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June 24, 2024

Submitted through: https://www.regulations.gov/docket/USCIS-2005-0024/document

Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

RE: Comment in response to DHS/USCIS Doc. No. 89 FR 30388 Revision of a Currently Approved Collection: Biographic Information (for Deferred Action); OMB Control Number 1615-0008; Docket ID USCIS-2005-0024

Dear Chief Deshommes:

The AFL-CIO is a federation of 60 unions that represents 12.5 million working people. We strive to ensure that every person who works in this country receives decent pay, good benefits, safe working conditions and fair treatment on the job. Our members work in every state in the union and in every sector of the economy. We represent working people with all types of immigration status, including undocumented workers, deferred action and TPS recipients, guestworkers, lawful permanent residents, refugees, and citizens.

We submit the following comments with regards to DHS's proposed revisions of Form G-325A, "Biographic Information (for Deferred Action)." Because of our deep engagement with Labor Investigation-Based Deferred Action ("LIB-DA"), the AFL-CIO and our affiliated unions have a vital interest in ensuring that Form G-325A—and the underlying application process for LIB-DA—is maximally streamlined and minimally burdensome for our members.

We agree with DHS that a modernization of Form G-325A is appropriate at this time, and hope that DHS will consider our proposals to reduce barriers to applying by eliminating the filing fee for employment authorization, reducing or removing questions requesting unnecessary biographic information, and providing for a simplified form for renewal requests.

I. LIB-DA and the AFL-CIO's Interest

All of our members, regardless of their immigration status, depend on the ability of the U.S. Department of Labor ("DOL"), the National Labor Relations Board ("NLRB"), the Equal Employment Opportunities Commission ("EEOC") and their state and local counterparts to enforce our nation's labor and employment laws. These agencies protect and vindicate our members' core rights to organize collectively and join a union, to work at job sites that are free of discrimination, and to enjoy the basic standards guaranteed by wage-and-hour and occupational safety law.

But these agencies cannot do their work alone. Workers and their unions are on the front lines of enforcement, and play an active role at every stage of an investigation and enforcement action, including reporting the initial violation, providing key factual information to agency investigators, testifying at evidentiary hearings, and monitoring compliance with any judgment or settlement. When workers do not feel empowered to participate at every stage of this process, our labor and employment laws are under-enforced, allowing unscrupulous employers to abuse their employees and providing them with an unfair advantage over law-abiding businesses.

The AFL-CIO and our affiliates have long recognized the challenges of enforcing labor and employment law at worksites with a significant immigrant workforce. Even when violations are egregious, immigrant workers are often reluctant to report violations or cooperate with investigations because they fear immigration-related retaliation. [1] Unfortunately, we have found that businesses that violate workers' basic labor rights also have no compunction in threatening those same workers on account of their immigration status. These threats are potent and they affect not only undocumented workers, but also those on temporary employment visas who are tied to their employers.

In recognition of this reality, DHS has recognized that it has an important role to play in supporting its peer agencies' efforts to enforce labor law. While the agency has long had a practice of considering requests for deferred action submitted by noncitizen workers involved in a labor investigation or enforcement action, the process was often opaque to labor agencies and workers alike. To streamline this procedure, DHS has implemented important process enhancements, replacing a system of *ad hoc* adjudication at individual USCIS field offices with an efficient centralized intake process that allows for concurrent filing of a Form I-765, and providing clear guidance to labor agency partners about the minimum requirements necessary to issue a Statement of Interest.

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[1] DHS shares the AFL-CIO's understanding, noting that "workers are often afraid to report violations of law by exploitative employers or to cooperate in employment and labor standards investigations because they fear removal or other immigration-related retaliation by an abusive employer." U.S. Dep't of Homeland Security, Press Release, "DHS Announces Process Enhancements for Supporting Labor Enforcement Investigations," (Jan. 23, 2023) https://www.dhs.gov/news/2023/01/13/dhs-announces-process-enhancements-supporting-labor-enforcement-investigations (hereinafter, "DHS 2023 Press Release").

