



MALDEF

Mexican American Legal Defense and Educational Fund

[OMB Control Number 1615-0124]

**Comments on Revision of Form I-821D and Instructions,
Consideration of Deferred Action for Childhood Arrivals**

**Washington, D.C.
Regional Office**

1016 16th Street, NW
Suite 100
Washington, DC 20036
Tel: 202.293.2828
Fax: 202.293.2849

Electronically Submitted through the Federal eRulemaking Portal

February 18, 2014

**National Headquarters
Los Angeles
Regional Office**

634 S. Spring Street
Los Angeles, CA 90014
Tel: 213.629.2512
Fax: 213.629.0266

Laura Dawkins

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

**Chicago
Regional Office**

11 East Adams Street
Suite 700
Chicago, IL 60603
Tel: 312.427.0701
Fax: 312.427.0691

**RE: Agency Information Collection Activities: Consideration of Deferred
Action for Childhood Arrivals, Form I-821D; Revision of a Currently
Approved Collection, 78 Fed. Reg. 76636 (Dec. 18, 2013); Docket ID
USCIS-2012-0012; OMB Control Number 1615-0124.**

Dear Chief Dawkins:

**San Antonio
Regional Office**

110 Broadway
Suite 300
San Antonio, TX 78205
Tel: 210.224.5476
Fax: 210.224.5382

MALDEF (Mexican American Legal Defense and Educational Fund) submits the following comments in response to the notice of revisions to Form I-821D and corresponding instructions for Consideration of Deferred Action for Childhood Arrivals (DACA), which was most recently published in the Federal Register on December 18, 2013 and revised on December 24, 2013.

**Sacramento
Policy Office**

1512 14th Street
Sacramento, CA 95814
Tel: 916.444.3031
Fax: 916.444.7207

Founded in 1968, MALDEF is the nation's leading Latino legal civil rights organization. Often described as the "law firm of the Latino community," MALDEF promotes social change through legislative and regulatory advocacy, community education, and high-impact litigation in the areas of education, employment, voting rights, and immigrant rights.

MALDEF applauds U.S. Citizenship and Immigration Services' (USCIS) commitment to establish an effective process for initial and renewal requests for Consideration of Deferred Action for Childhood Arrivals. In the spirit of this process, MALDEF submits the following recommendations to improve, clarify, and streamline the DACA-request process.

A. GENERAL COMMENTS

1. Recommendation for Blanket Automatic Extension of Employment Authorization

Documents: Issue a “blanket automatic extension” for expiring Employment Authorization Documents (EAD) for all requestors who submit Form I-765 and I-765WS within 120 days of expiration, but are not approved before that date due to backlogs, processing delays, or other administrative issues.

Rationale: USCIS regularly issues blanket automatic extensions for expiring EADs for other types of beneficiaries, such as Temporary Protected Status (TPS) holders, to allow time for EADs with new validity dates to be issued.¹ This recommendation would ensure that requestors do not face interrupted employment, dismissal, or an inability to obtain a driver’s license or other EAD-dependent governmental services while awaiting renewal of a timely submitted request.

2. Recommendation for Blanket Automatic Extension of Deferred Action for Childhood

Arrivals for Certain Individuals: Issue a blanket automatic extension of expiring deferred action for all requestors who submit their renewal request within 120 days of expiration but do not receive approval before that date due to backlogs, processing delays, or other administrative issues.

Rationale: This recommendation would ensure that deferred action does not expire for DACA-holders who, by definition, are low-enforcement priorities for Immigration and Customs Enforcement (ICE) and should be treated accordingly.

3. Recommendation to Harmonize Updated Form and Instructions with FAQ: Harmonize language and guidance from the updated Form I-821D and Instructions with USCIS’s DACA Frequently Asked Questions (FAQ).²

Rationale: To ensure uniformity with collateral materials, USCIS should harmonize language and guidance changes made to Form I-821D and Instructions with USCIS’s DACA FAQ and other educational materials.

4. Recommendation for use of ELIS for Initial and Renewal Requests: Allow requestors to submit both initial *and* renewal requests for DACA online through USCIS’s Electronic Immigration System (ELIS).

