

May 31, 2016

By Online Submission

Office of Policy and Strategy, Regulatory Coordination Division
U.S. Citizenship and Information Service
Samantha Deshommes, Acting Chief
20 Massachusetts Avenue NW.
Washington, DC 20529-2140

Re: USCIS Agency Information Collection Activities: Application To Register Permanent Residence or Adjust Status, Form I-485; OMB Control Number 1615-0023, Docket ID USCIS-2009-0020

Dear Ms Deshommes:

On behalf of members of the Massachusetts Food SNAP Coalition and eligible low income Legal Services clients, we are writing to offer comments with respect to information collected on USCIS Form I-485, "Application to Register Permanent Residence or Adjust Status." We submit these comments in response to USCIS public notice most recently included in the Federal Register, FR Doc. 2016-07265 (March 30, 2016).

The Massachusetts Law Reform Institute, formed in 1971, is a statewide non-profit legal services organization whose mission is to advance economic, racial and social justice through legal action, education and advocacy. MLRI focuses on advocacy which seeks to address the root causes of poverty, remove barriers to opportunity, promote economic stability and create a path to self-sufficiency for low-income individuals and families, including immigrant-headed households. We submit these comments on behalf of our eligible low income clients, regional legal services programs within Massachusetts and members of the Massachusetts SNAP Coalition. Formed in 2002, the Massachusetts SNAP Coalition is comprised of staff and volunteers from food banks, feeding programs, child care services, faith-based organizations, municipal government, health and social services, immigrant rights groups and legal services offices. Many members of the SNAP Coalition work closely with the immigrant community and regularly hear concerns from their clients about seeking certain nutrition benefits to which they and/or their dependents are entitled.

We appreciate that USCIS has been welcoming public comment for a number of its forms used by immigrant applicants for USCIS services, including adjustment of status. Our comments address a single question on Part 3 of USCIS Form I-485 which asks applicants seeking to register or adjust about past receipt of "public assistance" benefits. We are concerned that this question effectively undermines the willingness of needy immigrants to access essential benefits they are otherwise entitled to receive, and undermines efforts of sister federal agencies seeking to provide essential services to these individuals and their dependents. Question C2 asks the applicant for adjustment the following:

"Have you ever received public assistance in the United States from any source, including the US Government or any state, county, city, or municipality (other than emergency medical treatment) or are you likely to receive public assistance in the future?"

As currently scripted, this question raises a number of concerns:

- Question C2 is located squarely in the middle of a series of questions about criminal and/or terrorist activities – which location unfortunately associates receipt of “public assistance” with criminal wrongdoing or moral turpitude.
- Question C2 lacks any definition of “public assistance” other than to distinguish it from “emergency medical treatment.” The question effectively suggests that a wide range of non-cash needs-based benefits may be implicated and require the applicant to give an affirmative answer if any kind of government service has been received.
- The ambiguity in the phrasing of Question C2 (e.g. “have you ever received...”) has led many immigrants to believe that the question not only applies to non-cash benefits intended for the immigrant herself, but also any benefits she may have received for family members who are not derivative beneficiaries of the application of adjustment, such as U.S. citizen children.
- The accompanying instructions for the I-485 fail to address any of the above or give the non-citizen any guidance on the meaning of “public assistance,” or how and when to complete this question. It contains no information or assurances on the consequences of an affirmative answer.

This single question persists as a chronic source of fear and confusion for both immigrants and the local organizations that serve them. The natural reading of Question C2 suggests that *any* applicant for adjustment who received *any* aid – other than emergency room care – from a federal, state or local government source is at risk of being found inadmissible or excludable on public charge grounds. Reader confusion and fear is deepened by the *location* of Question C2 among a host of questions about criminal activities, causing immigrants to fear that receipt of public assistance could trigger some sort of criminal investigation and/or benefit that mere receipt of benefits will be considered in the same context as a criminal activity. Outside of fraudulent receipt of benefits by any person – immigrant or U.S. citizen – legitimate receipt of assistance to which one is financially and categorically eligible is absolutely not a crime.

