Laura Dawkins,
Chief, Regulatory Coordination Division
USCIS Office of Policy and Strategy
20 Massachusetts Avenue N.W.
Washington, DC 20529-2140
Submitted via Federal Register at https://www.regulations.gov/

RE: Revisions to Form I-485, OMB Control # 1615-0023, Docket ID USCIS-2009-0020

Dear Chief Dawkins:

International House is a non-profit legal service provider in Charlotte, North Carolina. We at International House are a clinic of three attorneys and one accredited paralegal that represents low-income immigrants and refugees in naturalization, family based-petitions, adjustment of status, document replacement and employment authorization, amongst other benefits. As an organization that works closely with the United States Citizen and Immigration Services (USCIS), we appreciate the task USCIS has taken to improve the current form I-485.

However, we are concerned by a number of the changes proposed by USCIS and strongly urge USCIS to reconsider some of those changes, as outlined below.

I. General Comments

The length of the proposed Form and instructions contravenes the intent of the Paperwork Reduction Act, which has as a stated purpose to "minimize the paperwork burden for individuals, small businesses, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government." *See* 44 U.S.C. § 3501(1). The Form in its current state has successfully accomplished the Service's goals of making eligibility determinations and data collection in a far less unwieldly and unnecessary manner than the proposed Form. The proposed Form asks for extraneous information and legal conclusions that may not only be excessive and confusing for the average applicant seeking adjustment, but are also unnecessary for making determinations of eligibility and the collection of data. With the proposed Form instructions and Form at 40 and 18 pages respectively, the burden on the applicant will far exceed the benefit gained.

In response to previously submitted comments, the Service has had a blanket response to the issue of length as simply facilitating information collection and eligibility determinations and will ultimately be easier to manage for both applicants and the Service alike. We find it difficult to conclude that tripling the length of the form will in some way ensure better and faster processing by the Service or better comprehension by the applicant. To the contrary, it seems far more likely that the proposed Form will only create more confusion for the applicant and three times the amount of paperwork for the Service to review before making a determination.

While we recognize that the Service has every reason to want to ensure that it only grants benefits to those who are eligible, it need not do so in a manner that creates unnecessary hurdles for the applicant and the Service alike. The recommendations below suggest removal of a number of questions as redundant, extraneous, or possibly illicit altogether as well as

Mailing Address: PO Box 5429 Charlotte, NC 28299
Physical Address: 1817 Central Avenue Suite 215 Charlotte, NC 28205
tel: 704-333-8099 fax: 704-334-2423
direct: 704-405-0962 website: www.ihclt.org

modifications to others which will help the applicant better understand the question and ensure that the request comports with the law.

II. Part 1. Information About

Question 24. Immigration status is necessarily a conclusion of law that applicants often cannot (and arguably should not) make for themselves. Terms in this context have very specific meanings attached to them and requiring the applicant to determine for him/herself will create the unnecessary potential for conflicts within the record or misunderstandings concerning the applicant's current status. We recommend that this question be removed, as it is unnecessary for making a determination of benefits as the applicants already must provide evidence of either their lawful presence in the country or the means by which they are eligible to adjust status.

III. Part 2. Application Type or Filing Category

The proposed Form sets forth 27 different filing categories, contrasted with the 8 (10 including the rollback filing sections) on the current Form. These categories employ highly-technical terms that will likely be confusing to the applicant, when the adjudicator can easily determine the correct category from the evidence provided. Moreover, it will potentially create a greater paperwork burden should the applicant have to repeatedly "fish" for his or her correct category amongst the 27 options, rather than the broader, but more straightforward eight clearly-explained bases for adjustment on the current Form. We recommend that the current version of Part 2. Application Type or Filing Category be kept.

IV. Part 2. Information about Principal Applicant

Questions 3. and 4. are unnecessary, as the applicant is already required to submit a copy of the I-797 receipt notice that forms the basis for the applicant's adjustment. Moreover, according to current USCIS procedure, a copy of the receipt notice should already exist in the applicant's A file. We recommend that this question be deleted.

V. Part 8. General Eligibility and Inadmissibility Grounds

Question 14: This question is confusing, unnecessary, and redundant. This is a legal term of art that will be confusing to most applicants. The fact that an applicant has been previously denied admission into the U.S. does not pertain to that person's current eligibility and is beyond the scope or purpose of the Form. Other questions in the Form address any unlawful entry or presence. We recommend that this question be deleted.