Over the year-and-a-half since these process enhancements were announced, the AFL-CIO and our affiliates have supported hundreds of workers through their request for LIB-DA and have extensive experience with Form G-325A and all aspects of the LIB-DA application process. In revising Form G-325A, we urge DHS to consider how to best effectuate Secretary Mayorkas's conception of LIB-DA as "encouraging all workers to assert their rights, report violations they have suffered or observed, and cooperate in labor standards investigations," with an aim of "effectively protect[ing] the American labor market, the conditions of the American worksite, and the dignity of the workers who power our economy."[2]

To make Secretary Mayorkas's vision a reality, DHS should make applying for LIB-DA a minimally burdensome process that supports, rather than chills, worker participation in labor agency processes. We offer the following comments to assist DHS in determining what information should be collected on Form G-325A and in administering LIB-DA more broadly.

II. DHS's Proposal Allowing Requestors to Apply for EADs Using Form G-325A

Part 3 of DHS's proposed revision of G-325A allows a requestor to indicate whether they are requesting an employment authorization document ("EAD") upon being granted deferred action. The proposed revised instructions clarify that requestors who check "yes" in response to this question are given the option to forgo filing a separate Form I-765. Furthermore, requestors choosing to use Form G-325A for this purpose are asked to answer questions concerning their economic need for employment authorization, thus obviating the need to file a separate Form I-765WS.[3]

As a general matter, the AFL-CIO applauds this initiative, and believes that allowing requestors to forego filing Form I-765 will significantly reduce burdens. We offer the following comments to further streamline the process.

A. DHS Should Revise Part 3 to Allow for the Collection of Information Necessary for the Social Security Administration to Issue Social Security Numbers

We note that those individuals who have never previously been issued work authorization typically use Form I-765 to request a Social Security Number ("SSN") for the first time (by answering the questions in Part 2, Questions 12 through 17, of that form). In addition to providing information that is necessary for the Social Security Administration ("SSA") to generate a SSN, such as the name of the applicant's mother and father, applicants filling out Form I-765 must expressly consent to the disclosure of the information submitted via the form to the SSA (Question 15).

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[2] DHS 2023 Press Release.

[3] Although this may be obvious by implication, DHS may wish to specifically state in the Form Instructions that filling out Part 3 of Form G-325A permits requestors to forego filing Form I-765WS as well as Form I-765.

If DHS will be streamlining its EAD application process for LIB-DA requestors via Form G-325A and allowing such requestors to forego filing Form I-765, it is crucial that the agency collect the information required to automatically request a SSN and secure the necessary consent to share information with SSA for the automatic production of a Social Security card.[4] If Form G-325A fails to include these questions, requestors would have to separately apply for a SSN with the SSA after being granted deferred action, which would be unnecessarily burdensome and contrary to DHS's goals of reducing barriers towards applying.

Accordingly, we recommend that DHS reproduce Questions 12 through 17 of Part 2 of Form I-765 in Part 3 of the revised Form G-325A.

B. DHS Should Waive EAD Filing Fees for LIB-DA Requestors

Although Form G-325A allows LIB-DA requestors to forego filing Form I-765, the revised form instructions make clear that DHS continues to expect such requestors to pay the applicable filing fee (currently $520), or apply for a fee waiver via Form I-912.

We urge DHS to reconsider this position, which is inconsistent with the agency's approach for employment authorization incident to other benefits implicating law enforcement interests, such a U and T visas, and other humanitarian relief, such as Violence Against Women Act ("VAWA") self-petitions, Special Immigrant Juvenile Status ("SIJS") and asylum, all of which are fee-exempt. DHS must recognize that LIB-DA requestors, by definition, are victims of or witnesses to violations of important federal and state laws and are therefore often—indeed, almost always—economically vulnerable.

