

Laura Dawkins
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
20 Massachusetts Avenue, N.W.
Washington, DC 20529-2140

**Re: Deferred Action for Childhood Arrivals, Form I-821D
OMB Control No. 1615-0124, Docket ID USCIS-2012-0124**

Dear Chief Dawkins:

Asian Americans Advancing Justice-Los Angeles (Advancing Justice-LA), formerly the Asian Pacific American Legal Center, writes this comment in response to “the proposed renewal form I-821D for Deferred Action for Childhood Arrivals” published in the Federal Register on December 18, 2013. We commend the Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) for renewing DACA and for seeking comments about the form and instructions.

Founded 30 years ago, Advancing Justice-LA is the nation’s largest legal and civil rights organization serving Asian American, Native Hawaiian and Pacific Islander (AA and NHPI) communities. Advancing Justice-LA provides free immigration assistance by licensed attorneys and Board of Immigration Appeals (BIA) Accredited Representatives to qualifying individuals in the Southern California region. Advancing Justice-LA serves not only the AA and NHPI community, but all communities. We are committed to ensuring that every eligible DACA candidate has access to accurate information about the DACA program and the vital assistance they need in a linguistically and culturally appropriate manner.

Since the DACA program’s implementation on August 15, 2012, Advancing Justice-LA has been on the ground providing free one-on-one application assistance to DACA-eligible youth within the counties of Los Angeles, Orange, and the Inland Empire. To date, we have served **over 2,000** DACA clients -- from diverse racial and ethnic backgrounds -- and will continue to serve the community when renewals commence. We provide DACA assistance to our clients, who are largely Asian and Latino, in the following languages: Mandarin, Cantonese, Tagalog, Thai, Korean, Spanish, and English.

With our clients’ and our greater community’s interest in mind and based on our organization’s on-the-ground experience with the DACA process, we submit the following comments for your consideration:

1) USCIS should consider a longer renewal window than the proposed 90-120 days and should implement policies to protect youth whose documents may expire during the adjudication process.

Advancing Justice-LA is concerned that the current 90-120 day renewal window is too narrow in light of processing times. Most applicants have not received a final decision until three or four months after filing, with large numbers receiving decisions more than 120 days after filing. Some applicants have waited as long as a year for a final decision. Thus, renewal applicants filing in the 90-120 day window risk having DACA and their EAD expire during the adjudication process.

In Fall and Winter 2012, there were an overwhelming number of DACA applicants who contacted Advancing Justice-LA for help. We were so impacted by the high number of DACA applicants that we had to set appointments months in advance. A DACA recipient seeking assistance with the renewal process may be unable to make an appointment with a low-cost or free legal service provider for several weeks, or may need to make several appointments to finalize the renewal application. We ask that USCIS take steps to prevent and/or remedy this risk.

First, USCIS should consider allowing applicants to file for renewal earlier than 120 days before expiration, so that applicants and service providers can use early filing to avoid expiration during adjudication. This will also enable applicants to have sufficient time to seek legal services and gather supporting documentation. We suggest expanding the window to allow DACA recipients to file for renewal as early as six months before their EAD expiration date.

Second, timely filing of a renewal application should automatically extend deferred action and employment authorization until a final decision is reached. Third, an applicant who misses her renewal window should still be allowed to apply as a renewal applicant. Finally, a DACA recipient should not accrue unlawful presence if her DACA expires during the renewal adjudication process. This would bring the renewal process in accord with existing policy, because USCIS' Frequently Asked Questions on DACA state that applicants who turn eighteen while their applications are pending will not accrue unlawful presence.

2) USCIS should create two separate application forms - one for the Renewal Request and for the Initial Request, respectively. This will avoid confusion and unnecessary delays.