¹ See Temporary Protected Status, U.S. Citizenship and Immigration Services, <http://www.uscis.gov/tps> (last updated Jan. 18, 2013) (“Automatic Employment Authorization Document (EAD) Extension. Sometimes DHS must issue a blanket automatic extension of the expiring EADs for TPS beneficiaries of a specific country in order to allow time for EADs with new validity dates to be issued. If your country’s EADs have been automatically extended, it will be indicated on your country specific pages to the left.”).

² See Frequently Asked Questions for Childhood Arrivals, U.S. Citizenship and Immigration Services, <http://www.uscis.gov/childhoodarrivals> (last updated June 18, 2013).

Rationale: An online submission process would ease the filing and cost burden on requestors, and allow USCIS to streamline requests and reduce adjudication times. Online submission for DACA has precedent as USCIS currently allows requestors to submit Form I-821 Application for Temporary Protected Status, the form upon which I-821D is based, through ELIS.³

- 5. Recommendation for Reduced Filing Fee:** Reduce the financial burden for initial and/or renewal requests for DACA.

Rationale: While Form I-821D has no filing fee, requestors must pay a \$380 filing fee for Form I-765 and a \$85 biometric fee. The cost to file for DACA is a significant financial obstacle for many requestors,⁴ especially considering many eligible individuals are historically from low-income communities. Accordingly, USCIS should: (1) reduce the cost associated with initial and/or renewal requests; (2) allow requestors to apply for fee waivers in addition to fee exemptions; and (3) elevate the availability of fee waivers and exemptions.

B. COMMENTS FOR FORM I-821D⁵

- 6. Recommendation on Page 1:** Change "Attorney State License Number:" to "Attorney State License Number (if applicable):". Allow field to accept "N/A" or "None" as an acceptable entry.

Rationale: Not all state bars issue attorneys state license numbers, for example Maryland.⁶

- 7. Recommendation on Page 1:** Make the following changes:

"Read the Form I-821D instructions for information on how to complete this form."

³ See U.S. Citizenship and Immigration Services, Instructions for Electronic Filing of Form I-821, <http://www.uscis.gov/e-filing-i-821> (last updated Aug. 8, 2012).

⁴ Jeanne Batalova et. al, *Deferred Action for Childhood Arrivals at the One-Year Mark: A Profile of Currently Eligible Youth and Applicants* 8, MIGRATION POLICY INSTITUTE, Aug. 2013, available at <http://www.migrationpolicy.org/pubs/cirbrief-dacaatoneyear.pdf>. ("The \$465 application fee, however, may be an obstacle for the lowest-income individuals.").

⁵ Underlined text indicates recommended additions. ~~Stricken text~~ indicates recommended deletions. Punctuation is placed after quotations in recommendations in order to clearly convey the exact text of the recommended language.

⁶ See FAQs for Lawyers, Maryland Courts, www.courts.state.md.us/lawyers/ ("Does Maryland issue bar numbers to new attorneys? No. Although many states furnish their attorneys with 'bar numbers,' Maryland has not adopted this practice. Attorneys licensed to practice in Maryland are identified by their names.").

Rationale: It is unclear what “instructions” refers to in this sentence. Pro se requestors may erroneously interpret this sentence as a prompt or invitation to follow the instructions located before Item Numbers on Form I-821D, the USCIS DACA FAQ, or other DACA educational materials created by entities external to USCIS instead of the official I-821D instructions.

- 8. Recommendation on Page 1. Part 1. Item Numbers 1 and 2.a:** Delink Item Numbers 1 and 2.a to allow requestors to select one checkbox without both checkboxes being automatically populated.

Rationale: Requestors cannot check either only Item Number 1 or 2.a. Instead, when a requestor selects a single checkbox, both checkboxes are automatically populated. This appears to be a technical glitch.

- 9. Recommendation on Page 1. Part 1. Item Number 2.b:** Enable entry of specific date under Item Number 2.b upon the selection of 2.a.

Rationale: Selection of Item Number 2.a does not correctly enable 2.b. Instead, selection of Item Number 5 erroneously enables 2.b. This appears to be a technical glitch.

- 10. Recommendation on Page 1. Part 1. Item Number 2:** Make the following changes:

“2.b. ☐ Consideration of Deferred Action for Childhood Arrivals – **Renewal Request (NOTE: Renewal Requests can only be submitted within 120 days prior to the expiration of your current period of deferred action)”.**

Rationale: Form I-821D does not indicate on its face that renewal requests must be submitted within 120 days prior to the expiration of a requestor’s current period of deferred action. And while the 120 day requirement is located in the Form I-821D Instructions, that requirement is not prominently displayed, currently relegated to the second page in a supplementary note. This is a key threshold requirement and requestors, especially pro se requestors, may inadvertently complete and submit Form I-821D without knowing of this requirement.

