



# 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**

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**Electronically Submitted through the Federal eRulemaking Portal**

April 30, 2014

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Laura Dawkins

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**RE: Agency Information Collection Activities: Consideration of Deferred Action for Childhood Arrivals, Form I-821D; Revision of a Currently Approved Collection, 79 Fed. Reg. 18925 (April 4, 2014) as Amended by Fed. Reg. 21257 (April 15, 2014); Docket ID USCIS-2012-0012; OMB Control Number 1615-0124.**

Dear Chief Dawkins:

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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 April 4, 2014 and revised on April 15, 2014.

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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 recognizes U.S. Citizenship and Immigration Services' (USCIS) commitment to establish and maintain an effective process for initial and renewal requests for Consideration of DACA. To those ends, MALDEF submits the following recommendations to improve, clarify, and streamline the initial and renewal request process for DACA.

**A. SUPPORT FOR ADOPTED CHANGES**

MALDEF strongly supports, among others, the following changes made by USCIS to Form I-821D during the prior notice and comment period:

1. Elimination of educational requirement for renewal requests;
2. Clearer instructions regarding which sections initial and renewal requestors must complete;
3. All changes that shorten and streamline the form;
4. Elimination of Item Numbers that ask requestors to list pending immigration-related requests or new immigration statuses;
5. Page 1 insertion of “(if any)” after “Attorney State Bar Number;”
6. Page 1 insertion of “Form I-821D” between “Read” and “Instructions;”
7. Part 1 Item Number 3 insertion of “Legal” between “Full” and “Name;”
8. Part 3, Item Number 5 changes related to I-9X records;
9. Part 3, Item Number 6 changes related to “Education Information;”
10. Part 4, Item Number 1 changes related to “Criminal, National Security . . . Information;” and
11. Part 8, Item Number 1 insertion of “Legal” between “Full” and “Name.”

MALDEF strongly supports, among others, the following changes made by USCIS to Form I-821D Instructions during the prior notice and comment period:

1. Extension of the period during which requestors may submit their renewal requests from 120 to 150 days before expiration;
2. Page 1 insertion of “150 day filing requirement” language on first page of instructions;
3. Page 4 insertion of example certification for translated materials;
4. Page 6 instructions allowing submission of documents in name of parents;
5. Page 8 inclusion of non-profit programs as eligible educational institutions; and
6. Page 11 instructions regarding the submission of Form G-1145.

## **B. COMMENTS FOR FORM I-821D**<sup>1</sup>

### **1. Recommendation on Page 1: Make the following changes:**

- "1. ☐ **Initial Request** – Consideration of Deferred Action for Childhood Arrivals –  
~~Initial Request~~  
**OR**  
2. ☐ **Renewal Request** – Consideration of Deferred Action for Childhood Arrivals –  
~~Renewal Request~~".

**Rationale:** This recommendation makes it easier for requestors to more clearly determine which checkbox they should select. This recommendation also promotes consistency with other portions of Form I-821D and Instructions where "Initial Request" and "Renewal Request" precede "Consideration of Deferred Action for Childhood Arrivals."

## **B. COMMENTS FOR FORM I-821D INSTRUCTIONS**

### **1. Recommendation on Page 1. When Should I Use Form I-821D? Make the following changes:**

"If you are currently in immigration detention, you may not request consideration of DACA or Renewal of DACA from USCIS. If you think you meet the guidelines of this process, you should identify yourself as eligible for related relief to your deportation officer.

Upon receipt and acceptance of your Renewal Request for DACA, USCIS will issue a receipt notice that will automatically extend your current period of deferred action and employment authorization for a period after your expiration date to prevent lapses in deferred action or employment authorization during adjudication of your request."

**Rationale:** USCIS stated at recent meetings with stakeholders that there will be some sort of automatic temporary extension of DACA and employment authorization in order to ensure requestors do not fall out of their period of deferred action or employment authorization while USCIS adjudicates their renewal requests. This recommendation succinctly explains how automatic extension operates. USCIS should incorporate additional language to better explain this contemplated extension.

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<sup>1</sup> 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.

**2. Recommendation on Page 3. General Instructions. Advance Parole and Travel Warning.** Make the following changes:

“ . . . Deferred action will terminate automatically if you travel outside the United States without obtaining an Advance Parole Document from USCIS. In addition, leaving the United States, even with an Advance Parole Document, may prevent you from returning to the United States.”