Question 23: This question unnecessarily requires the applicant to grasp the complexity and ambiguity of the legal term "relief." Several of the prior questions address any issues surrounding removal proceedings and removal and render this question superfluous. We recommend that this question be deleted.

Question 25: This question is vague and overbroad, as the term "drugs" is a colloquial term that can encompass things far beyond federally controlled substances. Moreover, there is currently a conflict between State and Federal Law concerning the illicit nature of certain substances, a distinction and tension that an applicant may not readily comprehend when answering this question. Most importantly, this information is unnecessary for the adjudicator, who must instead rely on the sealed I-693 from a Civil Surgeon. USCIS adjudicators are not trained in identifying health-related grounds of inadmissibility, which require medical professionals to make determinations based on existing medical standards, rather than rely on the adjudicator's own understanding. The criminal-related grounds of inadmissibility are already covered elsewhere in the Form. We recommend that this question be deleted.

Question 27: This question is overly broad. Not all crimes render an applicant inadmissible, only crimes involving moral turpitude or certain controlled substance offenses under INA §§ 212(1)(2)(A) render an applicant inadmissible. The proposed question extends well beyond the inadmissibility grounds. We recommend that the current language be kept so that the question would read "Have you EVER, in or outside the United States . . . knowingly committed any crime of moral turpitude or drug-related offense for which you have not been arrested?"

Questions 29, 30, 32: These questions are entirely redundant. Questions 29, 30, and 32 inquire as to judicial proceedings, which was already covered by questions 26 and 28 as well as the instructions prior to the questions which already request that the applicant fully explain the arrest/detention and all the events subsequent. We recommend that these questions be deleted as they are redundant and unnecessarily increase the burden on the applicant.

Questions 31, 33, 34: These questions all ask the same thing regarding trafficking of controlled substances. This conduct is already captured in prior questions regarding criminal conduct. We recommend that these questions be deleted as they are redundant and unnecessarily increase the burden on the applicant. If the Service wishes to address this conduct in a more direct manner, we recommend that it condense these questions into a single question rather than asking the same thing three different ways.

Question 48: This question is vague and is far beyond the understanding of the average applicant, who is very unlikely to know what an adverse policy consequence is and what conduct would result in such a consequence. These terms are undefined in the INA and the Form Instructions, and there is no reasonable means for the average applicant to ascertain the meaning of or appropriate response to this question. The Service should be able to make this determination, as it has in the past, based upon the applicant's answers to other questions in the Form, the evidence, background checks, and interviewing the applicant as necessary. We recommend that this question be deleted.

Questions 49.e and 49.f: These questions inquire about similar conduct that has already been asked in preceding questions and nearly mirror each other. We recommend that they be combined into a single question regarding material support for any of the groups or activities mentioned in the prior questions.

Questions 51.a-51. f.: These questions reflect a misapplication of the spouse and child grounds of inadmissibility under INA § 212(3)(B)(i)(IX). This ground of inadmissibility is only applicable for spouses and children of inadmissible aliens whose terrorist-related conduct has occurred in the last five years. Moreover, questions 51.e and 51.f can be condensed (see comment to questions 49.e and 49.f). We recommend that the initial instruction read "Are you the spouse or child of an individual, who in the last 5 years: . . ." and that the Service combine questions 51.e and 51.f into a single question.

Question 54.: This question is redundant and is already covered by question 49.a. We recommend that this question be deleted. In the alternative, we recommend that the service combine questions 49.a and 54.

Question 61.: Only current or past receipt of public *cash* assistance programs can be considered by the agency in determining whether the applicant is likely to be considered a public charge. See "Inadmissibility and Deportability on Public Charge Grounds," 64 Fed. Reg. 28676-88 (May 26, 1999). We suggest that you add the word "cash" between "public" and "assistance."

Question 62.: As discussed in the previous comment, this question inaccurately reflects the public charge grounds of inadmissibility (see comment to question 61). Moreover, it is vague and asks the applicant to speculate about a future potential inadmissibility. The Service is tasked with

making the public charge determination under a number of factors found in INA 212(4)(B) and can weigh these factors with the information already contained in the Form and the evidence. We recommend that this question be deleted as it is vague and unnecessary.

