

Via Email to: oir_submission@omb.eop.gov

July 27, 2015

OMB USCIS Desk Officer
Office of the Citizenship and Immigration Services Ombudsman
Department of Homeland Security
Mail Stop 0180
Washington, DC 20528

Re: Revisions to Form I-485, OMB Control# 1615-0023

To Whom It May Concern:

The New York Legal Assistance Group (NYLAG) respectfully submits the following comments related to proposed revisions to Form I-485, Application Register Permanent Residence or Adjust Status.

Since 1990 NYLAG has provided high quality, free civil legal services to low-income New Yorkers who cannot afford representation from a private attorney. NYLAG is recognized by the Board of Immigration Appeals as a "Non-Profit Social Service or Similar Organization." The attorneys, accredited representatives and supporting staff of NYLAG's Immigrant Protection Unit (IPU) make up one of the largest organizations providing legal advice and representation to New York City's indigent immigrant population, many of whom seek assistance applying for Adjustment of Status. As such, NYLAG encourages USCIS to reconsider some of the proposed changes. Please find our general comments followed by our specific recommendations laid out in detail below.

We offer the general comment echoed by many of our fellow commenters that this proposed form and the 107 page instruction book are far too lengthy and complicated for most *pro se* applicants. As USCIS has acknowledged in their comments, many of the questions mirror language in the INA and, as such, we believe require legal interpretation and analysis to respond properly. However, it is unlikely that such complicated questions could be fully understood and accurately answered by the vast majority of *pro se* applicants and will therefore lead to inaccurate data collection by USCIS.

If, as USCIS has reiterated in its responses to comments to this form, it is absolutely necessary to collect this information in this manner, DHS must make more resources available for free or low-cost legal services to help individuals fully understand the questions that they are answering in pursuit of an immigration benefit. This is particularly important in light of the increasing complexity of forms such as the proposed one and the recently updated naturalization, as well as the risk of being placed into removal proceedings that immigrants may face when applying for benefits like adjustment of status.

Part 8. General Eligibility and Inadmissibility Grounds

Health

Question 13. Have you EVER used any illegal drugs or abused any illegal drugs?

This language is overbroad and unlikely to solicit the information needed to determine whether, as USCIS has stated, an individual must be referred to a civil surgeon for an additional medical examination to determine specifically whether the individual is a drug abuser or addict. “Use” without any modifier or clarification does not assist in identifying those who have “abused.” We would propose the language of this question read “Have you EVER abused any illegal drugs”.

Terrorist-Related and National Security

Question 36. Have you EVER:

A. Committed, threatened to commit, attempted to commit, conspired to commit, incited, endorsed, espoused, planned, or prepared any of the following: hijacking, sabotage, kidnapping, political assassination, use of a weapon or explosive to endanger safety or cause damage, or any other form of terrorist activity?

The language is unclear and, may be easily misinterpreted too broadly, particularly by *pro se* applicants. For example, non-terrorist organizations such as police or military organizations may be considered groups that “use[] a weapon or explosive to endanger safety or cause damage.” We suggest clarifying language such as, “Committed, threatened to commit, attempted to commit, conspired to commit, incited, endorsed, espoused, planned or prepared for any form of terrorist activity, including: hijacking, sabotage, kidnapping, political assassination, or use of a weapon or explosive to endanger safety or cause damage.”

Question 38. Are you the spouse or child of an individual who engaged in any of the activities listed in Item Number 36.?

This language is overbroad. Section 212a(3)(B)(i)(IX) of the INA renders any spouse or child of individuals participating in the activities listed in Number 36 only where the activity occurred within the last five years. The time limit presumably exists as children or spouses of those participating in terrorist activity may not be aware of or benefit from their family member’s activities and should not therefore be rendered inadmissible. Indeed, USCIS may receive false negative answers from such a broadly worded statement where individuals may be unaware of their family member’s past activities because of the passage of time. We suggest changing the question to track the language of the INA more closely, “Are you the spouse or child of an individual who engaged in any of the activities listed in Item Number 36 within the past five years”.

Question 59. Have you EVER obtained a student nonimmigrant visa and violated the terms of your nonimmigrant student visa?

We appreciate that this question includes the descriptive name – ‘student’ – of the nonimmigrant status. This relates to our concern that the term ‘nonimmigrant’ is often misunderstood, and thus we believe questions such as Question 5. in Part 8 (that asks, “Have you ever violated the terms or conditions of your nonimmigrant status?”) are potentially more confusing than questions that use the descriptive terms of the nonimmigrant status or statuses in question, such as student, tourist, etc.

Thank you for taking the time to review and consider our comments. Please do not hesitate to contact me at (212) 613- 5013 if any further information or clarification is needed.

Sincerely,



Irina Matiychenko
Director
Immigrant Protection Unit
NYLAG