- 11. Recommendation on Page 1. Part 1. Item Number 5:** Enable selection of Item Number 5.e upon the selection of “Yes” under 5.

Rationale: Selection of Item Number 5 does not correctly enable 5.e, preventing requestors from selecting “Other” under 5. This appears to be a technical glitch.

- 12. Recommendation on Page 1. Part 1. Item Number 5.f:** Disable entry of Item Number 5.f. until a requestor selects “Yes” under 5.

Rationale: Requestors should not be able to enter data into Item Number 5.f until they first select "Yes" under 5, similar to 5.a – 5.e, and 5.g. This appears to be a technical glitch.

13. Recommendation on Page 1. Part 1: Change "Full Name" to "Full Legal Name".

Rationale: Many requestors use various iterations of their names, especially those from Latin American and Arab countries where multiple surnames are the norm.⁷ This recommendation ensures that requestors know to provide their full *legal* name, instead of nicknames or aliases.

14. Recommendation Page 2. Part 1. Item Number 14: Add "Separated" to the marital status options *OR* clarify what option requestors who are separated should select.

Rationale: Other USCIS forms for immigration benefits allow applicants or requestors to select "separated" to describe their marital status.⁸ This recommendation allows requestors to more accurately complete this Item Number and maintain consistency with other immigration forms.

15. Recommendation on Page 2. Part 1. Item Number 15: Make the following changes:

"Include other names used, including names that you have used or may have been used on your behalf by a parent, legal guardian, or employer. If you need additional space, use Part 9. Additional Information."

Rationale: This recommendation provides clarity for requestors who may not have used another name themselves, but who may have had a parent, legal guardian, or employer use another name on their behalf. This clarification is especially pertinent for requestors who may have had others use aliases on the requestor's behalf at an early age without the requestor's authorization, knowledge, or cognizance. By ensuring that requestors provide all other names used on their behalf, adjudicators will be able to more easily reconcile discrepancies when adjudicating requests.

16. Recommendation on Page 2. Part 1. Item Number 17: Make the following change:

"Place of ***Initial*** Entry into the United States (*actual or approximate*)".

⁷ U.S. Gov't Accountability Office, GAO-11-146, Employment Verification: Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain 19 (2010) ("Further, individuals from certain cultural groups, such as those of Hispanic or Arab origin, may have multiple surnames . . .").

⁸ U.S. Citizenship and Immigration Services, Form N-400, Application for Naturalization 8 (2015), *available at* <http://www.uscis.gov/sites/default/files/files/form/n-400.pdf>.

Rationale: For requestors who entered at a young age and/or those that entered without lawful status away from a city center, a specific entry location may be difficult to identify. This recommendation informs requestors that they may put an approximate entry location.

17. Recommendation on Page 2. Part 1. Item Number 19.a: Strike “Do you have” and insert “Were you ever issued”.

Rationale: This recommendation clarifies an ambiguity with the phrasing of Item Number 19.a because requestors may interpret the current question in one of two different ways. A requestor may interpret the question to ask: (a) whether the requestor was previously issued such a record; *or* (b) whether the requestor was previously issued such record and also currently has it in his or her possession. This recommendation prevents requestors who were issued an I-9X record and subsequently lost that record from selecting “No” on Item Number 19.a under the impression that the question asks whether the requestor *currently* has such a record in their possession.

18. Recommendation on Page 2. Part 1. Item Number 19.a: Make the following changes:

“☐ Yes ☐ No ☐ Yes, but I no longer have access to that record”.

Rationale: This recommendation recognizes that requestors may have had an I-9X record issued to them but no longer have access to that record and the information contained in it. Under the current Item Number checkboxes, requestors who were issued an I-9X record but later lost that record have no way of explaining such a loss. Under the call of the question, these requestors would select “Yes” but then be forced to leave Item Numbers 19.b and 19.c blank.

19. Recommendation on Page 2. Part 1. Item Number 20.b: Make the following change:

“20.b. For Initial Requests: Indicate whether you have any other immigration-related requests pending (*e.g. I-130, I-129, I-918, etc.*).”.