Further, as noted above, Question C2 does *not distinguish* receipt of benefits by immigrants for themselves, versus benefits received by immigrants for their U.S. citizen children or other citizen family members, dependents unquestionably qualified to receive aid. Immigrant parents (and family members with legal guardianship or legal custody of minor or disabled individual) often receive and administer benefits on behalf of dependents. Yet Question C2 is not sufficiently clear to distinguish these situations, nor if it matters if the benefit was cash-based or non-cash. Equally distressing, the USCIS “Instructions for I-485” are 100% *silent* on the purpose or import of Question C2.¹

National and state research groups have long confirmed underutilization of nutrition and health care benefits by otherwise eligible immigrant-headed households. As a result, food insecurity is significantly higher among children with immigrant parents than children with US-born parents.² These concerns are echoed by the Boston-based pediatric research center, Child Health Watch,

¹ Department of Homeland Security, USCIS Instructions for I-485, Application to Register Permanent Residence or Adjust Status, available at: <http://www.uscis.gov/files/form/i-485instr.pdf>

² Food Research Action Center and Children’s Health Watch, Food Security Among Immigrants, Refugees and Asylees, February 2016, <http://frac.org/pdf/frac-chw-early-childhood-february-2016.pdf> ; Urban Institute, Capps, Randy, *The Health and Well-Being of Young Children of Immigrants 10*, 2004, accessible at: http://www.urban.org/UploadedPDF/311139_Childrenimmigrants.pdf ; Randolph Capps et. al., *Young Children in Immigrant Families Face Higher Risk of Food Insecurity* (Child Trends Release Brief, February 2009, Publication # 2009-07), available at: http://www.childtrends.org/Files/Child_Trends-2009_02_20_RB_ImmigrantFood.pdf.pdf Low-income children of immigrants are about half as likely to receive TANF or SNAP as low-income children of US-born individuals. *Id.* at 22.

which noted that while immigrant headed households have much greater rates of poverty and food insecurity, they are less likely to access important health and nutritional benefits.³

Public health and anti-hunger organizations in Massachusetts struggle constantly to demystify federal and state benefit, seeking to convince otherwise eligible immigrants of the importance of programs such as Women, Infant and Children (WIC) nutrition benefits, school lunch, public health services, SCHIP health care for children, SNAP/food stamps for eligible family members. Immigrant parents repeatedly report to MLRI and our Legal Services colleagues they are afraid to apply for these non-cash benefits – even for their U.S. citizen children – because they think receipt of such help might affect their current immigration status and/or chances of adjusting down the road. In Massachusetts, USDA awarded funding in September 2009 to Project Bread for a targeted outreach campaign to the Latino community, many of whom are immigrants. This grant was awarded based on USDA findings of significant underutilization of SNAP benefits. In Massachusetts, only 51 percent of eligible Latino households use SNAP benefits compared with 65% of all eligible state residents.⁴

When we dig further into the reluctance to pursue benefits, it's not just about the Yes/No answer to Question C2. Immigrants, and their legal representatives, often report that an affirmative answer to *any question* under Section 3 leads to more in-depth scrutiny by an USCIS officer during the adjustment interview. We wish to underscore that immigrant applicants for adjustment are very much aware of their obligation to answer each question truthfully and under oath; they are absolutely counseled *not* to lie about anything asked on the I-485 or any other USCIS document. However, we hear repeatedly from immigrants seeking to achieve legal status that many private attorneys advise them early in the process to simply avoid receipt of *any* needs-based benefits at all costs - both cash or non-cash for themselves or family members – in order to avoid having to make an affirmative answer to Question C2. It is commonly believed that avoiding any and all benefits receipt minimizes the likelihood of additional USCIS scrutiny during the adjustment interview and/or delays in the adjustment process. However, the negative impact of such vigilant benefits avoidance on health and well-being is deep for the immigrant and their families; families whom Congress intended to help keep food on the table and medicine in the cabinet.