**Rationale:** USCIS removed language similar to the above underlined language from Form I-821D Instructions during the previous notice and comment Period. MALDEF *strongly disagrees* with this deletion. 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 is not guaranteed. Thus, USCIS should re-insert and clearly emphasize this warning in light of the severe and substantial immigration-related consequences that a requestor may face. Additionally, the above language should be bolded, underlined, or in some way emphasized.

**3. Recommendation on Page 4. General Instructions. Further Information on filling out Form I-821D.** Make the following changes:

“**2.** Further information on filling out Form I-821D:

A. Type or print legibly in black ink.

B. If you need extra space to complete any item within this request, use **Part 8. Additional Information** and make additional copies of this sheet as needed. Type or print your name and Alien Registration Number (A-Number) (*if any*) at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet.”

**Rationale:** Requestors may be unaware that USCIS expects them to make multiple copies of the sheet under Part 8 when a single sheet is not sufficient. USCIS references these additional sheets (“ . . . sign and date *each* sheet.”) but does not clearly inform requestors that they may photocopy this sheet. This recommendation ensures that requestors with a significant amount of additional information are aware that they should submit multiple copies of the sheet under Part 8, as needed.

**4. 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 they may submit evidence from online educational programs to fulfill the education requirement. Online programs are explicitly allowed under USCIS's Service Center Operations (SCOPS) August 2012 DACA guidance.<sup>2</sup> This recommendation clarifies that requestors may submit documentation from these programs. *If USCIS does not agree to this specific insertion, USCIS should insert some reference to online programs in Form I-821D Instructions, as there is currently no public guidance to indicate that online programs are acceptable, contrary to internal USCIS guidance.*<sup>3</sup>

**5. Recommendation on Pages 8 and 9. Evidence for Initial Requests. Question 9.A.** Make the following changes under the section listing forms of acceptable evidence:

"If you are enrolled in an education program administered by a non-profit entity, you may submit a copy of the IRS letter confirming tax exempt status under 501(c)(3) for the education program to demonstrate its non-profit status."

**Rationale:** The instructions do not inform requestors that they may submit a copy of a Internal Revenue Service (IRS) letter confirming tax-exempt status for an education program to demonstrate that the program is administered by a non-profit entity. This evidence is allowed under USCIS's SCOPS August 2012 DACA guidance.<sup>4</sup> Without this change, Form I-821D Instructions will not have any examples of what requestors enrolled in non-profit education programs should submit to demonstrate the program's non-profit status.

**6. Recommendation on Pages 8 and 9. Processing Information:** Make the following changes:

"Initial Processing. Once your request has been received by USCIS, USCIS will check the request for completeness. If you do not completely fill out the form, USCIS may ~~deny~~ reject your request. Upon initial receipt, USCIS will either reject or accept your request. Rejection occurs when a request is missing key information (e.g. a signature or form).

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<sup>2</sup> Deferred Action for Childhood Arrivals: SCOPS-HQ at 53, Aug. 2012, (on file with author) ("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.").

MALDEF obtained this internal guidance from USCIS through an April 29, 2013 Freedom of Information Act (FOIA) request.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 64.

When USCIS rejects a request, it will return your entire application packet, including the fee, so you may remedy the issue. Please note that rejections, which occur at the initial receipt of your request, are different than denials, which occur after USCIS adjudicates your request."

**Rationale:** The language that USCIS uses to describe its lockbox vetting process is ambiguous as "rejection" is technically different from "denial." This recommendation replaces "deny" with "reject" to more accurately reflect internal USCIS processes. This recommendation also provides basic background on the differences between rejections and denials and the associated consequences.

**7. Recommendation on Page 11. What is the Filing Fee?** Make the following changes:

*"There is no filing fee for Form I-821D. However, you must submit both filing and biometric services fees with Form I-765. Read Form I-765 filing instructions for complete information at [www.uscis.gov/i-765](http://www.uscis.gov/i-765).*

Both Initial and Renewal Requests must submit the filing and biometric services fees for Form I-765."

**Rationale:** The instructions do not clearly inform renewal requestors that they must submit the filing fee for a renewal request. As USCIS does not require renewal requestors to submit other materials (e.g. previously submitted evidence) it is likely that some requestors may assume that they do not need to submit the I-765 filing and biometric services fees again. This recommendation ensures that renewal requestors are aware of the filing fee requirements.

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](mailto:imagana-salgado@maldef.org).

Sincerely,



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