Rationale: Due to various descriptors used to describe immigration petitions, requestors may not consistently or correctly describe pending immigration requests. This recommendation provides examples of how requestors should provide this information.

20. Recommendation on Page 2. Part 1. Item Number 20.c: Make the following change:

“20.c. For Renewal Requests: Since you have received . . . immigration-related requests pending (*e.g. Lawful Permanent Resident Status, Temporary Protected Status, U Nonimmigrant Status, I-130 Pending, I-129 Pending, I-918 Pending, etc.*).”.

Rationale: Due to the various descriptors used to describe immigration statuses and petitions, requestors may not correctly describe their immigration status or pending immigration requests. This recommendation provides examples of how requestors should provide this information.

21. Recommendation on Page 2. Part 1. Item Number 20: Make the following change:

“For Initial Requests: If you are filing . . . you must complete **Item Numbers 21. – 24.** and ~~may~~ skip **Item Numbers 25. – 29.**”.

Rationale: The use of “may” frames this instruction as optional instead of directive. This recommendation clarifies that requestors should skip the specified Item Numbers.

22. Recommendation on Page 2. Part 1. Item Number 21: Make the following change:

“21. Education Status: Indicate how you meet the Education Requirement (*e.g. High School Graduate, General Educational Development (GED) Certificate, Currently in School*)”.

Rationale: “Education Status” without more information is confusing for requestors attending college or a graduate institution or holding a postsecondary or graduate degree. These requestors may erroneously provide an irrelevant education status, such as “College Student” or “College Graduate,” unaware that the question seeks the requestor’s *qualifying DACA* education status.

23. Recommendation on Page 3. Part 1. Item Numbers 25.c. and 26.d: Change the uppercase “S” in “State-authorized exam” to lowercase.

Rationale: This recommendation ensures that “State-authorized” is in lowercase as it is elsewhere throughout Form I-821D and Instructions.

24. Recommendation on Page 3. Part 1. Item Number 27: Make the following change:

“27.d. ☐ I am currently enrolled . . . state-authorized exam.

27.e. ☐ I am still enrolled in an education program that assists students in either obtaining a high school diploma or its recognized equivalent under state law, or in passing a GED exam or other equivalent state-authorized exam, and have made substantial, measureable progress toward graduating or passing a GED exam or other equivalent state-authorized exam.”.

Rationale: Requestors may qualify for renewal by demonstrating substantial and measurable progress in a school or education program that assists students in obtaining a high school diploma or recognized equivalent, an education, literacy, or career training (including vocational training) program, but not for an education program that assists students in passing a GED exam or equivalent state-authorized exam (GED and state-authorized exam option). Requestors should be able to qualify for renewal by demonstrating substantial and measurable progress in classes for a GED exam or equivalent state-authorized exam because:

- a. Many of the same considerations that lead to a substantial and measurable progress option for other forms of education apply to the GED and state-authorized exam option, including the prevalence of part-time programs, the difficulty of paying for classes, and delayed completion due to various socio-economic factors;
- b. There should be consistent renewal criteria that allows *all* requestors to satisfy the education requirements by demonstrating substantial and measurable progress, instead of having conflicting and inconsistent standards for requestors;
- c. Prohibiting individuals from demonstrating substantial and measurable progress in the GED and state-authorized exam option, but allowing them to satisfy the educational requirement by enrolling in a new program (Item Number 27.d) creates a negative incentive that encourages requestors to drop out and find a new program instead of continuing to make progress in their current program; and
- d. As of January 2014, GED examinations will become substantially more difficult and costly, leading to correspondingly longer and more complex GED education programs.⁹ Accordingly, USCIS should afford requestors enrolled in the GED and state-authorized exam option more flexibility by allowing them to demonstrate substantial and measurable progress.

25. Recommendation on Page 5. Part 4. Item Numbers 1.c. and 2.c: Make the following changes:

"1.c. Reason for Departure (e.g. wedding, funeral, family emergency, etc.)";

and

"2.c. Reason for Departure (e.g. wedding, funeral, family emergency, etc.)".

Rationale: By providing examples of how requestors should provide this information, adjudicators will be able to more easily discern the requestor's reason for travelling.

⁹ Motoko Rich, *Raising the G.E.D. Bar Stirs Concerns for Students*, N.Y. TIMES, Oct. 12, 2013, at A11, available at <http://www.nytimes.com/2013/10/12/education/raising-the-ged-bar-stirs-concern-for-students.html>.