Navigating the I-821D application and determining which answers are required for renewals and which are required for initial applicants is confusing. While the draft Form I-821D indicates that certain sections are required for initial requests and others are required for renewal requests, this labeling is not consistent throughout the form. For example, Part 5 for "Criminal, National Security, and Public Safety Information" does not indicate whether initial applicants, renewal applicants, or all applicants should fill out this section.

Additionally, the labeling of sections as “For Initial Request Only” and “For Renewal Requests Only” on the form appears to conflict with information in the draft Instructions for Form I-821D, which state that applicants who initially received deferred action from U.S. Immigration and Customs Enforcement (ICE) must “complete the entire form and respond to all questions on the form,” regardless of what the form itself states. This inconsistency is likely to create confusion and lead applicants to inadvertently submit incomplete applications or to supply unnecessary information and documents. The complex form is especially problematic because, in our experience, most DACA applicants are proceeding pro se and do not have the assistance of attorneys or accredited representatives to help them complete the application forms.

We ask USCIS to create two separate forms for the initial and renewal applications to make the processes more user-friendly for pro se applicants. Separate forms will require less complex instructions and will be easier for applicants who lack legal assistance or expertise to properly complete. Two separate, less complex applications will also better inform applicants as to what supporting documents are required, leading to fewer rejections, Requests for Evidence (RFE’s), and adjudication delays. This will help to increase efficiency and conserve USCIS resources.

3) USCIS should not request evidence and information that was submitted in the initial application, because it will cause applicants and USCIS officers confusion and delay.

It will be more efficient for USCIS to process renewal applications without having to review information and evidence provided in the applicants’ initial DACA application. From the months of August 2012 to July 2013, USCIS received approximately 2,300 DACA applications per day with a peak of 5,489 applications per day in September 2012.¹ It is very likely that USCIS will receive a similar number of renewal applications, since current DACA recipients continue to need employment authorization and deferred action. Therefore, to avoid unnecessary backlogs and waste valuable government resources, USCIS should not request information and evidence that was already provided and is available in the initial application.

We recommend that USCIS use TPS as a model for DACA renewals and only require applicants to submit documents that were “pending at first filing” with their renewal application. For example, a DACA recipient who satisfied the education requirement because she was currently enrolled in high school should only have to submit transcripts or attendance records for the terms for which these documents were unavailable at the time of her application.

Further, by not requesting the same information and evidence as the initial application, any confusion by USCIS agents and the applicants will be avoided. USCIS officers would not be required to wade through and sort documents that were already submitted for the initial application (and do not provide any new information), from the documents that provide new

¹ USCIS, Deferred Action for Childhood Arrivals, <http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca-13-8-15.pdf>.

information. This will also help prevent delays by the applicant in filing renewal applications and reduce confusion about which documents applicants need to submit.

For example, the Form I-821D instructions do not specify whether a renewal applicant must only submit post-DACA-grant criminal records or if the applicant must re-submit all criminal records. To avoid redundancy of information and evidence, USCIS should only request applicants to provide documentation of arrests, charges and convictions that have occurred subsequent to their DACA approval.

4) USCIS should require applicants to demonstrate continuous residence for the five years preceding the date of their application, rather than since June 15, 2007, in order to expand the pool of potential DACA applicants.

Based on the original DACA requirement, the continuous residence requirement should remain the five years preceding the date of the DACA application. Since two years have passed since DACA first went into effect, the applicant should only be required to prove continuous residence from June 15, 2009 rather than June 15, 2007. The consistency in the time period will permit new DACA eligible applicants that were in the U.S. before DACA took effect to apply. It is in the public interest to provide the same opportunity to students who arrived only two years later and were present when DACA was implemented.

Gathering sufficient evidence to prove continuous residence since June 15, 2007 has been the most challenging part in documenting eligibility for most DACA applicants. Those individuals who waited years to have enough money to pay for the filing fee, but were eligible for DACA in 2012, now face a challenge of proving continuous presence for a longer period of time.

