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Comment Submitted by Neighborhood Defender Service of Harlem

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i-191 comment

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NEIGHBORHOOD DEFENDER SERVICE OF HARLEM

COMMENT ON REVISION OF CURRENTLY APPROVED COLLECTION: APPLICATION FOR RELIEF UNDER FORMER SECTION 212(c) OF THE IMMIGRATION AND NATIONALITY ACT

Neighborhood Defender Service of Harlem (NDS) is a community-based public defense office serving the residents of Northern Manhattan. NDS provides holistic services and advocacy for clients in courthouses across New York City including criminal court, family court, housing court, and civil court, as well as in immigration and custody proceedings and affirmative immigration applications. NDS's Immigration Defense Team provides a full breadth of immigration legal services but prioritizes representation of noncitizens with a criminal history or facing current criminal charges. Many of NDS's clients have been beneficiaries of relief under former Section 212(c).

NDS supports many of the proposed revisions to Form I-191 in order to make this important form of relief more accessible. However, NDS also urges DHS to propose additional regulations that would make relief under Form I-191 more expansive.

First, the proposed revisions to Form I-191 Sections 9, 10, and 11 promote clarity that will reduce the burden on applicants and enhance accessibility for immigrants like NDS's clients. First, the proposed revisions to Part 9 of Form I-191, "Contact Information, Certification, and Signature" and the corresponding instructions should be adopted because it minimizes the burden to applicants, by eliminating confusing language and promotes utility by focusing the requested information on the applicant, collecting only information that is both useful and necessarily for capturing the signature and contact information of the applicant or their guardian. The purpose of Part 9 is to collect the signature and person information of the application. However, current language confuses this simple purpose in that it uses complex language and references a preparer and interpreter, despite the fact that this information is collected in Parts 10 and 11 respectively. Removing this redundant, confusing information and streamlines the provision of information for the applicant, while ensuring relevant information is still collected.

Second the proposed revisions to Part 10 of the Form also streamline the collecting of pertinent information and reduce the applicant's burden. Part 10 is designed to collect the "Interpreter's Contact Information, Certification, and Signature." The proposed revisions would eliminate the need to provide the Interpreter's Mailing Address. This revision eliminates the impractical, unnecessary collection of information that has no bearing on the determination of a lawful permanent resident's application for relief. Providing only an email address and phone number is sufficient should contact be necessary in order to verify information.

Third, Part 11, "Preparer's Mailing Address," will benefit from the proposed revisions. Collecting the Preparer's Mailing Address has limited utility in that it has no bearing on the determination of the applicant's eligibility for relief. Collecting this information only creates additional, undue burden for applicants. The proposed revisions reduce this burden and clarify the understanding of the information to be provided.

While the proposed revisions to Form I-191 are in large part beneficial to applicants like NDS's client, the one proposed revision NDS opposes is the elimination, in Part 11, of the warning to attorneys who act as a preparer for an applicant. This warning instructs attorneys and accreditive representatives that a G-28 Notice of Appearance may be required. Failure to include this warning may result in the unnecessary denial of applications, creating an additional administrative burden for USCIS and unfairly prejudicing applicants.



NEIGHBORHOOD DEFENDER SERVICE OF HARLEM

In addition to the proposed revisions, NDS calls on DHS to propose a new regulation that adopts the language of former Section 212(c) to provide relief for Lawful Permanent Residents convicted of a crime after April 1, 1997. Currently, Section 212(c) relief is limited to Lawful Permanent Residents who were convicted of or pled

guilty to a crime before April 1, 1997. For those who qualify, this is an effective avenue of relief. For example, many of our clients are decades-long Lawful Permanent Residents, parents and grandparents of U.S. citizens, who have only a single drug conviction from the 1990's, sometimes only due to being at the wrong place at the wrong time near the site of a drug sweep; whether they even have the *chance* to apply for relief from removal often depends on the arbitrary factor of whether the conviction was prior to April 1, 1997. The effectiveness of this relief is supported by data. In 1989 to 1995, about 51.5% applicants were approved, resulting in over 10,000 instances of relief granted. In 2004 to 2008, approximately 7,000 applications for 212(c) relief were granted. In that time frame, 212(c) relief held about one third of the relief from removal granted to Lawful Permanent Residents, other than grants of asylum. Reopening this avenue of relief through new regulation could make a significant difference for longtime Lawful Permanent Residents facing removal.

Expanding the opportunity for relief under Section 212(c) is particularly crucial as criminal and immigration enforcement become every more intertwined. Coinciding with the repeal of Section 212(c), more grounds for removability were applied against people convicted of criminal offenses. These changes in the law were a response to growing national resentment toward noncitizens and a "tough on crime" approach which has proved largely ineffective. As a result, more people than ever are swept into the criminal justice system, and more noncitizens than ever face separation from their homes, families and communities as a result of these often symbiotic systems. Under these circumstances, the opportunity for relief under an expanded 212(c) is ever more pressing.