26. Recommendation on Page 5. Part 4. Item Number 2: Make the following change:

“For Initial Requests Only: If you are filing Form I-821D for consideration of *initial* deferred action, ~~may~~ skip to **Part 5. Criminal . . .**”

Rationale: The use of “may” frames this instruction as optional instead of directive. This recommendation clarifies that requestors should skip to the specified Item Numbers.

27. Recommendation on Page 5. Part 5. Item Number 1: Make the following changes:

“1. Have you **EVER** been arrested for, charged with, or convicted of a felony or misdemeanor, including incidents handled in juvenile court, in the United States? *Do not include minor traffic violations unless they were alcohol- or drug-related.* ~~Do not include incidents handled in juvenile court.~~”

Rationale: The placing, font, and style of the original juvenile incident language suggests, upon first glance, that juvenile incidents should not be included, much like minor traffic violations. This recommendation more clearly informs requestors that they *must* include incidents handled in juvenile court.

28. Recommendation on Page 8. Part 9. Item Numbers 1.a, 1.b, and 1.c: Enable entry for these Item Numbers.

Rationale: These Item Numbers are not enabled for entry. These issues appear to be technical glitches.

29. Recommendation on Page 8. Part 9. Item Number 1: Change “Your Full Name” to “Full Legal Name”.

Rationale: See rationale for Recommendation Number 13. Additionally, “Your” was stricken for consistency throughout Form I-821D.

B. COMMENTS FOR FORM I-821D INSTRUCTIONS

30. Recommendation on Page 1. “When Should I Use Form I-821D?”: Make the following change:

“NOTE: . . . You must also submit documentation to establish how you satisfy the guidelines as if you were filing an Initial ~~Request~~ for consideration of deferred action.

Renewal requests should be submitted within 120 days prior to the expiration of your current period of deferred action. If you file a renewal request more than 120 days before the expiration of your current period of deferred action, USCIS may reject your

submission and return it to you with instructions to resubmit your request closer to the expiration date.”.

Rationale: The instruction that renewal requests be submitted within 120 days of the expiration of a requestor's deferred action is not prominently displayed but instead relegated to the second page in a supplementary note. The 120-day requirement is a critical threshold requirement that virtually all requestors will need to know before completing a renewal request. Placement of this notice on the first page, under the header entitled “When Should I Use Form I-821D?” logically fits the purpose of this section and ensures that this requirement is immediately conveyed.

31. Recommendation on Pages 1, 5, and 8: All references to entering “without inspection” should be changed to “without lawful status”.

Rationale: Under *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010), individuals without lawful status who were admitted and inspected are not considered to have entered without inspection (EWI) and are nonetheless eligible to request deferred action. Technically, these individuals neither entered without inspection nor remained after expiration of their lawful immigration status. Accordingly, USCIS should clarify the instructions to ensure that these individuals are aware that they are eligible for relief. This recommendation functions in parallel with USCIS's previous changes to Form I-821D, which changed references to “without inspection” to “no lawful status” in light of *Matter of Quilantan*.¹⁰

32. Recommendation on Page 3. General Instructions. Translations: Make the following change:

“Translations. Any document . . . foreign language into English. An example certification would read ‘I, [typed name], certify that I am fluent (conversant) in the English and [language] languages, and that the above/attached document is an accurate translation of the document attached entitled [name of document].’ The certification should also include the date and the translator’s signature, typed name, and address.”.

Rationale: The instructions do not give an example of a template translation certification. This recommendation ensures that a requestor will provide a certification that contains all of the necessary information and is identical to the guidance provided

¹⁰ Response to I-821D Public Comments – Summary of Suggestions 11.30.2012, U.S. Citizenship and Immigration Services, Feb. 27, 2013, <http://www.regulations.gov/#!documentDetail;D=USCIS-2012-0012-0031> (“Comment: A commenter recommended that if part 1, Question 15 is really designed to get at “Status at Entry” rather than “manner of Entry,” then “EWI – Entry Without Inspection” and “Without Inspection” should be removed from the drop-down menu because the inclusion of these options prejudice their future adjustment prospects through no fault of their own. This is because many organizations instruct *Quilantan* entrants to choose ‘EWI’ as their ‘Status at entry.’ Response: USCIS has agreed to modify the question.”).

by USCIS under the "General Tips on Assembling Applications for Mailing" section of its website.¹¹

33. Recommendation on Page 3. General Instructions: Make the following change:

"Translations. Any document . . . the foreign language into English.

