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## VIA ELECTRONIC SUBMISSION

February 12, 2013

Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Policy and Strategy  
Chief Regulatory Coordination Division  
20 Massachusetts Avenue NW  
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[uscisfrcomment@uscis.dhs.gov](mailto:uscisfrcomment@uscis.dhs.gov)

OMB Control Number: 1615-0124  
e-Docket ID Number: USCIS-2012-0012

Re: Comments on U.S. Citizenship and Immigration Services, OMB Control Number 1615-0124, Agency Information Collection Activities: Consideration of Deferred Action for Childhood Arrivals, Form I-821D, Revision of a Currently Approved Collection

Dear Sir or Madam,

Thank you for the opportunity to comment on the federal notice regarding Form I-821D, Consideration for Deferred Action for Childhood Arrivals (DACA).

The Immigrant Legal Resource Center (ILRC) is a national non-profit resource center that was founded in 1979 and provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC provides nationwide support, training, and information about immigration law and civil rights to advocates and the public. We serve as a bridge between advocates, attorneys, and community-based service providers and immigrants themselves. We have many existing connections with legal service providers and networks throughout the state, as well as those with community and legal advocates who are working on immigration issues. Specifically, in regards to DACA, we have conducted several legal trainings for practitioners, as well as several informational sessions and screenings for the immigrant community in the California Bay Area and Central Valley. Our attorneys have provided technical assistance to private attorneys, non-profit practitioners, and criminal defense attorneys across the nation on DACA-related issues. We have created and continue to maintain a local and nationwide listserv where practitioners are able to share comments and questions regarding the DACA request process. Recently, we published a national manual, *DACA: The Essential Legal Guide*, which is a comprehensive and practice-oriented overview of DACA and contains in depth discussion of the eligibility requirements, criminal bars, and the entire

process of representing a DACA applicant from the initial client meeting to the closing of the case.

We applaud many of the thoughtful suggested changes that clarify certain questions; but we are deeply concerned with the request to include juvenile records. We ask that you consider all of the following comments. Please note that we have also included the proposed changes here in bold.

### **Part 1, Question 2**

**U.S. Mailing Address (Enter the same address on Form I-765)**

The proposed change is good because it matches the proposed change for Question 3 of the Form I-765. If both proposed changes are implemented, both address questions will be the same and it will clarify that requestors do not need to write down their physical address if that is not also their preferred U.S. mailing address.

### **Part 1, Questions 3(a-d) [Removal Proceedings]**

3.a. Are you now or have you ever been in removal proceedings (**which includes exclusion or deportation proceedings initiated before April 1, 1997, an INA section 240 removal proceeding, expedited removal, reinstatement of removal, an INA section 217 removal after admission under the Visa Waiver Program, or removal as a criminal alien under INA section 238**), or do you have a removal order issued in any other context (for example, at the border or within the United States by an immigration agent)? If you answered “Yes” to the above question, you must check a box below indicating your current status or outcome of your removal proceedings.

#### **3.b. Status or outcome:**

- 1. Currently in Proceedings (Active)**
- 2. Currently in Proceedings (Administratively Closed)**
- 3. Terminated**
- 4. Subject to a Final Order**

#### **3.c. Date of Proceedings (mm/dd/yyyy)**

#### **3.d. Location of Proceedings**

The first part of the changes, i.e. the additional description of removal proceedings, is good because it clarifies what USCIS means by “removal proceedings.” The changes also clarify the four options that are available to the requestor under 3.b.

However, the options provided under 3.a. and 3.b. still do not cover incidents where the requestor does not remember or does not know if he or she has ever been in removal proceedings. Some of the requestors entered the United States or tried to enter when they were very young and do not remember or do not understand if they were ever subject to a removal order. Or maybe their parents have been in removal proceedings and the children do not know if they were included. For example, if requestors remember something happening at the border,

but they do not know for sure whether or not they were removed and they do not have any documents of such incident, once they check yes for 3.a. they must check one of the boxes in 3.b.

Therefore, we recommend a third option in 3.a. that states “other” so requestors can write in “I do not remember,” “I do not know,” or whatever other description that best explains their situation. Without an “other” option, these requestors are left confused whether they should mark “yes” or “no.” If they mark “no,” but in fact they have been in removal proceedings, the USCIS official may think they purposefully omitted information from the form. But if the requestor answers “yes” even though they have not in fact been in removal proceedings, it will raise false red flags for the adjudicator and it may affect the requestor’s DACA request.

