



ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

99 HUDSON STREET, 12th FL, NEW YORK, NY 10013-2815 212 966-5932 FAX 212 966-4303

May 2, 2016

VIA E-MAIL

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

Re: **Agency Information Collection Activities: Consideration of Deferred Action for
Childhood Arrivals, Form I-821D, Revision of a Currently Approved Collection
OMB Control Number 1615-0124**

Dear Ms. Deshommes:

On behalf of the Asian American Legal Defense and Education Fund (AALDEF), I respectfully submit the following comments on the above-referenced agency collection of information for Form I-821D, Consideration of Deferred Action for Childhood Arrivals (DACA), and accompanying instructions published in the Federal Register on March 3, 2016.

Founded in 1974, AALDEF is a national organization that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all.

AALDEF advocates for fair immigration policies that recognize the human rights of undocumented immigrants in the United States, promote family reunification, enforce worker protections for all, eliminate racial and ethnic profiling, and end other discriminatory practices that violate due process. We also provide legal assistance to undocumented individuals who may be eligible for the DACA program. This includes representing primarily Asian undocumented youth who qualify for DACA and assisting these individuals with filing their initial and renewal requests with U.S. Citizenship and Immigration Services (USCIS).

We welcome the opportunity to provide comments on the current I-821D form and the instructions and urge USCIS to make several additional changes to Form I-821D in order to update the form to have it comport with recent agency guidance and to make it more accessible to DACA requestors, particularly those individuals who are unrepresented.

AALDEF also asks that USCIS reconsider and revise its current policy on the accrual of unlawful presence during the pendency of a timely filed renewal request, particularly in instances when adjudication is delayed due to Service processing delays. In addition, we recommend that USCIS issue an automatic extension of employment authorization upon the filing of a timely renewal request. Such action would avoid the disruption to employees and their employers that is caused by lapses in work authorization. We are providing specific suggestions for revising the instructions to the I-821D form which incorporate these changes.

USCIS provides the following guidance on the accrual of unlawful presence in the Service's DACA Toolkit: Resources for Community Partners:

If your previous period of DACA expires before you receive a renewal of deferred action under DACA, you will accrue unlawful presence for any time between the periods of deferred action unless you are under 18 years of age at the time you submit your renewal request. Similarly, if your previous period of DACA expires before you receive a renewal of deferred action under DACA, you will not be authorized to work in the United States regardless of your age at time of filing until and unless you receive a new employment authorization document from USCIS.

However, if you have filed your renewal request with USCIS approximately 120 days before your deferred action and EAD expire and USCIS is unexpectedly delayed in processing your renewal request, USCIS may provide deferred action and employment authorization for a short period of time.¹ (emphasis added)

In the event that USCIS decides not to change its policy, we recommend that the Service adjust its practices with its guidance to requestors, employers, and the public to accord with the above italicized language. This guidance suggests that USCIS may grant a brief or interim period of deferred action and work authorization when a timely filed DACA request is adversely impacted by processing delays. We would welcome USCIS

¹ USCIS, Deferred Action for Childhood Arrivals (DACA) Toolkit: Resources for Community Partners 23,
https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Deferred%20Action%20for%20Childhood%20Arrivals/DACA_Toolkit_CP_072914.pdf.

implementing such a practice, as it would provide greater certainty for both requestors and their employers and avoid costly and unnecessary disruptions in employment.

Form I-821D:

1. Move questions 8 through 10 to the beginning of the “Travel Information” section

Page 3, Part 2, questions 8-10

USICS poses a series of questions that the requestor must respond to in questions 8 through 10, beginning with “Have you left the United States without advance parole on or after August 15, 2012?” An individual who has never departed from the U.S. and thereby does not respond to questions 6 and 7 can easily miss and skip the “Travel Information” section, entirely missing questions 8 through 10.

Recommendation: We recommend revising the form so that questions 8 through 10 appear at the beginning of the “Travel Information” section of Part 2 of the I-821D.

Instructions to Form I-821D:

1. Clarify that DACA renewal requests can be filed even following the expiration of the current period of deferred action

Page 1: When Should I Use Form I-821D? – Renewal Requests After Expiration

It is not clear to people reading the instructions that the submission of renewal requests are accepted by USCIS even after the current DACA period expires. While this information is contained in USCIS’s DACA FAQs of June 15, 2015,² it is only implicit in the instructions, which state: “If . . . you are filing within one year after your last period of deferred action expired, please follow the instructions provided below . . .”

Recommendation: We recommend that USCIS revise the first “Note” section to state as follows:

² See USCIS DACA Frequently Asked Questions, answer to Q50, at <https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions>.

NOTE: You may file for a renewal within one year of the expiration date of your previous period of deferred action under DACA. If you are filing beyond one year after your most recent period of DACA expired, you may still request DACA by submitting a new initial request. However, if you file for a renewal after your previous DACA expires, you will accrue unlawful presence AND you will not be authorized to work in the United States between the date of expiration and the date your work authorization is renewed.

2. Update and revise the cautionary message

Page 1: When Should I Use Form I-821D

The current “Caution” message states: If you file this request **more than 150 days prior** to the expiration of your current period of deferred action, USCIS may reject your submission and return it to you with instructions to resubmit your request closer to the expiration date.” This language appears to conflict with the updated DACA FAQs, which state: “Requests received earlier than 150 days in advance will be accepted; however, this could result in an overlap between your current DACA and your renewal. This means your renewal period may extend for less than a full two years from the date that your current DACA period expires.”

Recommendation: We recommend that USCIS revise the “Caution” message to state:

CAUTION: If you file this request **more than 150 days prior** to the expiration of your current period of deferred action, USCIS will accept your submission; however, this could result in an overlap between your current DACA and your renewal. USCIS encourages that you submit your renewal request as early in the 150-day period as possible—ideally, **at least 120 days prior** to the DACA expiration date.

3. Individuals requesting DACA should not accrue unlawful presence if their DACA period expires during the renewal adjudication process

Page 1: What is the Purpose of This Form?

DACA recipients should not accrue unlawful presence if their period of deferred action under DACA expires during the renewal adjudication process. This would be consistent with USCIS’s current policy that individuals requesting DACA who turn 18 while their applications are pending will not accrue unlawful presence.

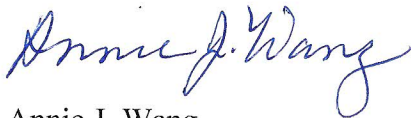
Recommendation: USICS should include the following additional language:

NOTE: A receipt notice issued by USCIS for a DACA renewal request will serve as proof that you are in deferred action status for purposes of avoiding the accrual of unlawful presence while your renewal request remains pending.

In conclusion, we appreciate the opportunity to comment on Form I-821D, Consideration of Deferred Action for Childhood Arrivals (DACA), and the accompanying instructions. AALDEF hopes that we, our community partners, and members of the community that we represent can continue to engage with USCIS in connection with the implementation of the DACA program.

Please feel free to contact me at awang@aaldef.org if you have any questions.

Sincerely,



Annie J. Wang
Staff Attorney