Question 65.: Only willful and material misrepresentations would trigger potential inadmissibility under INA § 212(6)(C)(i). Asking for information beyond those grounds is irrelevant to any eligibility determination. We recommend that you add those two words to the question so that it would read as follows: Have you **EVER** willfully lied about, concealed, or misrepresented any material information on an application or petition to obtain a visa, other documentation required for entry into the United States, admission to the United States, or any other kind of immigration benefit?

Question 66.: Only false claims of citizenship made to obtain a benefit under Federal or State law is inadmissible under INA § 212(6)(C)(ii). Thus any inquiry into other possible representations outside of that context is not supported by the statutory language. We recommend that language be added to the current question to read: Have you EVER falsely claimed to be a U.S. citizen (in writing or any other way) for any purpose or benefit under Federal or State law?

Question 71.: This question regarding removal/removal proceedings has been asked in several different ways in questions 18-20 and will only burden the applicant with having to explain this issue multiple times. We recommend that this question be deleted. To the extent that the Service wishes to address any "self-removal" issues, we recommend that such language be added to a prior question regarding removal to reduce the burden on the applicant.

Question 72.: This question asks the applicant if he or she has ever entered the U.S. without admission or parole. The terms "admission" and "parole" are legal terms that are unlikely to be understood by the applicant. The word "inspection" effectively covers and clearly asks whether the applicant entered through an appropriate process or not. We recommend that the words "admitted or parole" be deleted so that the question would read: Have you ever entered the United States without being inspected?

NOTE after question 73.b.: See comment and recommendation regarding admission and parole in question 72.

Question 74.a.: See previous comments regarding admission in parole for the statement prior to this question. The use of the word "aggregate" is a term that is likely to confuse or be misunderstood by the applicant and we recommend that a more common term such as "total" be used instead so that the question would read "Having been unlawfully present in the U.S. for a total of more than one year?"

Question 76. This question asks the applicant for a detailed understanding of guardianship and medical inadmissibility for someone the applicant is accompanying. As noted previously, the determination of medical grounds of inadmissibility such as those under INA § 232(c) are established by a Civil Surgeon and are unlikely to be understood by the applicant. The Service will already have access to this information through the medical exam and thus requiring the applicant to make an assertion about guardianship and medical inadmissibility is both

unnecessary and unduly burdensome on the applicant. We recommend that this question be deleted entirely.

VI. Part 10. Applicant's Statement, Contact Information, Certification, and Signature

We echo the comments that the American Immigration Lawyers Association (AILA) and other have made to some of the proposed certifications and acknowledgements on the I-485, which still remain a concern. The continued expansion of the various certifications is lengthy, repetitive, and unnecessary. Moreover several of these certifications and attestations appear to be overly broad and go beyond the scope of the acknowledgements required by law. We ask that USCIS closely reexamine the necessity of these lengthy certifications and acknowledgements to ensure that they fulfill a valid purpose and are within the scope of USCIS's authority. We also suggest the following edits, at a minimum.

Applicant's Certification. The language allowing USCIS to access *"any and all of my records that USCIS may need,"* is overly broad and may violate privacy laws. USCIS undoubtedly has the authority to obtain records related to the applicant within the Department of Homeland Security and the State department, but not necessarily from any other branch of the U.S. government, private companies, or foreign governments. We strongly suggest that this language be revised so as to limit its scope to USCIS's purview and issues of eligibility regarding the applicant.

VII. Part 11. Interpreter's Contact Information, Certification, and Signature

Interpreter's Certification. The language of the certification is unclear. It states that the interpreter has read all the questions, instructions, and answers to the applicant "and has verified the accuracy of every answer." It is unclear if the use of the word "has" refers to the interpreter or the applicant. If it refers to the interpreter, then it is likely of little use to the Service, as the interpreter is not in a position to establish the accuracy of any response given by the applicant, but can only translate what the applicant says in response to a question. If the word "has" refers to the applicant, then we suggest that the sentence be reconstructed to state ". . . including the Applicant's Certification and the applicant has verified the accuracy of every answer."

Conclusion

We appreciate the opportunity to comment on the proposed changes on Form I-485 and look forward to a continuing conversation with USCIS regarding this form and its implementation.

Sincerely,

Daniel Melo
Immigration Attorney
On behalf of the Immigration Clinic Staff of International House.