Advancing Justice-LA has seen first-hand how difficult it is for many DACA-eligible youth to obtain the documentation to demonstrate continuous residence. For example, one client, despite having graduated from high school and college in the U.S., had difficulty providing evidence under her name given that she had remained in the shadows out of fear of deportation and was receiving financial support from her parents so that all bills and records were in her parents' names.

In general for everyone that applies for DACA, as years pass collecting documentation of their presence in the U.S. will only become more burdensome. Since DACA was enacted to provide temporary protection to youth that arrived in the U.S. at an early age and have plans on residing in the country permanently, there is no need to require that they show continuous presence because other DACA requirements fulfill this goal. The applicant's arrival at an early age is proven by requiring that they enter the U.S. before the age of 16. Their presence since their arrival is proven by requiring presence on June 15, 2012.

However, if USCIS preserves this continuous residence requirement, USCIS should modify the requirement to request continuous presence from the filing date to five years back. This will be

representative of the initial DACA requirement when in 2012 USCIS was requesting evidence of five years of continuous presence, beginning with 2007. Question 1.b. on page 4, Part 3 can be changed from “I have been continuously residing in the U.S. since at least June 15, 2007, up to the present time” to “I have been continuously residing in the U.S. since 5 years prior to the date of this application.” There would not be an issue of a new wave of applicants who were not residing in the U.S. on the date that the DACA program was implemented because USCIS requires that the applicant was present on June 15, 2012. This will also facilitate the adjudication process because otherwise USCIS will be burdened with reviewing more documents proving the additional years of continuous presence.

5) USCIS should consider removing the biometric information collected under the “Processing Information” section on page 4. This is unnecessary and may deter applicants from completing the form.

The demographic information requested under the “Processing Information” section on page 4, part 2, which includes ethnicity and race, does not serve a purpose in this application. This information bears no relevance to DACA guidelines and does not assist adjudicators in determining if deferred action should be granted in an individual’s case.

Advancing Justice-LA believes that this information is not necessary for identity verification nor criminal background purposes, as initial and renewal applicants must submit their biometric information during the DACA process. Seeking this information now, when it was not requested before, will intimidate eligible API applicants who are already fearful of how the government might use their personal information, and further instill the fear of potential unjustified enforcement. This deterrent effect will frustrate the purposes of the DACA program. No form other than the N-400 requires this type of information, and there is no clear justification for requiring it on the Form I-821D.

Requesting height, weight, and ethnic and racial information may intimidate many applicants. Concerns about confidentiality and fear that information from the DACA application will be used to place people into removal proceedings is a significant reason why many *prima facie* eligible individuals do not apply for DACA. As an organization that actively serves the undocumented Asian American and Pacific Islander (AAPI) communities, Advancing Justice-LA is concerned that the DACA applicant numbers would become even lower if this section remains in the application. With DACA applicants from Asian countries comprising only 4.2% of applicant thus far, we fear these already low numbers will significantly decline.² The fact that AAPI undocumented clients are a particularly vulnerable group, given that they often lack in-language support and are subject to scams which often put them in risk, will further alienate this community.

² “Undocumented No More”; Center for American Progress (CAP) report at 15.

6) The “Education and Military Service Information” section should be simplified because the current series of questions is confusing even to experienced practitioners.

The current “Education and Military Service Information” checklist on page 3 for renewal applicants is confusing. Even experienced practitioners had difficulty determining how to navigate this section in the proposed draft of the Form I-821D. The instructions that follow Question 25 are particularly confusing, because they instruct the applicant to read Questions 26-29, but to only answer one of these questions. We recommend condensing this section into two basic questions. Question 25 could remain the same, but Questions 26-29 should be condensed into a single Question 26. Simplifying the instructions on the form following Question 25 to read “If you selected Item 25.d, answer Question 26. Otherwise, skip to Part 4, Travel Information,” would help clarify the intent of this section. This simple change will make it clearer to applicants which questions they must answer, thus reducing the chances that an application will result in aRFE.

