

May 11, 2015

USCIS, Office of Policy and Strategy
Regulatory Coordination Division
Attn: Laura Dawkins
Chief, Regulatory Coordination Division
20 Massachusetts Avenue, NW
Washington, DC 20529-2140

Dear Ms. Dawkins:

RE: Agency Information Collection Activities: Application To Register Permanent Residence or Adjust Status, Form I-485 Supplement A, and Instruction Booklet for Filing Form I-485 and Supplement A, Form I-485; Revision of a Currently Approved Collection.

On behalf of Family Equality Council, please accept these comments on the United States Citizenship and Immigration Service's (USCIS) Agency Information Collection Activities: Application To Register Permanent Residence or Adjust Status, Form I-485 Supplement A, and Instruction Booklet for Filing Form I-485 and Supplement A, Form I-485. Family Equality Council is a national organization working to ensure full social and legal equality for lesbian, gay, bisexual, transgender, and queer (LGBTQ) parents and their children by providing direct support, educating the public, and securing inclusion in legislation, policies, and practices impacting families. On behalf of the more than three million LGBTQ parents and their six million children across the United States,¹ Family Equality Council would like to thank the Director and the Service for their work to provide inclusive and comprehensive services to the LGBTQ and immigrant communities within the United States.

Mother and Father Designations

Form I-485 is used by a non-citizen in the United States to adjust their permanent resident status, or to register for permanent residence. A spouse or child may also use this form to apply at the time a "principal" applicant files for or is granted permanent resident status, though only in certain circumstances. Applicants are required to provide identifying information about certain family members, including personal information about the applicant's parents and spouse, using fields employing the terms "mother," "father," "husband," and "wife."²

The intent of this form is to identify the parents and spouse of the applicant, so as to facilitate USCIS properly identifying the applicant and determining whether known information about the applicant or her family members affects her eligibility for permanent residency in the United States. Using gendered terms to gather information about the applicant's parents and spouse when the form's intent is to effectively ascertain her identity and the identity of certain family members serves to confuse applicants and possibly delay or deny processing of this form, and petitions for residency, where the applicant has two mothers, two fathers, or a spouse of the same-sex. Even worse, this language may erroneously convince applicants that they and their family are ineligible for permanent residency in the United States based on their sexual

¹ Movement Advancement Project, Family Equality Council and Center for American Progress, "All Children Matter: How Legal and Social Inequalities Hurt LGBT Families," October 2011, *Issue Brief: Obstacles and Opportunities: Ensuring Health and Wellness for LGBT Families*.

² *Id.*

orientation or the sexual orientation of their parents. Using the gendered terms “mother,” father,” “husband,” and “wife” adds nothing to the information gathered by the form that would not be ascertained by using non-gendered terms.

Recommendations

Form I-485 can easily be changed to use non-gendered terms to describe the parents and spouse of an applicant. We propose the following amendments to the form’s language, all of which can be changed without undermining or compromising the information gained from this form.

We recommend the Service amend the language at Part 2, Question f, to read (edits in strikethrough and bold:

“I am the ~~husband, wife,~~ **parent** or minor unmarried child of a Cuban described above in (e), and I am residing with that person, and was admitted or paroled in the United States after January 1, 1959, and thereafter have been physically present in the United States for at least 1 year.”

We also recommend that language at Part 2, Question j, be amended to read:

“I am the ~~husband, wife,~~ **parent** or minor unmarried child of a Cuban and meet the description in (f) above.”

Finally, we recommend that the fields at Part 3, Question A, be amended as follows:

- “Your ~~Mother’s~~ **Parent 1’s** First Name”
- “Your ~~Father’s~~ **Parent 2’s** First Name”

Amending these fields as recommended would allow applicants to complete the form more fully and truthfully, and more accurately match any previous records with which Form I-485 is being compared.

The Director of United States Citizenship and Immigration Services, through power granted him by the Secretary of Homeland Security, has the authority to change this form as established by 40 U.S.C. § 1315. Neither the statute³ nor regulations⁴ governing applications for permanent residency use gendered terms to describe such an individual’s parents or spouse. Thus, the changes we recommend are solely of internal agency policy.

The federal government’s thousands of programs, services, and benefits are intended to be accessible to all who qualify, and the language we use to determine eligibility for those benefits carries significant tangible and symbolic consequences for LGBTQ-headed families. Changing Form I-485 to employ gender-neutral parental and spousal terms will be a cost-neutral change that would more accurately reflect the varied composition of today’s families. Updating this form to be inclusive of same-sex couples and families with two parents of the same-sex will also increase governmental efficiency by alleviating the needless confusion, delays, and denials caused by current outdated forms. The exclusionary effect of the gendered statutory language struck down by the Supreme Court’s ruling in *U.S. v. Windsor*⁵ shows how

³ 8 U.S.C. § 1227.

⁴ 8 C.F.R. § 245a, et seq.

⁵ *United States v. Windsor*, 570 U.S. ____ (2013).

gendered spousal fields and other terms like those seen here exclude millions of people from benefits, services, and programs. Updating this form and forms like it to be inclusive of all families will ensure these benefits are available and awarded appropriately to all who are eligible for them.

We respectfully recommend that the United States Citizenship and Immigration Services amend the gendered spousal and parental language on Form I-485 to be inclusive of all parents and families. We commend USCIS and the Department of Homeland Security for its work, and look forward to the final draft of this form.

We are happy to provide your office with any additional information or clarification that you might need. Please contact Michael Porcello (mporcello@familyequality.org, 202-607-2140) in our Washington, D.C. office with any questions.

Sincerely,



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