TULANE LAW SCHOOL

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*Submitted via regulations.gov*

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**Re: Comment on USCIS-2005-0024 (Revisions to Form G-325A)**

Dear USCIS:

I write to provide comments on the proposed revisions to Form G-325A, Biographic Information for Deferred Action. I am the director of the Tulane Immigrant Rights Clinic, and I have assisted clinic clients in filling out this form for the purposes of applying for deferred action based on labor enforcement. I also provide training and technical assistance to other attorneys and advocates working on deferred action for labor enforcement, both by myself and in partnership,[1] and so my comments are additionally based on this experience assisting others in this field.[2]

I applaud DHS's initiative to consolidate the forms required for deferred action for labor enforcement by integrating the necessary questions from the I-765 and the I-765WS into a revised G-325A. Filling out a single form to request deferred action as well as employment authorization is more efficient for applicants and their attorneys and should also be more efficient for the agency. Requiring three separate forms is cumbersome and time-consuming for attorneys and applicants, where basic information about the applicant must be entered multiple times. The separate forms also introduce more possibility for errors across the forms, such as a typo in name or birthdate, that can delay processing or result in an employment authorization document that replicates the error, which takes many months to correct. A single consolidated form reduces the chance for error and saves time for all stakeholders.

[1] *See generally* Mary Yanik, Jessica Bansal, Ann Garcia, & Lynn Damiano Pearson, Practice Manual: Labor-Based Deferred Action (March 24, 2023), https://nipnlg.org/work/resources/practice-manual-labor-based-deferred-action.
[2] I provide my comments related to my experience as a practicing attorney and am not representing the views of Tulane University.

The proposed revisions to the G-325A also aim to include the written request from the deferred action applicant as part of the G-325A. I suggest first that this requirement be eliminated entirely from deferred action applications. Even though this requirement is included in DHS's Frequently Asked Questions on DHS Support for the Enforcement of Labor and Employment Laws,[3] it is a source of great confusion in the field. This is an unusual requirement in immigration benefit applications. I am not aware of any other immigration benefit that requires a separate written statement from the applicant that provides reasons for seeking immigration protection. Other temporary humanitarian relief, such as temporary protected status or humanitarian parole, do not require a separate written statement from the applicant. Because this requirement is unusual, it is often overlooked, even by experienced immigration attorneys. This has resulted in rejected applications, which frustrates workers who are urgently seeking this protection as well as their advocates.

Further, the requirement of a written request for deferred action from the applicant does not yield information that is useful to the agency's case-by-case weighing of the equities. Applicants for deferred action usually seek this protection for the same valid and predictable reasons that are shared by most other eligible workers: they do not want to be deported, they want to stay with and provide for their families, they want to contribute to their community, they want to seek justice for labor violations committed against them, and they want to assist in labor agency investigations or compliance. But these reasons are evident from the application and can be appropriately weighed without requiring a separate written statement. Every application for deferred action for labor enforcement is accompanied by other evidence, including at a minimum evidence of employment, labor agency Statement of Interest, proof of identity, and some biographic information. So, the minimal information the agency receives from an applicant's written request for deferred action is not adding novel information relevant to its weighing of the equities. And eliminating the requirement for a separate written statement in each application would not in any way bar applicants from conveying additional and unique reasons through an optional separate statement, through a cover letter written by the representative or applicant, or through additional evidence.

Therefore, I ask that the agency to consider eliminating this requirement in its entirety. If DHS is not able to eliminate this requirement, then the second-best option is to integrate this requirement into the G-325A, as the proposed revision seems to do, to reduce the confusion in the field that is resulting in rejected applications and delayed protections for workers needed in labor agency investigations.

Along the same lines, I ask that the agency eliminate or reduce the voluminous biographical information that is required on the current G-325A, specifically, the five years of address and work history. These fields are burdensome on applicants and attorneys. The low-wage workers that are most likely to suffer labor exploitation and therefore are most in need of deferred action protections typically have informal employment, working for one or more contractor and sometimes on-and-off over a period of weeks or months. These employers do not have fixed addresses and informal employment of this nature often does not have a clear start and end date, as

[3] DHS Support of the Enforcement of Labor and Empoyment Laws, Dep't Hom. Sec. (last updated: April 11, 2024), https://www.dhs.gov/enforcement-labor-and-employment-laws.

is required by this form. Low-wage workers struggle to remember in a linear fashion their address and work history over so many years, which means that it may take hours of careful questioning from an attorney to elicit accurate information. This delays applications and undermines DHS's policy objective of providing "streamlined" protections to workers assisting labor investigations.[4] And this significant burden on applicants and those assisting applicants is not worth the information obtained, since address and work history are rarely relevant to weighing equities in these cases. The current revisions retain all of these fields, without explanation and in addition to adding new fields to integrate information needed for employment authorization. Instead, DHS should request only current address and current employment.

Finally, I urge the Department to consider exempting the revised G-325A from the filing fee associated with applications for employment authorization. Under the latest fee schedule, the fee for seeking employment authorization has risen to $520.[5] This is cost prohibitive for every eligible worker that I have personally encountered, the vast majority of whom are low wage workers. I have personally assisted or witnessed workers apply for deferred action for labor enforcement based on experiencing severe wage theft, wage discrimination, unlawful withholdings, and retaliatory firings. They are often applying for this protection in the most economically precarious moment of their lives.

While the availability of an individual fee waiver offers some relief, it is insufficient. The fee waiver form is longer than every other form currently required in this application, combined. The documentation required to support a fee waiver request is often not available. Immigrants in the Deep South, where I practice, are never eligible for any means-tested benefits that would qualify them for a fee waiver. And the documentation to show income below 150% of the federal poverty line is also often elusive: workers are sometimes paid off the books, in cash, and cannot ask their employer to verify their income because, for instance, their employer is under investigation by the labor agency and already poised to retaliate against any worker who seems to be cooperating. The remaining ground, financial hardship, requires even more extensive documentation for every significant monthly expense. I treat the financial hardship category of the fee waiver form as an absolute last resort because I often find that reviewing every monthly expensive is retraumatizing for workers who have just lost their job and fear facing the financial needs of their family in a moment of crisis, all wrought by the employer's unlawful conduct. Therefore, the workers who are eligible for deferred action may not be able to produce the evidence to demonstrate that they qualify for fee waiver. This also delays the filing of applications, as workers attempt to find supportive evidence or borrow from friends or family to pay the application fee. Eliminating the fee required for deferred action for labor enforcement would alleviate this significant hardship and also serve the purpose of the streamlined protections in facilitating the timely participation of witnesses in labor enforcement.

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[4] DHS Announces Process Enhancements for Supporting Labor Enforcement Investigations, Dep't Hom. Sec. (Jan. 13, 2023), https://www.dhs.gov/news/2023/01/13/dhs-announces-process-enhancements-supporting-labor-enforcement-investigations (announcing the new "streamlined and expedited deferred action request process").

[5] And since there is no way to seek deferred action for labor enforcement through an online filing, these applicants can not benefit from the online discount.

Thank you for considering my comments and all of your work on this important initiative to facilitate labor enforcement. If I can be of further assistance, I can be contacted at myanik@tulane.edu or (504) 865-5153.

Best,

Mary Yanik