"Online Submission. Initial and Renewal Requests may be submitted online through the USCIS Electronic Immigration System (ELIS). For more information about using ELIS, please visit: <http://www.uscis.gov/uscis-elis>."

Rationale: The instructions do not clearly inform requestors that they may file initial and renewal requests through ELIS. The instructions, at most, only provide a passing reference to the use of an USCIS ELIS Account Number. This recommendation would clearly inform requestors that they have the option of submitting a request online.

34. Recommendation on Page 3. General Instructions. Advance Parole and Travel

Warning: Change "*In addition, leaving the . . . ability to return to the United States*" by bolding and capitalizing all letters to: **"IN ADDITION, LEAVING THE UNITED STATES, EVEN WITH AN ADVANCE PAROLE DOCUMENT, MAY AFFECT YOUR ABILITY TO RETURN TO THE UNITED STATES."**

Rationale: While many requestors are aware that leaving the country without an Advance Parole Document (APD) will terminate deferred action, many are unaware that even with an APD, their ability to return to the country may be affected. Thus, this warning should be more clearly emphasized in light of the severe and substantial immigration-related consequences that a requestor may face.

35. Recommendation on Page 6. Evidence for Initial Requests. Item Number 5.A: Make the following change:

"A. Rent receipts, utility bills (*gas, electric, phone, etc.*), or receipts or letters from companies showing the dates during which you received service. You may submit this documentation even if it only has the name of your parent(s) or guardian(s), as long as you also submit corroborating evidence (such as school or medical records) that point to your residence at that address."

¹¹ See General Tips on Assembling Applications for Mailing, U.S. Citizenship and Immigration Services, <http://www.uscis.gov/forms/forms-and-fees/general-tips-assembling-applications-mailing> (Last updated Nov. 21, 2013).

Rationale: The instructions do not inform requestors that they may submit certain evidence in the name of parent(s) or guardian(s) even though submission is explicitly allowed under USCIS's Service Center Operations (SCOPS) August 2012 DACA guidance.¹² This recommendation ensures that requestors will not refrain from sending relevant evidence simply because it is in the name of parent(s) or guardian(s).

36. Recommendation on Page 8. Evidence for Initial Requests. Question 9: Make the following change:

"USCIS recognizes that schools, educational programs, online educational programs, school districts, and state education agencies . . .".

Rationale: The instructions do not inform requestors that evidence from online educational programs may be submitted to fulfill the education requirement. Online programs are explicitly allowed under USCIS's SCOPS August 2012 DACA guidance.¹³ This recommendation clarifies that requestors may submit documentation from these programs.

37. Recommendation on Pages 8 and 9. Evidence for Initial Requests. Question 9.A: Make the following changes:

"**(4)** A public or private college or university, or community college.

The following evidence may simultaneously satisfy multiple criteria such as demonstrating both enrollment, public funding, and/or demonstrated effectiveness for non-publicly funded programs.

(i) Evidence of Enrollment for School. Evidence of enrollment may include, but is not limited to: school registration cards, acceptance or other . . . your current educational or grade level.

¹² Deferred Action for Childhood Arrivals: SCOPS-HQ 77, U.S. Citizenship and Immigration Services, Aug. 2012, (on file with author) ("Examples of acceptable secondary evidence to meet the CR guideline: Rental agreements in the name of the DACA requestor's parent, if corroborating evidence in the file (such as school or medical records) points to the DACA requestor's residence at that residence."). MALDEF obtained this internal guidance from USCIS through a Freedom of Information Act (FOIA) request.

¹³ *Id.* at 53 ("Enrollment in On-Line Classes

- Evidence of enrollment in on-line courses is acceptable.
- Offices should focus on the school, not the medium.
- It is not uncommon for students to be enrolled in online courses.
- Officers should focus on the completeness, credibility, relevance, and sufficiency of the evidence to see if it is germane.").

(ii) Evidence of Enrollment for School When Classes Have Not Begun. If you have been accepted for enrollment and your classes have not yet begun . . . or your Individualized Education Program (IEP).

