

July 24, 2015



OMB USCIS Desk Officer
via email at oir_submission@omb.eop.gov.
U.S. Citizenship and Immigration Services
DEPARTMENT OF HOMELAND SECURITY

Re: OMB Control Number 1615-0023

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 AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security

Dear Sir or Madam:

Thank you for providing additional time to comment on the information collection request regarding the estimated public burden of revised Form I-485, the Application to Register Permanent Residence or Adjust Status. Federal Register Number: 2015-15646 (June 26, 2015). We are especially grateful for the agencies' interest to: (1) "enhance the quality, utility, and clarity of the information to be collected;" and (2) "minimize the burden of the collection of information on those who are to respond."

The National Immigration Law Center (NILC) is a nonpartisan national legal advocacy organization that works to protect and promote the rights of low-income immigrants and their family members. NILC specializes in the intersection of public benefit and immigration laws and policies, offering technical assistance, training and publications to government agencies and non-profit organizations. With more than 30 years of experience, NILC understands the challenges and barriers that immigrant families confront in their efforts to participate fully in and contribute to the nation's communities.

We ask that you consider NILC's following comments in response to the two identified points.

Enhance the quality, utility, and clarity of the information to be collected

Public Charge Questions are Overly Broad

A person residing in the United States seeking to adjust to permanent resident status or register for permanent residence must file Form I-485 with the U.S. Citizenship and Immigration Services (USCIS). Positioned in between a series of questions about criminal activities are questions 50 and 51 of Part 8 asking whether the filer has ever received – or is likely to receive in the future - public assistance in the United States from any source. These questions - *Have you received public assistance in the United States from any source, including the U.S. Government or any state, county, city or municipality (other than emergency medical treatment)* and *Are you likely to receive public assistance in the future?* – are confusing to applicants, attorneys,

advocates, and adjudication officials. These questions, as written, are also at odds with USCIS policy on public charge. Most importantly, these questions, as written, perpetuate a longstanding misunderstanding and concern among immigrants that receiving public benefits will undermine their ability to adjust their status or will otherwise put them at risk, because they will be considered a “public charge.” This, in turn, has a chilling effect on immigrants’ willingness to apply for critical benefits for themselves or their children.

1999 INS Rule and Field Guidance on Public Charge

In 1999, the former Immigration and Naturalization Service (INS, now USCIS) issued a landmark field guidance defining the term “public charge,” establishing procedures to be used by INS officers when making public charge determinations, and clarifying the benefits that immigrants can receive without public charge consequences.ⁱ Simultaneously, the Department of Justice published a proposed rule addressing the same issuesⁱⁱ and the Department of State issued a cable incorporating the definitions and rules contained in the guidance.ⁱⁱⁱ The guidance took effect on May 21, 1999.

The INS issued the guidance and proposed rule to alleviate “considerable public confusion about the relationship between the receipt of federal, state and local public benefits” and “public charge” determinations in immigration law.^{iv} After extensive consultation with benefit-granting agencies including the Departments of Health and Human Services and Agriculture and the Social Security Administration, the INS noted that

This situation is becoming particularly acute with respect to the provision of emergency and other medical assistance, children’s immunizations, and basic nutrition programs, as well as the treatment of communicable diseases. Immigrants’ fears of obtaining these necessary medical and other benefits are not only causing them considerable harm, but are also jeopardizing the general public.^v

INS definition of public charge

The 1999 INS rule and guidance clarified that “public charge” refers to an individual who is likely to become “primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance, or institutionalization for long-term care at government expense.”^{vi} The term describes persons who cannot support themselves and who depend on benefits that provide cash —specifically Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), or state and local cash assistance programs – for their income. In addition, public assistance, including Medicaid, that is used for long-term institutional care—such as in a nursing home or mental health institution – may be considered as a factor in establishing public charge.

