

Via Email: [USCISFRComment@uscis.dhs.gov](mailto:USCISFRComment@uscis.dhs.gov)

April 30, 2016

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

Dear Ms. Deshommes,

We write on behalf of OneAmerica, Northwest Immigrant Rights Project, 21 Progress, Casa Latina, Asian Counseling and Referral Service and the City of Seattle Office on Immigrant and Refugee Affairs to submit the following comments relating to **Form I-821D, Consideration of Deferred Action for Childhood Arrivals (DACA), and Instructions** in response to the request for public comment issued by U.S. Citizenship and Immigration Services (USCIS) in the Federal Register on March 3, 2016.

We encourage USCIS to make a number of changes to Form I-821D and the accompanying instructions to improve the application and adjudication process. In particular, we recommend several changes to make the forms more understandable and accessible, particularly to those DACA applicants who are unrepresented by counsel. We believe our recommendations will help to reduce inefficiency and waste in the adjudication process and will address the increase in denial rates<sup>1</sup> by helping applicants better understand the application process.

Finally, although not directly related to the I-821D and accompanying instructions, we strongly urge USCIS to identify ways to make DACA more affordable and have included in this comment our recommendations to achieve this goal. Thank you for the opportunity to submit this comment.

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<sup>1</sup> See USCIS, *Number of I-821D, Consideration of Deferred Action for Childhood Arrivals by Fiscal Year, Quarter, Intake, Biometrics and Case Status: 2012-2016 (December 31)*, [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/I821\\_daca\\_performancedata\\_fy2016\\_qtr1.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/I821_daca_performancedata_fy2016_qtr1.pdf).

## **FORM I-821D**

### **1. Move “*Removal Proceedings Information*” to Part 4**

*Page 1, Part 1, Question 5*

Requesting information about prior removal proceedings at the beginning of the application has a chilling effect on community members who already have a heightened fear of deportation.

**Recommendation:** Question 5 should be moved to Part 4.

**Recommendation:** Add an “unknown” option for applicants who may not know whether they have been subject to removal proceedings.

### **2. Update the “*Information About You*” Section**

*Page 2, Part I Information About You, Question 9*

**Recommendation:** Add "other" (or other appropriate gender indicators)

*Page 2, Part I Information About You, Question 16*

**Recommendation:** Add "other"

### **3. Move Questions 8 – 10 to the Beginning of the *Travel Information* Section**

*Page 3, Part 2, Questions 8 - 10*

USCIS asks a series of questions that each Requestor must complete in Questions 8 to 10 beginning with “*Have you left the United States without advance parole on or after August 15, 2012?*” An applicant who has never left the U.S. and thus does not answer Questions 6 to 7 may glance over and skip the section on “Travel Information” all together missing Questions 8 - 10.

**Recommendation:** We recommend revising the form so that Questions 8-10 are at the beginning of the section under *Travel Information*.

#### **4. Do not require Applicants to Disclose Juvenile Dispositions and Limit Evidence Required to be Submitted for Convictions**

##### *Page 4, Part 4, Question 1*

The form currently requires a DACA Requestor to indicate whether he or she has been arrested for, charged with, or convicted of a felony or misdemeanor in the United States, even if the incident was disposed of in juvenile court. The form further requires that a requestor provide documents from the juvenile record, including copies of all arrest records, charging documents, dispositions, and sentencing records.

In addition, although the current form instructions (at the bottom of page 10) indicate that renewal applicants are not required to resubmit documents that were submitted previously, the form itself does not make this clear, causing confusion for renewal applicants.

**Recommendation:** To ensure uniform treatment of all DACA requests, USCIS should not require DACA requestors to reveal whether they were charged with or convicted of a felony or misdemeanor if that incident was handled in juvenile court. Removing this requirement will prevent the unavoidably inconsistent and unfair treatment of DACA requesters who are subject to divergent state laws.

**Recommendation:** We recommend USCIS limit evidence of criminal convictions to the record of conviction (plea agreements, plea colloquy transcripts, and verdict or judgment of conviction). We also recommend that applicants not be required to submit certified copies of documents, which are expensive for applicants to obtain.

**Recommendation:** On the proposed Form I-821D, Page 4, Part 4, Question 1, the following sentence should be added to the bold section after the question. ***“Renewal applicants are not required to resubmit documents submitted in their initial request.”***

**Recommendation:** On the proposed Form I-821D, Page 4, Part 4, Question 2, the following sentence should be added to the bold section after the question. ***“Renewal applicants are not required to resubmit documents submitted in their initial request.”***

**Recommendation:** The form should be amended to read:

***Have you ever been arrested for, charged with, or convicted of a felony or misdemeanor in the United States? Do not include minor traffic violations unless they were alcohol- or drug-related. Do not include incidents handled in juvenile court.***

***If you answered “Yes” you must also include copies of all charging documents, plea agreements, plea colloquy transcripts, and verdicts or judgments of conviction, unless the***

***records involved incidents handled in juvenile court, or the disclosure is prohibited under state law.***

**Recommendation:** On the instructions for this section, USCIS should clarify that renewal applicants who have previously disclosed criminal history information and provided the relevant records during their initial application can simply state as much in the addendum after checking “yes” to the question on the form.

## **INSTRUCTIONS TO FORM I-821D**

### **1. Clarify Evidentiary Requirements**

Based on our experience providing services to community members, qualified applicants often struggle to meet overly burdensome evidentiary standards. For example, we have received many reports of RFEs issued for a lack of documentation for short gaps in time.

