

February 17, 2014

VIA E-MAIL: uscisfrcomment@uscis.dhs.gov

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

OMB Control Number 1615-0124; Docket ID USCIS-2012-0124

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:

We are writing to submit comments for consideration in the agency's development of final revisions to USCIS Form I-821D, Consideration of Deferred Action for Childhood Arrivals in accordance with 78 Fed. Reg. 243 (December 18, 2013). Pursuant to the Federal Register Notice, the Service seeks to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

Statement of Interest

The undersigned individuals constitute, in part, the Chicago Area DACA Collaborative, a group designed to address the challenges and issues associated with the Deferred Action for Childhood Arrivals (DACA) since the program's launch on June 15, 2012. The DACA Collaborative is comprised of representatives of various Chicago area community-based organizations (CBO) engaged in immigration representation for low-income clientele. The DACA Collaborative meets at least bi-monthly to address trends in DACA adjudications. In addition, we have engaged the CIS Ombudsman Office to meet with representatives of this collaborative to discuss our mutual concerns regarding the adjudication process. Together, we have a great deal of experience with the DACA program and Form I-821D. We are grateful for the opportunity to respond to the proposed form and appreciate the agency's consideration of our feedback.

Please find comments and suggestions from the Chicago Area DACA Collaborative below:

Evidence Related Questions:

1) **Form I-821D, Part 5. Criminal, National Security, and Public Safety Information.**

Question 1. The draft DACA renewal form requests for those who have EVER been arrested, charged or convicted of a felony or misdemeanor to provide a certified court disposition, arrest record, charging document, etc., for each arrest, unless disclosure is prohibited by law.

DACA recipients who have already provided these documents in their initial DACA request should not have to provide these documents again during renewal. Resubmitting documents of this nature lacks practical utility for USCIS and fails to minimize the burden of the collection of information on those who are to respond. Please clarify that these documents do not need to be submitted anew with the I-821D renewal.

2) **Form I-821D, Part 5. Criminal, National Security, and Public Safety Information.**

Question 1 (of the proposed form). *"Do not include minor traffic violations unless they were alcohol- or drug- related."* This reflects the policy delineated in the DACA FAQs found at www.uscis.gov. That policy, however, has generated significant confusion in the past with regard to traffic violations that are also misdemeanor offenses under state law. In fact, the certified dispositions for such offenses are often requested in an RFE, such that practitioners have simply submitted these documents with the initial filing as a matter of course.

Please clarify that USCIS will not collect this information with the principal application nor through subsequent RFEs unless the traffic violations were alcohol- or drug- related. This will enhance the clarity, quality, and utility of the information to be collected and minimize the burden of collection of information on those who are to respond.

3) **Form I-821D, Instructions at Part 12.** The instructions state "if the charges against you were handled in a juvenile court, and the records are from a state with laws prohibiting their disclosure, the evidence is not required." The DACA Collaborative applauds USCIS for recognizing the nuanced complexity of obtaining juvenile dispositions from certain states. However, we would like USCIS to clarify how one will demonstrate state law relating to non-disclosure of juvenile court documents. This will be particularly difficult for pro se requestors.

4) **Form I-821D, Instructions (proposed).** The instructions do not indicate that an applicant must submit documentation showing ongoing compliance with the education requirement. For example, the form allows an individual to indicate whether they ever took the GED exam if they were signed up for the GED course at the time of initial filing,

but the instructions do not indicate whether a certificate of completion or GED exam results are required.

USCIS should issue adequate guidance on what evidence, if any, will be required to demonstrate compliance with the DACA educational requirement in the renewal process. This will increase the clarity, quality, and utility of the information to be collected.

- a. We suggest USCIS use Temporary Protective Status as a model for only requesting documents on issues that were “pending at first filing e.g GED diploma, HS Diploma or Report card, Transcripts” [with an obvious exception for arrests post-initial filing]. *See* 8 CFR § 244.17 (“Completing the block on the I-821 attesting to the continued maintenance of the conditions of eligibility will generally preclude the need for supporting documents or evidence.”).

Non-Evidence Related Questions:

5) Form I-821D. Part 2. Processing Information. Questions 1-6 (of the proposed form).

USCIS asks for Processing Information, which includes information about the person’s ethnicity, race, height, etc.

We do not see how this information is necessary for the proper function of the agency in adjudicating consideration for deferred action. In fact, some community members have articulated distrust in the accumulation of this type of information for a process that is already suspect to certain undocumented communities. USCIS should explain why this information is necessary in the proper function of the agency, i.e. adjudicating the DACA renewal. USCIS should explain the practical utility of this information in the instructions.

- 6) Form I-821D. Instructions, Privacy Act Section.** Instructions at the Privacy Act Section seem to broaden the scope of the previous confidentiality provisions as they exist in the DACA FAQ. Specifically, the instructions state that information will not be shared with ICE for purposes of immigration enforcement unless the individual falls within the priorities highlighted under the NTA Guidance. However, the additional information sharing allows for sharing of information with national security **and law enforcement agencies... for purposes other than removal... *The above information sharing clause covers family members and guardians, in addition to the requestor.***

As has been highlighted in DACA reports from various undocumented populations, the DACA program is considered suspect in some communities as akin to a registration for deportation program. By broadening the scope of the confidentiality provisions and specifically listing the parents and guardians as subject to information sharing, the USCIS threatens the viability of the program for various populations.

- 7) **Form I-821D. Instructions (proposed). Who May File Form I-821D.** The proposed instructions indicate that a DACA renewal request may not be filed more than **120 days prior** to the expiration of the current period of deferred action.

USCIS should clarify in the instructions what will happen to a respondent's DACA status and employment authorization where the renewal adjudication by USCIS remains pending upon expiration of the requestor's initial period of deferred action. For example: A person granted deferred action and employment authorization expiring on August 1, 2014, files for DACA renewal on April 3, 2014 (120 days in advance). However, USCIS does not complete the adjudication of the DACA renewal until September 2014. We can envision this complication arising pervasively.

- a. We suggest USCIS use the Conditional Permanent Residence Petition to Remove Conditions as a model to provide automatic extensions of DACA status upon receipt of properly filed renewal requests. *See* 8 CFR § 216.4 ("Upon receipt of a properly filed form I-751, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition.").

Conclusion

We would again like to express our appreciation for this opportunity to submit comments for consideration in the agency's development of final revisions to USCIS Form I-821D, Consideration of Deferred Action for Childhood Arrivals.

Best Regards,

Chicago Area DACA Collaborative & Supporters

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