The receipt of these benefits does not automatically make an individual ineligible to adjust to lawful permanent residence, or deportable on public charge grounds. Each determination is made on a case-by-case basis in the context of the totality of the circumstances. Other factors to be considered include an individual’s age, health, income, family size, education, and skills, as well as the affidavit of support. No single factor will determine whether an individual is a public charge. Although the government can look at whether the individual used cash welfare, it cannot make its decision based only on what happened in the past.

USCIS policy is clear: noncash benefits are not subject to public charge consideration

The guidance states that noncash benefits and special-purpose cash benefits that are not intended for income maintenance, but rather to promote other important societal interests, are not subject to public charge consideration.^{vii} These programs include use of Medicaid, the Children’s Health Insurance Program (CHIP), or other health programs by the individual or a member of the family; or the Supplemental Nutritional Assistance Program (SNAP), WIC, public housing, or other noncash programs used by the individual or a family member. All other noncash programs, such as housing, school lunch, job training, child care, shelters, energy assistance, disaster relief, and health clinics, also are not relevant in the public charge determination.

The need to conform the I-485 form to existing USCIS policy

In its Summary of Responses to already submitted comments, USCIS rejects requests to change the wording of the questions on public charge. USCIS states:

No change will be made based on this comment. Inadmissibility based on public charge requires an officer to determine whether the foreign national is more likely than not to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense. The suggested edit makes the question too narrow.

As USCIS notes in this response, public charge can be demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense. This should be reflected in the questions. USCIS must act to address “considerable public confusion about the relationship between the receipt of federal, state and local public benefits” and “public charge” determinations in immigration law.^{viii}

RECOMMENDATIONS

Questions 50 and 51 of Form I-485 fail to distinguish between cash and noncash benefits. If questions pertaining to the use of public benefits are deemed necessary, they must be rewritten to ask the questions that are relevant to the public charge determination:

- Have you received Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), or cash from state and local income assistance programs?
- Have you received public assistance, including Medicaid, for long-term institutional care—such as in a nursing home or mental health institution?

The Pre-Decisional Deliberative Draft Instructions for Form I-485 provides a link to the USCIS Public Charge fact sheet. The Instructions themselves must include a section explaining the questions above by

- Specifying that noncash benefits such as SNAP, Medicaid, CHIP, WIC, housing benefits, child care services, energy assistance, emergency disaster relief, foster care and adoption assistance, education assistance, job training are not considered in the public charge determination.
- Specifying that receipt of monthly cash benefits for income maintenance purposes - SSI, TANF, cash from state and local income assistance programs and long-term institutional care – may be considered as a factor in the public charge determination, but

does not automatically make an individual ineligible to adjust status to lawful permanent residence on public charge grounds.

Once again, USCIS must act to alleviate “considerable public confusion about the relationship between the receipt of federal, state and local public benefits” and “public charge” determinations in immigration law.^{ix} Despite the issuance of the guidance, immigrants and their families continue to avoid seeking critical services for which they are eligible. This misunderstanding of USCIS policy will be fueled by the overly broad public charge questions and the fact that these questions are often asked verbally in the adjudication interview. Therefore, asking about the use of public benefits generally, including those that are not relevant to the public charge inquiry, must be considered flawed, unnecessary for the agency’s functioning, and lacking in practical utility.

Minimize the burden of the collection of information on those who are to respond

Proposed Form and Instruction Booklet Unnecessarily Burden Applicants

NILC finds that the increased length and additional questions proposed in the I-485 will increase the time and work required to fill out the form beyond what the agency has estimated. The proposed changes increase the length of the form from 6 to 20 pages and the length of the instruction booklet from 8 to 125 pages, which will make reading the material and filling out the form more onerous for applicants. USCIS estimates that respondents will take 15 more minutes to review the instructions, complete the petition, gather supporting documents, and submit the petition than the current form and instructions (from 6.25 to 6.5 hours). USCIS underestimates the time applicants will take to fill out the form. By examining the word count difference between the current and proposed forms, NILC estimates that reading the additional text alone will take the average reader approximately 17 minutes, which is already more than the time estimated by USCIS and does not take into account the time it will take applicants to review the instructions, respond to questions, and gather supporting documents.^x