### **Part 1, Question 9**

#### **Current Country of Residence**

This question would be further clarified if it stated in parenthesis after residence, “country where requestor currently resides” since it is confusing for many requestors if residence is the place where they live or where they have legal residency. Although adding “current” clarifies it for many advocates and practitioners, adding more information will make it clearer for those requestors that are submitting the requests on their own.

### **Part 1, sub-section on “U.S. Entry and Status Information”**

Question 15: Status **as of June 15, 2012.** (e.g., **Expired**, No Lawful Status, B2, F1, etc.)

Question 16.b. **If you answered “Yes”, provide** your I-94 number (if applicable)

The modification for Question 15 is good because it directly answers whether the requestor meets one of the eligibility requirements for DACA. If someone entered with a valid visa, they can write in/or choose “expired.” However, to make Question 15 even clearer, we recommend deleting valid visas as sample answers (“B2, F1”) to the question. If someone had a valid visa as of June 15, 2012, they will not be eligible for DACA. Having “B2” and “F1” as sample answers may confuse requestors that are applying on their own. With our recommended deletion, USCIS will still be able to make sure that the requestor did not have lawful status as of June 15, 2012 because USCIS is proposing to add “status of entry” in regards to the last entry to the Form I-765.

For Question 16.b, the proposed change clarifies that if the requestor has an I-94 and marks “yes” for 16.a, then they will need to provide their I-94 number for Question 16.b.

### **Part 1, subsection on Education Information**

Question 18: Education Status (e.g., *High School Graduate*, **Recipient of GED**, or **Currently in School**)

Question 20: Date of Graduation (e.g., Receipt of a **Certificate of Completion**, **GED Certificate**, or **other equivalent State-authorized exam**) or, if **Currently in School**, **Date of Last Attendance**

The proposed changes for Questions 18 and 20 are good in that the examples given match the possible answers a requestor could give. The examples added for Question 20 are good

because they expand on the various things that count as “graduation,” however, it is not clear whether people that are currently in school should write down the last date they attended class before filing their request (e.g. the day before) or if they can write in “present.” On the current form, the online version only lets requestors write in a date and “present” would have to be handwritten on the form. The form should be modified accordingly so requestors can write in a date or simply write in “present.”

### **Part 3, Question 1 [Criminal Offenses]**

Have you ever been arrested for, charged with, or convicted of a felony or misdemeanor in the United States? *Do not include minor traffic violations unless they were alcohol- or drugs-related. Do include incidents handled in juvenile court.* If you answered “Yes” you must also include copies of all arrest records, charging documents, dispositions (outcomes), sentencing records, etc., **unless disclosure is prohibited under state law.**

First, USCIS should not require applicants to include incidents handled in juvenile court because it is unfair, burdensome, and creates inconsistency amongst the states. Requiring disclosure of delinquency acts and records may be burdensome to DACA requestors and/or discourage them from applying altogether. Because juvenile delinquency occurs when individuals are under the age of 18 and in an unfamiliar legal setting, many individuals often do not understand what happened or what they may have been adjudicated delinquent of. In order to understand what they need to disclose, they may have to follow complex local procedures to obtain such information. If the individual discovers that the juvenile records are sealed, requestors may not receive any information regarding the nature of the juvenile adjudication and, therefore, not know what to disclose in the DACA request. The fear of not knowing what the juvenile record involved coupled with the real possibility that it could be used to deny a DACA request may therefore discourage a DACA-eligible person from applying altogether. Requiring requestors to disclose juvenile delinquency adjudications creates an uneven and burdensome result between applicants residing in different states of the United States.

Second, USCIS should not require applicants to submit arrest records or charging documents. This places a huge burden on requestors. USCIS should only require submission of dispositions and sentencing documents and no other records, especially not arrest records. Arrest records, may be difficult or impossible to obtain based on local and state laws and procedures. This may deter potential eligible requestors from applying. Finally, immigration case law including precedent from the U.S. Supreme Court generally does not allow for the consideration of police reports as they are not conclusive records of the underlying facts of a criminal conviction. USCIS should not request or review police reports when adjudicating a DACA request.