Requestors' ability to pay the required fee is frequently constrained by the very situations that gave rise to their eligibility for LIB-DA, which include, but are not limited to, wage theft, discriminatory dismissals, and even labor trafficking. Labor agencies need the full participation of all workers who have information about workplace violations to feel empowered to participated in their investigations—not only those who can afford an EAD filing fee. Maintaining a filing fee for this population necessarily dissuades some workers covered by Statements of Interest from applying and therefore undermines the efficacy of the labor investigations of DHS's partner agencies.

Additionally, DHS should recognize that—unlike U or T nonimmigrant status—LIB-DA is not a benefit or incentive for an individual who has been helpful with a law enforcement investigation or who was a victim of human trafficking; instead, it is a temporary protection available only to workers whose cooperation is necessary to support a labor agency's ongoing investigation. In other words, time is of the essence—if workers are unable to promptly gather

[4] We note that the proposed revised Form G-325A does request information about the requestor's mother and father, but does so in Part 1 of the form. To the extent that SSA needs this information to generate a SSN, DHS should ensure that it is immediately able to share such information with SSA based on its current placement on the form.

the appropriate fee to apply for an EAD, they will not be able to access the protection that the labor agencies have deemed necessary for them to fully participate in their investigations.[5]

In its recent Final Rule on fees, DHS recognized that fee exemptions are appropriate for applicants who are "particularly vulnerable as victims of abuse . . . because of this victimization, many will lack the financial resources or employment authorization needed to pay for fees related to immigration benefits." U.S. Dep't of Homeland Security, "U.S. Citizenship and Immigration Services fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 89 Fed. Reg. 6194, 6267 (Jan. 31, 2024). On this basis, DHS stated that it "believes that replacing fee waivers with additional fee exemptions removes barriers for applicants who are similarly situated in terms of financial resources and employment prospects." *Id.* at 6268. Indeed, DHS reached this conclusion even for U nonimmigrants who may maintain employment authorization for a long period of time, recognizing that "the impact of victimization can be lasting and far-reaching, even after the events giving rise to U nonimmigrant status eligibility have concluded." *Id.* at 6269. Because LIB-DA requestors are similarly victimized but enjoy far shorter periods of work authorization, the argument for exempting them from fee payment is arguably even stronger than for U and T nonimmigrants.[6]

III. Reducing Burden and Collection of Unnecessary Biographic Information

In determining which information to collect on Form G-325A, the AFL-CIO urges DHS to consider the following factors. First, DHS should avoid collecting extraneous information that is unnecessary to prove identity or nationality, eligibility for the type of deferred action requested, or its case-by-case exercise of discretion. Second, DHS should take into consideration the unique characteristics of the population applying for LIB-DA.

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[5] We recognize that, in theory, a worker can apply for LIB-DA for free while filing Form G-325A, without requesting employment authorization. In our practical experience and that of our affiliates, having an EAD and SSN are as important, if not more important, to workers' willingness to participate in a labor investigation than the underlying grant of deferred action. Without an EAD, employers could undermine labor investigations by simply discharging worker-witnesses under a claim that they "discovered" that they are not eligible to work.

Moreover, DHS recognizes the integral importance of employment authorization for the support of labor investigations by *requiring* noncitizens requesting LIB-DA through the centralized intake process to concurrently apply for employment authorization. *See* "DHS Support for the Enforcement of Labor and Employment Laws," https://www.dhs.gov/enforcement-labor-and-employment-laws (last accessed June 24, 2024) (Question 5 of FAQs).

[6] Furthermore, our experience demonstrates that LIB-DA requestors who should qualify for a fee waiver because their income is lower than 150 percent of the Federal Poverty Guidelines are regularly unable to access this relief from filing fees because of their inability to meet the documentary requirements imposed by Form I-912. Employers engaged in wage theft, worker misclassification, and other violations of federal and state labor laws regularly fail to provide this class of employees with paystubs or appropriate W-2 or 1099 tax forms.