(iii) Evidence of Enrollment for an Educational, Literacy, or Career Training Program (Including Vocational Training or an ESL Course) or Classes for a GED Exam or Equivalent State-Authorized Exam. You may also submit a letter or document (on school letterhead) from an authorized representative of the program (such as a registrar) that includes your name, date of enrollment, duration of the program, brief description of the program, date classes will begin, expected completion date, evidence of registration such as a copy of the current year registration intake/enrollment form or any other relevant information, authorized representatives' contact information and the type of program (e.g. educational, literacy, career training, vocational, ESL course, or classes for GED exam or equivalent state-authorized exam).

(iv) Evidence of Public Funding for Educational, Literacy, or Career Training Programs (Including Vocational Training or an ESL Course), and Classes for a GED Exam or Equivalent State-Authorized Exam. If you are enrolled in an educational, literacy, or career training program (including vocational training or an ESL course) or classes for a GED Exam or equivalent state-authorized exam, evidence that the program is funded in whole or in part . . . program's authorized representative's contact information.

(v) Evidence of Demonstrated Effectiveness for Educational, For-Profit Literacy, or Career Training Program (Including Vocational Training or an ESL Course), and Classes for a GED Exam or Equivalent State-Authorized Exam, That are Not Publicly Funded. If you are enrolled in an education, for-profit literacy, or career training program (including vocational training or an ESL course), classes for a GED exam or equivalent state-authorized exam that is not publicly funded . . . indicating the program's overall quality.

(vi) Evidence of Demonstrated Effectiveness for a Non-Profit Literacy Program. If you are enrolled in a non-profit literacy program that is not publicly funded, you may submit a copy of the IRS letter confirming tax exempt status under 501(c)(3) for the literacy program in lieu of showing demonstrated effectiveness.”.

Rationale: The instructions do not clearly enumerate the different evidence that a requestor may submit to satisfy the “currently in school” requirement in terms of demonstrating enrollment, public funding and/or demonstrated effectiveness for non-publicly funded programs. Ideally, USCIS should outline the evidentiary requirements for different programs using an easy to understand visual chart, such as the one found in USCIS's SCOPS August 2012 DACA guidance.¹⁴

¹⁴ *Id.* at 64-65.

Alternatively, if USCIS does not incorporate an easy-to-understand chart, then USCIS should adopt the above recommendations. These recommendations reformat the existing instructions and insert additional materials from USCIS's SCOPS August 2012 DACA guidance¹⁵ in an effort to clarify evidentiary requirements.

Rationale for Organization of Text and Insertion of Headers in (i) – (vi): These recommendations divide the different evidentiary requirements into distinct paragraphs based on what the evidence seeks to demonstrate (e.g. certain paragraphs focus on evidence for enrollment, while others focus on evidence of public funding, and yet others on demonstrated effectiveness). These recommendations also provide a bolded title for each paragraph that succinctly explains the type of educational program covered and the purpose of the evidence.

Rationale for (iii): The instructions do not inform requestors of the type of evidence that may be submitted to demonstrate enrollment in an educational, literacy, or career training program (including vocational training or an ESL course) or classes for a GED exam or equivalent state-authorized exam that have not yet begun. This evidence is allowed under USCIS's SCOPS August 2012 DACA guidance.¹⁶

Rationale for (iv): The instructions do not inform requestors that the same type of evidence that may be submitted to prove public funding for education, literacy, and career training programs (including vocational training or an ESL course) may also be used to prove public funding for classes for a GED exam or equivalent state-authorized exam, or literacy programs. This evidence is allowed under USCIS's SCOPS August 2012 DACA guidance.¹⁷

Rationale for (v): The instructions do not inform requestors that the same type of evidence that may be submitted to prove demonstrated effectiveness for education, for-profit literacy, and career training programs may also be used to prove demonstrated effectiveness for vocational training, ESL courses, classes for a GED exam or equivalent state-authorized exam that are not publicly funded. This evidence is allowed under USCIS's SCOPS August 2012 DACA guidance.¹⁸

Rationale for (vi): The instructions do not inform requestors that they may submit a copy of a non-profit literacy program's IRS letter confirming tax exempt status in lieu of showing federal, state, local, or municipal funding. This evidence is allowed under USCIS's SCOPS August 2012 DACA guidance.¹⁹

¹⁵ *Id.* at 57-58, 64-65.

¹⁶ *Id.* at 57, 65.

¹⁷ *Id.* at 57.

¹⁸ *Id.* at 58, 64.