The current version of Question C2 not only results in discouraging needy families of essential services, the net effect of this question directly conflicts with USCIS' longstanding policy that most government benefits, other than those designed for income maintenance assistance and long term care, will not trigger a public charge determination.⁵ We are confident this chilling effect cannot be what USCIS intended with this public assistance question. Understandably USCIS is

³ Child Health Watch, Policy Action Brief, *Children of Immigrants: Healthy Beginnings Derailed by Food Insecurity*, October 2010, available at:

http://www.childrehealthwatch.org/upload/resource/childrenimmigrants_brief_oct10.pdf

⁴ USDA Grants September 2009 Project, *Reaching Underserved Elderly and Working Poor in SNAP*, available at <http://www.fns.usda.gov/Ora/menu/DemoProjects/UnderservedElderly/Grantees.htm>, Project Bread, *Strengthening Latino Families – Putting Healthy Food Within Reach*, project materials available at

<http://www.projectbread.org/site/PageServer?pagename=latino>. See also Bread for the Word, Institute Notes, *Hunger in Latino Immigrant Families*, June 2011; available at:

[HTTP://WWW.BREAD.ORG/INSTITUTE/PAPERS/HUNGER-IN-LATINO-IMMIGRANT-FAMILIES.PDF](http://www.bread.org/institute/papers/hunger-in-latino-immigrant-families.pdf)

⁵ Department of Justice, *INS Field Guidance on Deportability and Inadmissibility on Public Charge Grounds*, (64 FR 28689). <http://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-54070/0-0-0-54088/0-0-0-55744.html>

, and USCIS *Public Charge Fact Sheet*, October 20, 2009,

http://www.uscis.gov/USCIS/New%20Structure/Press%20Releases/2009%20Press%20Releases/Oct%202009/public_charge_fact_%20sheet_11_06_09.pdf

trying to fulfill its legal obligations to inquire about present and future reliance on income maintenance programs and long term care needs. However, USCIS can and must fulfill that obligation without undermining the services offered by sister agencies to provide essential benefits and contradicting its own policy with respect to the triggers for a public charge determination. All of the government pamphlets and fact sheets designed to myth bust the public charge confusion do not sufficiently address the negative impact of this single C2 Question.

As USCIS knows, sister federal agencies including the United States Department of Agriculture (USDA) and Department of Health and Human Services (DHHS) have repeatedly issued policy guidance designed to assure immigrants, state agencies and the public at large that a wide range of benefits and services will not have adverse consequences on adjustment of status and otherwise eligible persons should not be dissuaded from seeking these programs.⁶ USDA has developed outreach materials highlighting the eligibility rules for immigrant-headed household to encourage parents to apply for eligible children.⁷ DHHS has issued guidance specifically targeted to victims of domestic violence, attempting to similarly assure them that they need not fear the adverse consequences of benefits receipt.⁸ The Center for Medicaid and Medicare has likewise released policy guidance instructing state agencies to remind beneficiaries that accepting SCHIP and Medicaid will not make immigrants a “public charge.”⁹ Despite these efforts, the location and wording of Question C2 stops the conversation. Although USCIS officers may be otherwise trained on the triggers for public charge and prepared to explain as much during the adjustment interview, this is not a reasonable response. The plain language wording of Question C2 and lack of written guidance in the I-485 instructions continues to have a significant chilling effect on thousands of immigrant families in Massachusetts and around the country.

Specifically, with respect to Form I-485, we urge USCIS to a) provide clear written guidance to clarify that only cash-assistance and long term care programs are implicated by the question, b) move the location of Question C2 to a section of the application that is unrelated to criminal activities, and c) amend the text of the question to clearly and narrowly seek the information relevant to the public charge determination, as follows:

- Have you received for your own benefit one of the following cash assistance programs: Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), or a monthly needs-based cash from state and local income assistance programs?
- Have you received Medicaid to pay for your long-term institutional care, such as in a nursing home or mental health institution?