In this vein, we strongly encourage DHS to eliminate or modify Questions 26 and 28 in Part 1 of the proposed revised Form G-325A, which asks requestors to provide their previous addresses and employers for the last five years.[7] We recommend that Question 26 be eliminated entirely, insofar as Questions 2 and 3 already ask requestors to provide their current physical and mailing addresses, while Question 28 be modified to ask requestors to provide information about their employer listed in the Statement of Interest only.[8]

There are three reasons for this recommendation. First, collecting information about prior addresses or employers unrelated to the Statement of Interest appears to be wholly extraneous to the LIB-DA application. To our knowledge, DHS has not relied on prior address or employment history to make a positive or negative discretionary assessment in any deferred action case, nor is it clear how or why it might do so. To the extent that an individual requestor wishes to provide evidence of other employment history as a favorable equity, they are free to do so, insofar as the application does not limit them from submitting any form of evidence. Nor does this information appear relevant in establishing the identity of the requestor, which is far more readily established by requiring the submission of identity documents and biometric checks.

Second, the collection of this information is burdensome for workers and the labor rights advocates who support them through the LIB-DA process. In our experience, noncitizen workers who lack employment authorization often work numerous informal or short-term jobs, which are difficult to account for over a five-year period. This is particularly true in the construction and building trades, where short-term projects and frequent turnover are the norm regardless of immigration status. Many of the cases that we have supported with our affiliates arise from this industry, and reconstructing an employment history for the purpose of the current Form G-325A is often a tedious and time-consuming process.

We also urge DHS to take into consideration the underlying purpose of LIB-DA and the unique structure of the program. A Statement of Interest is coterminous with a labor agency's interest in a given labor investigation or enforcement action, and typically covers all workers who are potential victims of or witnesses to the labor law violation alleged. In order for LIB-DA

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[7] We applaud DHS's decision to eliminate the questions concerning the requestor's last address and occupation outside the United States, which are similarly irrelevant to the form of deferred action requested.

[8] Asking for information about the "current employer" will often provide inaccurate or irrelevant information for LIB-DA purposes, because requestors may have been discharged or otherwise left the employment of the employer subject to the labor investigation or enforcement action, yet nevertheless be victims of or witnesses to violations of law and be covered by the labor agency Statement of Interest.

For categories other than LIB-DA, the AFL-CIO recommends that Question 28 be eliminated wholesale, insofar as the identity of any employer (including a current employer) does not bear on a requestor's eligibility for any other form of deferred action nor is it relevant to DHS's case-by-case exercise of discretion.

to meet the labor agency's investigatory and enforcement interests, it must be applied for and granted quickly, so that the workers the labor agency needs are able to fully participate at all stages of the investigation. These factors often put labor unions, workers' centers, and other workers' rights advocacy groups—all organizations that typically do not have immigration attorneys on staff—in the position of assisting in the filing of significant numbers of LIB-DA applications over a truncated period of time. This differs markedly from other victim-oriented benefits applications, such as VAWA, U and T visas, which are typically applied for by an individual applicant with the assistance of an immigration attorney, and are not subject to the time pressure of supporting an ongoing investigation.

While some of our affiliates have referred workers to immigration attorneys or otherwise provided them with counsel, the resource constraints in doing so are significant, especially when a Statement of Interest relates to a broad investigation that implicates a large number of workers. To meet this need, we have supported many affiliates and their local unions in organizing events on a clinic model, which allow workers to request LIB-DA *pro se* with the aid of non-attorney preparers under attorney supervision. The reports from such clinics are consistent: the questions concerning 5 years of employment and address history consume an inordinate and disproportionate period of time and reduce the number of workers that each preparer can assist, thereby limiting the efficacy of DHS's efforts to support its labor agency partners.

