-its-immigration-forms-2003). According to Bier, the vast majority of these increases have reflected agency discretion, rather than new legislation. *Id.*

- We recommend that USCIS elaborate on Point 1 of “How to Check if the Fees Are Correct.” The current instructions do not easily lead to clear and obvious information about the latest cost of this specific form. This lack of clarity could create unnecessary costs for applicants and complicate the filing process for both applicants and the adjudicating agency.

#### Recommendations Regarding Part 6. Information About Your Family and its Instructions

- The instructions for this section of the form should indicate whether applicants are expected to include information about deceased family members. If that is required, the instructions should specify how to indicate if the family member is deceased.
- To be inclusive of nonbinary individuals, Item Numbers 1.-56 of the instructions should read, “Provide information about your spouse, all children, and your parents, including *their* current legal name, A-number, USCIS online account number, date of birth, country of birth, country of citizenship or nationality, and physical address…”, rather than using “his or her”.
- “X” should be an option to check-off as a gender everywhere that gender specifications are requested on this form so that it may align with the laws of certain states of the United States.
- The placement of the subheadings for “other information for” various family members in this section of the form is confusing. The information should be streamlined so that all the questions regarding the applicant’s spouse come under the sub-heading, “Information About Your Spouse.” The sub-sections for each child and each parent should be formatted the same way so that all the questions about Child 1 are under the sub-heading, “Information for Child 1,” which can be printed in pale grey similarly to how “other information for Child 1” currently appears. All information for Child 1, including their legal name would then appear under the subheading etc.

#### Recommendations for Part 3. Information About Your Criminal Convictions and Part 7. Other Grounds For Removal

- The questions around the criminal convictions, grounds of removability, and discretion require legal analysis. The formatting and phrasing of this form may be prohibitively complicated to individuals completing this form pro se. This confusion may give rise to discrepancies and possible mischaracterizations that could be detrimental to the applicant.
- We recommend the questions requiring listing criminal convictions in part 3 and part 7 be streamlined into a request for the applicant to attach a criminal history chart. This would allow for more clarity and ease for both the applicant (particularly pro se applicants) and the adjudicator. It would also shorten the length of the form and, often, the time necessary to complete it since applicants who are in removal proceedings often have to prepare a criminal

history chart. *See Sample Criminal History Chart, Immigration Court Manual, Appendix O, www.justice.gov/eoir/office-chief-immigration-judge-1.* We recommend adding a question where the applicant can affirm, “I am seeking a waiver of removability for any conviction that may render me removable.” This would also prevent accidental discrepancies and mischaracterizations for individuals completing this form pro se.

- We also recommend narrowing the scope of the criminal contacts with law enforcement that this form requests the applicant to list in part 7 question 2. Listing and providing a full explanation of every arrest, citation, detainment, or investigation the applicant was involved in and requiring “an original official statement by the arresting or detaining agency or applicable court order confirming that no charges were filed” is unduly burdensome. The request for an original official statement regarding foreign criminal contacts may not be possible for certain applicants because of their relationship to the country where the contact took place. Applicants who fear returning to their home country may have good reason not to request such documents from their home country. Even individuals who do not have such a fear are likely to find this request very burdensome. Additionally, given the difficulty of establishing the reliability of foreign documents, it is unclear that these documents would be helpful to USCIS. This requirement can be burdensome even in U.S. jurisdictions, particularly where criminal records have been sealed, archived, or destroyed.

#### Recommendations for Part 8. Discretion

- The instructions should specify that the applicant is welcome to include information about the lawful status of their spouse, children and parents.
- The instructions should also include an non-exhaustive list of the types of evidence that would highlight the provided list of favorable factors in the applicant’s case.

Thank you, in advance, for your consideration of these comments and recommendations.

Respectfully submitted,

By:



Adriene Holder, Attorney-in-Charge, Civil Practice  
Deborah Lee, Attorney-in-Charge, Immigration Law Unit  
Jennifer Durkin, Deputy Attorney-in-Charge, Immigration Law Unit  
Julie Dona, Supervising Attorney, Immigration Law Unit  
Olivia Adechi, Paralegal, Immigration Law Unit

THE LEGAL AID SOCIETY  
199 Water Street, 3<sup>rd</sup> Floor  
New York, New York 10038