Furthermore, instead of asking applicants how they met the education or military service criteria in their initial application, Question 25 should ask how applicants met these criteria on their last approved application. It is the most recent information, not the initial information provided, that would be most useful to USCIS. For example, an applicant may have initially received DACA because she was currently attending high school but she may continue to be eligible two years later because she has since graduated. If this applicant renews again, she should indicate that she was eligible on her most recent application because she had graduated from high school. This is clearer than requiring her to answer two questions: one stating that she was eligible based on school enrollment when she first applied for DACA, and a second stating that she remains eligible because she has since graduated.

We recommend rewriting this section as follows. Question 25 should read: “How did you demonstrate that your education or military service met the criteria for Deferred Action for Childhood Arrivals on your *last approved* application for Deferred Action for Childhood Arrivals?” The answer choices would remain the same. Questions 26-29 should then be consolidated into a single Question 26, with multiple answer options. See Exhibit A.

7) A more generous fee waiver is necessary to ensure financial difficulty does not cause eligible youth to delay or forego applying for DACA.

The lack of a fee waiver is a significant barrier to many DACA-eligible individuals. The most common reason as to why individuals who appear to be eligible for DACA and yet do not apply is the cost of filing.³ A large number of DACA-eligible youth come from low-income families, where 35% of DACA-eligible youth live in families with incomes below or at the federal poverty level (FPL), while 66% live in families with incomes below 200% of the FPL.⁴ Within the Asian

³ DACA Implementation Survey; Migration Policy Institute (MPI) Brief.

⁴ MPI Brief at 8.

American community, about 11% live below the federal poverty guidelines. Poverty levels are higher for certain ethnic communities, as reflected in the percentage of these communities who live at or below the federal poverty guidelines: Bangladeshi (20%); Pakistani (15%); Thai (14%); Vietnamese (14%); Korean (13%); and Chinese (12%).⁵

Within our own practice, Advancing Justice-LA has encountered several applicants who have forgone applying for DACA or delayed submitting an application solely because they lack the funds to apply. At least 40% of our current case list is composed of clients who have delayed their application because they struggle to find the funds to pay the \$465 filing fee. Moreover, many of our clients come from families with at least 2-3 young members who qualify for DACA, but do not have the means to raise funds, exacerbated by the lack of the legal work permit for which they are applying.

Having a more generous fee waiver would ensure that those who are eligible for DACA can actually apply. The need for a more generous fee waiver will likely become greater as the DACA program continues, because youth who otherwise meet the eligibility criteria but are under 15 years old have even higher levels of poverty, where more than half of this group live in households with income below or at 100% of the FPL. More than 80% live in households with incomes less than 200% of the FPL.⁶ Currently, our DACA client database consists of 52% IOLTA-funding-eligible individuals.⁷ IOLTA is a pool of funding that allows nonprofits to provide legal aid to the indigent, to increase access to justice for individuals and families living in poverty. Our organization determines a client to be eligible for IOLTA funding if his/her household income is at or below 125% of the FPL.

For families with more than one DACA applicant, the burden of paying the filing fee multiplies. Not only do families have to worry about raising the funds to apply for DACA, but also have to worry about paying for rent, having food on the table, and taking care of other basic necessities. Among the families we assisted who had more than one DACA-eligible family member, Advancing Justice-LA found an average of two months' delay in submitting the application.

The fee is particularly a key concern for our homeless clients who are DACA-eligible but do not meet the fee waiver requirements or cannot come up with the means to prove it, much less afford it. Advancing Justice-LA has represented three homeless clients: one had to withdraw because there were no resources or means to take out a loan for the application; one is looking to borrow money and move forward; and one was fortunately approved because her shelter fundraised money to assist her with the fee.

⁵ “A Community of Contrast, Asian Americans in the United States: 2011,” pages 35-36; Asian American Center for Advancing Justice; available at <http://advancingjustice.org/sites/default/files/CoC%20National%202011.pdf>

⁶ MPI Brief at 11.