Third, given the temporary nature of LIB-DA relief, which currently limits initial grants to 2 years, requesting extensive information about prior employment and addresses has a chilling effect on certain workers' willingness to apply for the program. Even when assured that the Administration's enforcement priorities would preclude such targeting, some workers fear that noncitizen family members or acquaintances living at past addresses might be singled out for DHS enforcement, that prior employers might be questioned or subject to an audit for employing unauthorized workers, or that they themselves might suffer adverse consequences for disclosing unauthorized work.[9]

Accordingly, given that this information would appear to be of exceedingly limited value to DHS, that its collection is burdensome for the LIB-DA requestor population, and that it tends to have a chilling effect on workers otherwise eligible to request LIB-DA, we encourage DHS to eliminate or modify Questions 26 and 28 in Part 1 of the proposed revised Form G-325A.

[9] We recognize that certain common forms, such as Form I-589 and Form I-485, request similar biographic information. However, both asylum and adjustment of status, if granted, are permanent forms of relief, and applicants would reasonably weigh the risks of disclosing biographic information differently for a temporary protection that is limited to the period of time of a labor agency's investigatory or enforcement interest. Moreover, many common forms, such as Form I-821 (Temporary Protected Status) and Form I-918 (U Nonimmigrant Status), do not require collection of this information.

IV. Simplified Form for Renewals or Subsequent Grants of LIB-DA

DHS has recently issued guidance on subsequent requests of LIB-DA beyond the initial 2-year grant period, which can be requested on the basis of an updated labor agency Statement of Interest. According to the DHS Frequently Asked Questions ("FAQs") on the subject, noncitizens requesting such grants must submit, among other documentation, a fully completed Form G-325A.[10] We believe that for subsequent or renewed grants of LIB-DA, this is duplicative, and encourage DHS to consider instituting a simple renewal form that omits questions about biographic information that is already in DHS's possession.

Specifically, such a simple renewal form could retain Part 1, Questions 1 through 9, and Parts 2 through 5, but omit Part 1, Questions 10-28. Questions 1 through 9 identify the requestor's current address and contact information, and provide basic biographic information necessary for identification purposes. Questions 10-28, in contrast, request information about the requestor's family, employment, and mode of entry that would already be within DHS's possession based on the initial approved request for LIB-DA. Accordingly, the collection of such information is burdensome and would unnecessarily tax the resources of labor unions and other workers' organizations that are supporting labor agency investigations and enforcement actions.[11]

V. Requested Clarifications

Finally, the AFL-CIO requests that DHS clarify the role of Part 2, Question 8, which requests a brief statement as to why the request for deferred action should be considered and why the requestor warrants deferral of removal as a matter of discretion.

We do not oppose the inclusion of this question, but observe that currently, DHS instructs LIB-DA requestors to submit "a written request signed by the noncitizen stating the basis for the deferred action request." We recommend that DHS expressly clarify on its webpage and/or in the form instructions that the submission of a signed Form G-325A with an articulated basis for a grant of LIB-DA satisfies the requirement for a "written request signed by the noncitizen," and refrain from requiring an additional separate statement, as this would be duplicative.

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[10] *See* "DHS Support for the Enforcement of Labor and Employment Laws," https://www.dhs.gov/enforcement-labor-and-employment-laws (last accessed June 24, 2024).

[11] Questions 21 through 25 ask about the Requestor's current spouse; to the extent that this information has changed since the initial filing, a Requestor could be given the option to provide it.

Furthermore, we recognize that Questions 26 and 28 ask about prior addresses and employment history, which might change between the approval of an initial request for LIB-DA and the submission of a subsequent requests. However, for the reasons articulated in Section III, we believe these questions are *per se* burdensome and should be eliminated or modified.

The AFL-CIO thanks DHS for the opportunity to comment on Form G-325A and for its leadership in supporting the enforcement of our nation's labor and employment laws through its commitment to LIB-DA. We hope that the revision of Form G-325A will continue to reflect the agency's intent to implement a streamlined and efficient framework for processing these vital requests.

Sincerely,

/s/ Andrew Lyubarsky

Associate General Counsel

AFL-CIO