Third, although the proposed change provides an exception for requestors to not submit documents if disclosure is prohibited under state law, such as juvenile records, this proposal does not consider the differences between state laws and the possibility that DACA requestors may still unknowingly violate state laws. Under this proposed change some requestors will have to disclose their juvenile records, while others will not. This inconsistency amongst requestors from different states is grossly unfair. Some requestors will be protected from their state laws, while others will be out of luck and will have to submit records of their juvenile adjudications. This will inevitably lead to the uneven application of DACA requests nationally. USCIS should strive to make the DACA request review process as uniform as possible regardless of the differences

between state laws. Continuing to request juvenile records also will continue to facilitate unknowing violations of state laws by DACA requestors. Most immigration attorneys are unfamiliar with state juvenile confidentiality laws because this is not their legal area of expertise. If attorneys are unfamiliar with these laws and allow records to be legally and automatically disclosed to USCIS, then surely DACA requestors, most of whom are unrepresented, are unfamiliar with such laws and thus will unknowingly violate state laws in order to request DACA. For these reasons, we not only recommend that Form I-821D should be revised to delete the requirement of disclosure of the existence of juvenile adjudications, but also exclude the requirement of disclosure of juvenile records regardless of the applicable state laws.

Form I-821D should be revised to state “Do not include incidents handled in juvenile court”. The disclosure of criminal documents should also read as “You must also include a copy of your dispositions (outcomes) and sentencing records, unless documents are related to an incident handled in juvenile court.”

#### **Part 4, Question 4 & Part 5**

**Did someone help you prepare this request? (You must answer Yes or No.) If yes, complete Part 5, Signature of Person Preparing This Request, If Other Than the Requestor.**

Part 5: Signature **and Contact Information** of Person Preparing This Request, If Other Than the Requestor

This modification is understandable because it allows USCIS to keep track of preparers that provide requestors with assistance with the forms, which can help with fraud prevention. However, “help” is not defined and can be interpreted too broadly. Requiring an individual that provides any type of help to a requestor to sign as the preparer, may discourage people from assisting pro se requestors because they will now have to sign and fill out part 5, even if they are not necessarily the preparer of the form. For instance, as worded, parents who help gather records might be concerned that they have to sign. While we agree USCIS should collect information to ascertain when community members assist with the form filling, perhaps limiting this inquiry to only those that actually prepare the form, not just provide help in preparing the request, should fill out and sign part 5. Therefore, we recommend changing Question 4 to “Did someone prepare this form or some portion of this form for you?”

Additionally, the declaration that preparers need to sign indicates they have personal knowledge of the contents of the form. This seems problematic for legal practitioners who do not have personal knowledge, but instead prepare the form based on information provided by the requestor. We recommend adding language such that the preparer’s affirmation states: “I declare that I prepared this Form I-821D at the requestor’s behest. *The answers provided are based on information of which I have personal knowledge and/or were provided to me by the above named person.*” [Proposed changes are in italics.]

#### **Part 5, Question 1**

**[Note and question 1 have been deleted.]**

The proposed deletion is good because if a volunteer preparer is an attorney, he or she should not be forced to submit a G-28 when they help a requestor fill out the forms, especially in

a limited representation workshop setting. Additionally, the language in the deleted text was inconsistent with the Frequently Asked Questions released by USCIS.

**Comments on Certain Changes within the I-821D Instruction Sheet:**

**(4) Were present in the United States on June 15, 2012 and at the time of making your request for consideration of deferred action with USCIS;**

This clarifies what USCIS has always required – that requestors can only request DACA while in the United States and cannot do so abroad.

**(5) Did not have a lawful immigration status on June 15, 2012; AND**

**a. Entered without inspection before June 15, 2012; or**

**b. Were lawfully admitted before June 15, 2012 but without being given any immigration status; or**

**c. Were admitted or paroled but your lawful immigration status or parole expired before June 15, 2012;**

This change is good because it clarifies the different ways someone can be eligible for DACA in regards to how they first entered the United States. Currently, the form states that someone is eligible if they entered without inspection or if they entered with lawful immigration status that expired as of June 15, 2012. The changes clarify that those two are not the only entries that will qualify someone for DACA.

We appreciate you considering our comments. If you have any questions, please feel free to contact me at [bpinto@ilrc.org](mailto:bpinto@ilrc.org) or at (415) 255-9499.

Thank you,

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