⁷ Asian Americans Advancing Justice-Los Angeles direct services funding database that classifies clients who live under 125% of the federal poverty guideline, disabled, or 60+ years old as IOLTA-eligible. Advancing Justice-Los Angeles' IOLTA-eligible clients are all based on household income.

Lastly, the time limit for DACA renewals and lack of fee waivers will create extra pressure on youth and families to come up with the money. The high fees coupled with time-limits will make beneficiaries fall out of DACA status.

Existing regulations give USCIS the authority to waive fees for DACA applicants. While there is no fee for DACA itself, all DACA applicants are required to submit an I-765 Application for Employment Authorization, which carries a \$380 fee. Current regulations allow USCIS to waive this fee.⁸ Additionally, existing regulations provide that the USCIS Director may “provide that the fee may be waived for a case or specific class of cases that is not otherwise provided in this section, if the Director determines that such action would be in the public interest and the action is consistent with other applicable law.”⁹ Because regulations already permit a waiver for the I-765, creating a waiver for DACA applicants is consistent with applicable law. Thus, existing regulations give USCIS the ability to implement a fee waiver for DACA applicants either under the explicit authorization to waive fees for the I-765, or under the Director’s discretion to provide a waiver for a class of cases when doing so is in the public interest.

For these reasons, we recommend the following fee waiver structure for both new DACA applications and renewals. USCIS should offer a full fee waiver for DACA youth in households with incomes at or below 150% of the FPL. USCIS should also offer a fee reduction of one-half for DACA youth with household incomes at or below 200% of the FPL, for DACA youth in households where more than one family member is applying for DACA, and for DACA eligible youth who have other compelling circumstances justifying a fee reduction. In the alternative, we ask USCIS to expand the availability of existing fee exemptions to include all youth with incomes at or below 150% of FPL and to offer a partial exemption to reduce fees for youth with household incomes at or below 200% of FPL, youth in households with more than one DACA applicant, and to youth with other compelling circumstances justifying a fee reduction.

8) USCIS should publish the I-821D and instructions in the most commonly-used foreign languages to make DACA more accessible to limited English proficient applicants, including those in the Asian American and Pacific Islander community.

According to the Migration Policy Institute, thirty-one percent of DACA-eligible youth have limited English proficiency.¹⁰ The need for pro bono legal immigration services far exceeds availability. As a non-profit organization that provides legal services to the Asian American and Pacific Islander community, Advancing Justice-LA is concerned that the lack of in-language materials and services constitutes a serious barrier for Asian American and Pacific Islander youth to access general information about DACA. The I-821D is currently available in English and Spanish, making the process more accessible to Spanish speakers. Yet, the I-821D is not

⁸ 8 C.F.R. § 103.7(c) includes the Application for Employment Authorization in the list of applications for which USCIS may waive fees.

⁹ 8 C.F.R. § 103.7(d).

¹⁰ MPI Report at 8.

available in any Asian languages. This oversight should be addressed, especially considering that the number of DACA applications have been quite low in many Asian and Pacific Islander ethnic communities.

The Center for American Progress' report, "Undocumented No More," found that applicants from Asia were almost twice as likely to have their DACA applications denied than Mexican-born applicants.¹¹ We strongly recommend that USCIS publish and make easily accessible the new I-821D and instructions in the foreign languages of the top ten countries of DACA applicants, which includes South Korea, the Philippines and India. Additionally, Advancing Justice-LA requests that USCIS provide materials in Chinese, given that the Chinese community comprises one of the largest segments of the undocumented AAPI population, yet has some of the lowest DACA application numbers. More undocumented immigrants are from China than any other Asian country (280,000), closely followed by the Philippines (270,000), India (240,000), Korea (230,000), and Vietnam (170,000).¹² Translating the I-821D into multiple languages will make DACA more accessible to a more diverse and broader swath of the immigrant community.