A form that is too long will likely impede applicants with low literacy from adjusting status. Given the increased time and resources that the proposed form will require to complete, applicants may be overwhelmed by the length of the form and, as a result, seek legal counsel for assistance. Low-income applicants who would otherwise adjust status on a pro se basis will likely be deterred from applying due to these additional costs. For those who do pursue to adjust status as pro se applicants, the length of the proposed form may lead to incomplete or error-filled applications.

For these reasons, NILC urges USCIS to reconsider the length of the proposed form. In an effort to lessen the proposed form’s burden on applicants, **NILC recommends that the following sections be deleted:**

Address History: Pages 4, Part 3, Questions 2 and 3

According to the U.S. Census Bureau’s Housing and Household Economics Statistics Division, foreign-born and low-income individuals are negatively associated with duration of residence, suggesting that low-income applicants are more likely to have

shorter housing durations.^{xi} Therefore, low-income applicants will find collecting and providing their address history for the last five years to be overly burdensome.

Employment History: Page 5, Part 3, Questions 4 and 5

Since low-income immigrants are more likely to hold multiple jobs^{xii} and work in the underground economy, such as those employed as day laborers and domestic workers, some low-wage applicants may find having to list their employers for the last five years to be an impossible documentation burden.

Applicant's Contact Information: Page 16, Part 10, Questions 3 – 5

These questions should be deleted since they are repetitive. An identical set of questions are listed in the previous page (p. 16).

Conclusion

We are grateful for your consideration of these comments. If you have any questions, please contact me at 202-384-1277 or via email at battistelli@nilc.org.

Respectfully,

s/ Ellen Sittenfeld Battistelli
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ⁱ Field Guidance on Deportability and Inadmissibility on Public Charge Grounds [64 FR 28689] [FR 27-99] <http://www.gpo.gov/fdsys/pkg/FR-1999-05-26/pdf/99-13202.pdf> (last visited July 21, 2015).

ⁱⁱ 64 Fed. Reg. 28676 (May 26, 1999), <http://www.gpo.gov/fdsys/pkg/FR-1999-05-26/pdf/99-13188.pdf> (last visited July 21, 2015).

ⁱⁱⁱ U.S. Department of State Foreign Affairs Manual Volume 9, Fam 40.41 Public Charge, INA 212(A)(4) <http://www.state.gov/documents/organization/86986.pdf> (last visited July 21, 2015).

^{iv} 64 Fed. Reg. 28689.

^v 64 Fed. Reg. 28676.

^{vi} "Public Charge" (USCIS webpage), <http://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge> (last visited July 21, 2015).

^{vii} 64 Fed. Reg. 28676.

^{viii} 64 Fed. Reg. 28689.

^{ix} 64 Fed. Reg. 28689.

^x A study by Marcel Adam Just and Patricia A. Carpenter found that normal individuals read at a rate of 240 words per minutes on average. By dividing the reading rate by the difference in words between the proposed and current I-485 form (4,112 words), NILC estimates that the form will take approximately 17 additional minutes to read. The study can be found online at <http://repository.cmu.edu/cgi/viewcontent.cgi?article=2081&context=psychology>.

^{xi} Mateyka, Peter, and Matthew Marlay. *The Duration and Tenure and Residence, 1996 to 2009*. U.S. Census Bureau. <<https://www.census.gov/hhes/migration/files/2008-Duration-WP.pdf>>

^{xii} "Who Are Low-Wage Workers?" *ASPE Research Brief*. Assistant Secretary of Planning and Evaluation, Department of Health and Human Services, Feb. 2009. <<http://aspe.hhs.gov/hsp/09/lowwageworkers/rb.shtml>>