

To: United States Citizenship and Immigration Services

From: United We Dream, National Council of La Raza, National Immigration Law Center, and the Asian American Center for Advancing Justice

Re: Form I-821D

Date: October 11, 2012

Please see the following comments from the United We Dream Network (UWD) regarding form I-821D for Deferred Action for Childhood Arrivals (DACA) applications. United We Dream is the largest immigration youth led network in the nation, with 47 affiliates in over 28 states. Since June 15, 2012, UWD has prepared and assisted the community to request for consideration for DACA through community forums, webinars, trainings, and group-processing workshops. Hundreds of members and volunteers have been trained to assist requestors with the I-821D forms, where appropriate.

We submit these comments, based on our experiences thus far, with an interest to make the online form as clear as possible for individuals who may fill it out pro se, or with the help of a preparer.

**These comments also incorporate the collective experiences of the National Council of La Raza, the Asian American Center for Advancing Justice, and the National Immigration Law Center. We hope that you consider these comments as you revise the DACA request form.*

Full Name (Part 1, Question 1)

We recommend that instructions indicate that a requestor should enter her legal name here (typically the name on the birth certificate, unless there has been a marriage or other name-changing event). We observe that some individuals who “Americanized” their name (by, for instance, dropping a second last name), are not sure about how to answer this question.

Removal proceedings information (Part 1, Question 3.a.)

Many requestors entered the United States at a young age, and are thus not be able to ascertain whether they have ever been in removal proceedings. Moreover, it is not clear whether someone who was subject to an administrative removal has “ever been in removal proceedings.”

Since the requestor population consists of young entrants, we recommend adding an additional choice (“I am not sure” or “I don’t know”).

U.S. entry information (Part 1, Questions 13, 14, and 15)

Requestors who entered the United States at a young age are sometimes not able to answer Questions 13, 14, and 15 based on personal knowledge. Many attorneys hesitate to classify a requestor’s initial entry as “EWI” without an opportunity to have a more in-depth conversation (which is often not possible in the context of group processing) about the circumstances of the entry. The hesitation stems in part from concern that a misclassification of the entry will prejudice a requestor’s eligibility for adjustment of status.

We recommend that requestors be permitted to answer “Unknown” if their age at the time of entry and other circumstances justify the answer.

Education Information (Part 1, Questions 18-20)

This part is confusing for many. It is not clear what college student or college graduate should answer. While we think that these questions are tied to the eligibility requirements, some requestors answer them as if they are simply eliciting current educational information.

For individuals who are currently enrolled in school, Question 20 is confusing because requestors don't know if they should enter the most recent date that they were in school or if they should leave it blank. Because the online form only allows for a response with a date, it does not allow individuals to reiterate that they are currently in school. We recommend adding an option "currently in school" or to clarify that the question can be left blank if you are currently in school.

Arrival / Residence information (Part 2, Questions 1.a. and 1.b.)

Question 1.b. is confusing to some requestors who mistakenly believe that "continuous residence" requires their presence in the United States every day since June 15, 2007. We worry a "no" answer prompted by such confusion may lead adjudicators to deny the request. After all, how can an adjudicator approve a request that affirmatively denies a question that is directly tied to an eligibility requirement?

In fact, we don't believe that questions 1.a. and 1.b. are necessary. The questions require the applicant to arrive at legal conclusions, and are superfluous in light of Part 1, Question 13, and Part 2, Questions 2 - 7.

Criminal, National Security and Public Safety Information (Part 3, Question 1)

1. We observe that some requestors are arrested for or charged with misdemeanor traffic violations that ultimately don't result in convictions. It is not clear whether such offenses need to be disclosed when no fine (or other punishment) was imposed. The italicized statement can lead to incongruous results: an individual arrested for or charged with such a misdemeanor need not disclose it, if it resulted in a fine; but would apparently need to disclose it if exonerated or punished by points or community service.

We recommend changing the italicized statement to read: "Do not include minor traffic violations unless it was alcohol- or drug-related."

In addition please clarify that juvenile dispositions are not convictions. This is a confusing question for those who do not know how to answer this question if they have a juvenile disposition.

2. A statement below Question 1 instructs requestors to "include copies of all arrest records, charging documents, dispositions (outcomes), sentencing records, etc." We believe that this instruction places a high burden on requestors. Requesting these documents from court often takes weeks, and we believe that in the vast majority of requests the entire court record will simply not be necessary. We understand that in other areas of immigration practice adjudicators only require the submission of dispositions in the first instance (reserving the right to request the entire record if the circumstance warrant). Requiring the submission of arrest is particularly problematic because (1) they are often difficult to obtain, and (2) they are generally inadmissible in removal proceedings.

We recommend altering the instruction to only require submission of a disposition.

Additional Information (Part 7, Question 2)

The numbering in this section is confusing to many. Requestors needing additional room for addresses/residences don't know how to identify which question on the request they are supplementing.

Signature of requestor (Part 4, Questions 2.a. and 2.b.)

We are concerned that high numbers of requests are rejected for lack of signature. We observe that it is sometimes difficult for requestors to identify the signature box in this form. Many requestors expect signature lines and boxes to be at the bottom of the form. We ask that you make the “Requestor’s Certification” section more prominent, possibly by relocating it to the very bottom of a page.

Forms I-821D, I-765, I-765WS, generally

When taken together, a few questions in the forms may cause inadvertent errors.

Form I-765 asks for manner of entry and current immigration status, while Form I-821D asks about status at entry. Moreover, Form I-765 asks about the last entry when I-821D asks for initial entry. In addition, there should be some added information /clarification on the I-765WS as many do not understand the economic necessity standard and what should be included in income, expenses, and assets. Many are supported by parents or family members and are unsure whether include their parents’ income, scholarships, expenses, and assets.

It would be helpful for USCIS to include instructions on what other helpful information can be included in addition to the reporting of the dollar amounts.