Advancing Justice-LA also encourages USCIS to develop an outreach plan to educate Asian American and Pacific Islander immigrants, community organizations, and service providers, as well as other community leaders and stakeholders about DACA - and to continue to engage the community once the renewal process commences.

* * *

Thank you for consideration of our comments. If you have any questions about our comments, please contact Michelle Saucedo or Tiffany Panlilio, DACA Advocates at the Asian Americans Advancing Justice - Los Angeles, at msaucedo@advancingjustice-la.org or tpanlilio@advancingjustice-la.org, or Connie Choi, Staff Attorney at (213) 241-0267 or cchoi@advancingjustice-la.org

¹¹ CAP report at 24.

¹² Michael Hoefer, Nancy Rytina, and Bryan Baker, U.S. Department of Homeland Security, "Estimates of Unauthorized Immigrant Population residing in the United States: January 2011," available at http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2011.pdf.

Exhibit A

Form I-821D, Page 3, Questions 25-29, Education and military service information (*For Renewal Requests Only*)

25. How did you demonstrate that your education or military service met the criteria for Deferred Action for Childhood Arrivals on your *most recently approved* application for Deferred Action for Childhood Arrivals? (select *only one* box)

- 25.a. I was an honorably discharged veteran of the U.S. Armed Forces or U.S. Coast Guard
- 25.b. I graduated from a U.S. high school, a public or private college or university, or a community college.
- 25.c. I obtained a GED certificate or passed another equivalent State-authorized exam
- 25.d. I was enrolled in school in the United States at the time I filed my Form I-821D that USCIS approved for my *most recent* period of Deferred Action as a Childhood Arrival.

If you selected Item 25.d, answer Question 26. Otherwise, skip to Part 4, Travel Information.

26. If, at the time you filed your *most recent* Form I-821D that USCIS approved, you demonstrated that you met the education requirement because you were currently in school, you must indicate how you continue to meet the education requirement. Select only ONE option below:

I was enrolled in school AND

- “ I have since graduated from school.
- “ I was in elementary school, middle school, or junior high and I have made substantial, measurable progress toward graduating from high school or the school in which I was or am enrolled.
- “ I am still enrolled in school or an education program that assists students in either obtaining a high school diploma or its recognized equivalent under state law, and I have made substantial, measurable progress toward graduating.
- “ I have since passed a GED exam or other equivalent State-authorized exam.
- “ I am currently enrolled in a new/different education, literacy, or career training program (*including vocational training*) designed to lead to placement in postsecondary education, job training, or employment.

I was enrolled in an education program that assists students either in obtaining a high school diploma or its recognized equivalent under state law or in passing a GED exam or other equivalent under state law or in passing a GED exam or other equivalent state-authorized exam AND

- “ I have since obtained high school diploma or its recognized equivalent
- “ I have since passed a GED or other equivalent State-authorized exam
- “ I am currently enrolled in high school.

“ I am currently enrolled in a new/different education program that assists students either in obtaining a high school diploma or its recognized equivalent under state law or in passing a GED exam or other equivalent state-authorized exam.

I was enrolled in an education, literacy, or career training program (*including vocational training*) designed to lead to placement in postsecondary education, job training, or employment AND

“ I have since enrolled in postsecondary education.

“ I have since completed an education, literacy, or career training program (*including vocational training*) (and have obtained employment – but we recommend deleting “and have obtained employment requirement”).

“ I have made substantial, measurable progress toward completing an education, literacy, or career training program.

“ I am currently enrolled in high school.

“ I am currently enrolled in a new/different education, literacy, or career training program (*including vocational training*) designed to lead to placement in postsecondary education, job training, or employment.

“ None of the above applies to me. Note that if you select this box, you must use **Part 9. Additional Information** to explain your reasons for not meeting the education guideline.