*Page 6, What documents may show that you came to the U.S. before your 16<sup>th</sup> birthday?*

**Recommendation:** We recommend USCIS clarify that affidavits are acceptable to establish entry before the age of sixteen. This change would also require revising Question 41 of the FAQs.

*Page 6, What documents may show that you continuously resided in the U.S. since June 15 2007, up to the present date?*

**Recommendation:** We recommend USCIS require one form of evidence per year to establish continuous presence and accept affidavits plus proof of school enrollment to establish arrival before June 15, 2007.

### **2. Clarify that Criminal Disposition Evidence need not be Resubmitted for Renewal Applications**

*Page 10, What evidence should I submit to demonstrate my criminal history?*

**Recommendation:** After the existing instructions on Page 10, Question 12, add the following sentence:

***“If you are seeking a renewal of Deferred Action for Childhood Arrivals, you do NOT need to resubmit evidence demonstrating the results of the arrests or charges brought against you if this evidence was submitted with your initial filing or in response to a Request for Evidence.”***

## **DACA FEES**

### **1. Clarify that Homeless Status is sufficient to qualify for a Fee Exemption**

USCIS current language on fee exemption eligibility states a Requestor is eligible if *“under 18 years of age, homeless, in foster care, or under 18 years of age and otherwise lacking any parental or other familial support and your income is less than 150% of the U.S. poverty level.”* Currently it seems a Requestor must be under 18 *and* homeless or in foster care.

**Recommendation:** We suggest clarifying that an individual’s homeless status is sufficient to qualify for a fee exemption.

### **2. Recognize other types of Debt, in addition to Medical Debt**

**Recommendation:** We suggest USCIS consider other types of debt, including school loans, mortgages, etc.

### **3. Remove the 12-month Limitation on Debt Accumulation**

**Recommendation:** We suggest USCIS not limit debt accumulation to the past 12 months. Rather, USCIS should consider the total amount of debt accrued.

### **4. Adjudicate Fee Exemptions through InfoPass**

Renewal applicants who request fee exemptions sometimes do not receive a decision on their fee exemption in sufficient time to renew their DACA.

**Recommendation:** We suggest allowing local USCIS offices to adjudicate fee exemptions through InfoPass to reduce delay in the process.

### **5. Expand Fee Exemption Categories**

As of the first quarter of FY 2015, USCIS has received a cumulative of 770,338 DACA applications, a considerably low proportion (37%) of the potentially- and immediately-eligible DACA population.<sup>2</sup> A recent report by the Brookings Institution finds that the \$465 DACA fee

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<sup>2</sup> USCIS, Through Fiscal Year 2015, 1<sup>st</sup> Qtr. 2015 (Washington, DC: USCIS)  
[http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/I821d\\_performancedata\\_fy2015\\_qtr1.pdf](http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/I821d_performancedata_fy2015_qtr1.pdf)

has a significant influence on an applicant's decision to apply for deferred action.<sup>3</sup> Similarly, based on a national survey of DACA-eligible youth by the American Immigration Council, respondents identified economic limitations as the number one barrier to applying for DACA.<sup>4</sup> These findings are not surprising given the socioeconomic characteristics of the DACA-eligible population. The Migration Policy Institute estimates that approximately 34% of immediately eligible youth lived with families with annual incomes below 100% of the federal poverty level.<sup>5</sup> Yet, despite the high rates of poverty in DACA households, USCIS only allows for fee exemptions in very limited circumstances.

**Recommendation:** We suggest USCIS consider expanding its fee exemption categories to DACA-eligible youth who are living in a household at or below 150% of the federal poverty level (FPL) and who (1) are parents; (2) are financially responsible for family members residing in the same household or (3) are enrolled in postsecondary education.

## CONCLUSION

Thank you for considering our comment on Form I-821D, Consideration of Deferred Action for Childhood Arrivals, and the accompanying instructions. We look forward to working together to ensure all eligible applicants receive DACA.

Sincerely,

Asian Counseling & Referral Service  
21 Progress  
Casa Latina  
City of Seattle Office of Immigrant & Refugee Affairs  
Northwest Immigrant Rights Project  
OneAmerica

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<sup>3</sup> Audrey Singer, Nicole Prchal Svajlenka, and Jill H. Wilson. 2015. Local Insights from DACA for Implementing Future Programs for Unauthorized Immigrants (Washington, DC: Brookings) [http://www.brookings.edu/~media/Research/Files/Reports/2015/06/04daca/BMPP\\_Srvy\\_DACAImmigration\\_June3b.pdf?la=en](http://www.brookings.edu/~media/Research/Files/Reports/2015/06/04daca/BMPP_Srvy_DACAImmigration_June3b.pdf?la=en).

<sup>4</sup> Roberto G. Gonzalez and Angie M. Bautista-Chavez. 2014. Two Years and Counting: Assessing the Growing Power of DACA (Washington, DC: American Immigration Council.) [http://www.immigrationpolicy.org/sites/default/files/docs/two\\_years\\_and\\_counting\\_assessing\\_the\\_growing\\_power\\_of\\_daca\\_final.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/two_years_and_counting_assessing_the_growing_power_of_daca_final.pdf).

<sup>5</sup> Batalova, Jeanne, S. Hooker, and R. Capps with J.D. Bachmeier. 2014. DACA at the Two-Year Mark: A National and State Profile of Youth Eligible and Applying for Deferred Action. Washington, DC: Migration Policy Institute. <http://www.migrationpolicy.org/research/daca-two-year-mark-national-and-state-profile-youth-eligible-and-applying-deferred-action>