¹⁹ *Id.* at 64.

38. Recommendation on Page 10. Evidence for Renewal Requests: Make the following change:

"If you are seeking a **Renewal** of Deferred Action for Childhood Arrivals, respond to all questions, except where the section or question indicates 'For Initial Requests Only.'

If you are seeking a Renewal, you do not need to resubmit all evidence submitted with your initial request. You only need to submit evidence specifically required for Renewal Requests by Form I-821D. Examples of supporting evidence that must accompany Renewal Requests include evidence related to **Removal Proceedings Information** (Part 1, Item Number 5), **Education and Military Service Information** (Part 1, Item Numbers 25 – 29), **Travel Information** (Part 4, Item Numbers 1 – 2), and **Criminal, National Security, and Public Safety Information** (Part 5, Item Numbers 1 – 5). Please note that you must submit supporting evidence related to **Removal Proceedings Information** and **Criminal, National Security, and Public Safety Information** even if you previously submitted the same evidence with your initial request."

Rationale: The instructions are unclear as to what evidence requestors seeking renewal must submit. This recommendation attempts to clarify the evidentiary burden for Renewal Requests but may not accurately reflect the evidence required by USCIS because Form I-821D and Instructions are inherently unclear on this issue.

The instructions seem to assume that the omission of enumerated evidence under Evidence for Renewal Requests, when compared to Evidence for Initial Requests, is sufficient to adequately convey that certain evidence need not be resubmitted. While the instructions impliedly convey that requestors do not need to resubmit certain types of evidence, the instructions fail to clearly and plainly state this fact. This recommendation clearly conveys these instructions to requestors and gives specific examples of supporting evidence that renewal requests must contain.

The instructions are also unclear that requestors must submit evidence related to removal and criminal proceedings *even if they have previously submitted this same evidence*. This recommendation clarifies this issue assuming USCIS will require Renewal Requests to contain this evidence.

39. Recommendation on Page 10. Additional Information Relevant to ALL Requests for Deferred Action for Childhood Arrivals: Make the following change:

"Filing and Biometric Services Fees. You . . . set forth in the instructions to Form I-765.

E-Notification of Application/Petition Acceptance. You may submit Form G-1145, an optional form, which will notify you electronically when USCIS accepts your immigration request for deferred action."

Rationale: The instructions do not inform requestors that they may file Form G-1145 with their request. This recommendation ensures that requestors are informed of this option.

40. Recommendation on Page 11. Where to File: Change the USCIS web site URL from "www.uscis.gov/I-821D" to "www.uscis.gov/I-821D-addresses".

Rationale: The URL provided by the instructions does not directly link to the USCIS webpage containing the lockbox addresses. This recommendation directly links requestors to that information, reducing potential confusion, and harmonizing this section with other URLs in the instructions, which provide direct links to the referenced page, form, or subject.

41. Recommendation on Page 11. Address Changes: Change the font color of the comma after "For information on filing a change of address" from red to black.

Rationale: This appears to be a formatting error.

42. Recommendation on Page 11. Processing Information. Decision: Make the following changes:

"Decision. USCIS will . . . there is no right to appeal. You may, however, request a review using the Service Request Management Tool (SRMT) process if you met all of the process guidelines, and you believe that your request was denied due to one of the following errors:

- USCIS denied Consideration for Initial or Renewal of Deferred Action for Childhood Arrivals based on abandonment and a claim that you did not respond to a Request for Evidence within the prescribed time; or
- USCIS mailed the Request for Evidence to the wrong address, even though you had submitted a Form AR-11, Change of Address, or changed your address online at www.uscis.gov, before the issuance of the Request for Evidence."

Rationale: The instructions do not inform requestors that they may request a review if they believe denial was based on abandonment or because a Request for Evidence was mailed to an incorrect address. This recommendation is taken directly from USCIS's DACA FAQ.²⁰

²⁰ See Frequently Asked Questions for Childhood Arrivals, U.S. Citizenship and Immigration Services, <http://www.uscis.gov/childhoodarrivals> (last updated Jan. 18, 2013).

Thank you for your consideration of MALDEF's views. Should you have any questions regarding these comments, feel free to contact me at (202) 572-0558 or imagana-salgado@maldef.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Magana-Salgado', with a horizontal line extending to the right.

Jose Magana-Salgado
Legislative Staff Attorney