Finally, we wish to close with the following observation: There are common, unfortunate misconceptions around the question of immigrant receipt of public benefits. Immigrants are often believed to receive more in government benefits than they in fact do. Both undocumented

⁶ USDA *Supplemental Nutrition Assistance Program Guidance on Noncitizen Eligibility*, June 2011,

http://www.fns.usda.gov/snap/government/pdf/Non-Citizen_Guidance_063011.pdf

USDA public charge guidance, <http://www.fns.usda.gov/SNAP/outreach/Translations/English/pc-english.htm>;
USDA Under Secretary Kevin Concannon letter to state SNAP distribution agencies, *on file* (Oct. 20, 2009).

⁷ See USDA’s efforts to reach out to specifically qualified, eligible immigrants with its state Toolkit, *available at* <http://www.fns.usda.gov/snap/outreach/pdfs/toolkit/2011/State/Basics/introduction.pdf>.

⁸ DHHS Office for Civil Rights “*Domestic Violence Fact Sheet*,” August 22, 2012,

<http://www.hhs.gov/ocr/civilrights/resources/specialtopics/origin/domesticviolencefactsheet.html>

⁹ Letter to State Health Officials from Center for Medicaid and CHIP Services Cindy Mann, Medicaid and CHIP Coverage of “Lawfully Residing” Children and Pregnant Women, *available at* <http://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SHO10006.pdf> (July 1, 2010).

immigrants and virtually all immigrants in the pipeline for adjustment of status based on a relative or employer petition have never been qualified to receive most federal or state needs-based benefits, with the exception of emergency medical care. The 1996 Personal Responsibility and Work Opportunity Reconciliation Act as amended,¹⁰ severely limited access to federally funded needs-based benefits for thousands of *legally present* immigrants: it created a “qualified alien” definition of who would be allowed on the programs; imposed a five year waiting period on legal permanent residents, battered immigrants and parolees; and included consideration of sponsor income in determining benefits for certain legal immigrants. This underutilization continues notwithstanding subsequent amelioration for some of the federal programs.

In 2002 Congress restored SNAP benefits for legal permanent resident children and severely disabled adults who entered status less than five years precisely because Congress recognized that children and disabled immigrants should not be deprived of core nutrition assistance.¹¹ Yet these historic and complex statutory restrictions continue to have had a significant and negative impact on legally present immigrants.¹² The Obama Administration need not be concerned that immigrants are somehow overrunning our benefits system, and USCIS should not continue to embrace bureaucratic forms with questions that undermine federal policy.

To the contrary, the Administration should pursue a consistent strategy within USCIS and among all federal agencies to ensure legally present immigrants and their U.S. citizen children access critical benefits designed to protect the long term health and wellbeing of their families for decades to come. Toward that end, as noted above, we strongly urge USCIS to amend Form I-485 as recommended in these comments, and to review and amend all related USCIS documents or forms which collect information from USCIS consumers in ways that undermine immigrant access benefits to which they and/or their children are entitled.

Thank you for your consideration of our comments.

Sincerely,



Patricia Baker
Senior Policy Analyst

cc. Kevin Concannon, Under Secretary
Food and Nutrition Service, USDA

¹⁰ The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193 (August 22, 1996), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208 (September 30, 1996).

¹¹ Farm Security and Rural Investment Act of 2002, (Public Law 107-171) amending 8 U.S.C. § 1612(2)(J) (extending SNAP to immigrant children) and 8 U.S.C. § 1612(2)(F) (extending SNAP to disabled immigrants lawfully residing in the United States on Aug. 22, 1996)

¹² See also Ruth Ellen Wasem, Congressional Research Service, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends* 10-13 (September 27, 2012, RL33809), available at <http://www.fas.org/sgp/crs/misc/RL33809.pdf>.