May 31, 2016

Laura Dawkins
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USCIS Office of Policy and Strategy
20 Massachusetts Avenue N.W.
Washington, DC 20529-2140

RE: Comments to Agency Information Collection Activities: Application to Register Permanent Residence or Adjust Status, Form I-485 Supplement A, and Instruction Booklet for Filing Form I-485 and Supplement A, Form I-485; Revision of a Currently Approved Collection

OMB Control # 1615-0023
Docket ID USCIS-2009-0020

Dear Ms. Dawkins:

Immigrant Justice Corps (IJC) is the country's first fellowship program dedicated to meeting the need for high-quality legal assistance for immigrants seeking citizenship and fighting deportation. IJC's goal is to use legal assistance to lift immigrant families out of poverty – helping them access secure jobs, quality health care and life-changing educational opportunities. Inspired by the Katzmann Study Group on Immigrant Representation,[1] IJC brings together the country's most talented advocates, connects them to New York City's best legal and community institutions, leverages the latest technologies, and fosters a culture of creative thinking that will produce new strategies to reduce the justice gap for immigrant families, ensuring that immigration status is no longer a barrier to social and economic opportunity.

Immigrant Justice Corps directly employs community fellows – recent college graduates who become partially accredited Board of Immigration Appeals accredited representatives – to

[1] "Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings," available at http://www.cardozolawreview.com/content/denovo/NYIRS_Report.pdf; and "Accessing Justice II: A Model for Providing Counsel to New York Immigrants," available at http://www.cardozolawreview.com/content/denovo/NYIRS_ReportII.pdf.

represent non-citizens on "light touch" affirmative cases, including naturalization, "green card" renewals, and adjustment of status. Since beginning their fellowships in September 2014, IJC community fellows have completed over 1900 client screenings and filed over 400 affirmative applications with US Citizenship and Immigration Services (USCIS). Because our mission is to increase access to high-quality legal representation in immigration proceedings, we are uniquely situated to understand a necessary corollary, which is that many individuals file applications for affirmative and defensive relief pro se.

Recognizing that many low-income non-citizens proceed without professional legal assistance, we feel that is it particularly important that Form I-485 be straightforward, unambiguous, and succinct. IJC asks USCIS to ensure that the proposed revisions to the Form I-485 enhance the form's accessibility to all low-income non-citizens and prioritize ease-of-use and comprehensibility for pro se applicants.

We commend USCIS for making Form G-325A obsolete by incorporating its contents into the proposed Form I-485. Nevertheless, the length of the proposed Form I-485 is concerning. In its current form, it nearly triples the number of pages an applicant must complete for the same benefit, and requests information from the applicant that is unnecessary or duplicative. Further, questions on the proposed Form I-485 are sometimes phrased in a confusing manner and/or use language that does not comport with statutory or regulatory requirements. Lastly, the new 40-page long accompanying instructions (the "Instruction Booklet") is unduly complicated, poorly organized, and contains factually incorrect information.

With respect to the proposed Form I-485 and the Instruction Booklet, we express the following concerns and offer the following recommendations:

I. Recommended amendments to the proposed Form I-485:

Page 1, Part 1, Question 1.a - "Family Name"
The number of characters allotted in response to this question (for applicants to list their last name) is insufficient. As a result, applicants from certain backgrounds are prevented from listing their full legal last names.

Page 1, Part 1, Question 5 - "Sex"
The answer to this question should not be binary, as gender is not a binary, and forcing individuals to choose between identifying as "male" or "female" excludes not only those born with non-binary reproductive organs, but also potentially those who identify as lesbian, gay, bisexual,

transgender, transsexual, genderqueer or third gender. We suggest that you add "other" as an answer option.

Page 2, Part 1, Questions 13.a-e - "Alternate and/or Safe Mailing Address"
The proposed Form I-485 notes that the option of including a safe mailing address is only available to VAWA self-petitioners and T, U, and SIJS applicants. However, all applicants should be able to provide a safe mailing address separate and apart from their physical address, regardless of the specific underlying application case type which provides their eligibility for adjustment of status.

Page 2, Part 1, Questions 14-18 – Passport and Travel Document Information
"Passport Number Used at Last Entry" and "Travel Document Number Used at Last Entry," as well as related questions (Expiration Date, Country of Issuance, NIV number) should be prefaced by a phrase similar to "If you last entered the United States using a passport or travel document, provide the information below," in line with the "(if any)" caveat used in other questions (e.g., "U.S. Social Security Number (if any)") (Part 1, Question 11). This change would make it clearer that not all applicants are expected to be adjusting after entry with inspection (a possibility obliquely referred to in the draft Instructions, but easily effected on the draft Form itself).

Page 2, Part 1, Questions 19-20 – Arrival or Entry
After using only "Entry" in prior questions (e.g., Part 1, Questions 14 and 15), Questions 19 and 20 suddenly shift to "Arrival or Entry." If there is to be no clarification in the Instructions or Form as to the distinction between "Arrival" and "Entry," consider using only "Entry" here so as not to create confusion (particularly for pro se applicants). The draft Instructions provide no guidance as to this distinction.

Page 2, Part 1, Question, "In which immigration status did you last enter the United States?"
Restore "without inspection" as one of the example answers for the question "In what status did you last enter?" This restoration would render the form more sensitive to the likelihood that asylees may have entered without inspection.

Page 4, Part 3, Questions 1-4 – Prior Immigrant Visa Applications
These questions (on prior immigrant visa applications) seem redundant in light of the new Part 8, Question 15 on whether the applicant has "EVER been denied a visa to the United States." Given that Part 8, Question 15 presumably includes nonimmigrant visa applications, can the two questions not be consolidated, if they are needed at all (in light of USCIS's access to the applicant's visa history)?

Page 4, Part 3, Question 1 - Whether the applicant has "ever applied for an immigrant (permanent resident) visa at a U.S. Embassy or U.S. consulate abroad"
The answer to this question should also include "unknown," as many noncitizens in vulnerable populations (for example, children) are unaware of legal processes previously undertaken on their behalf.

Page 4, Part 3, Question 3 - "Decision"
The explanatory language in this question is duplicative; there is little difference between "refused" and "denied." Also, "unknown," one of the options on the current Form I-485, should be added as a possible answer to this question, as there is a high likelihood that applicants will not know the answer, and having only "yes" or "no" as a potential answer creates a significant risk of unwitting misrepresentation.

Page 6, Part 4, Questions 1-16 - "Information About Your Parents"
Please specify whether you are asking for information about legal or biological parents, e.g., which parents to include when a child has been legally adopted. Also, the form should provide clear instruction if information about one's parent is unknown.

Page 6, Part 5, Question 1 – "What is your current marital status?"
Explain in the draft Instructions what "Legally Separated" means—because many couples who separate do not initiate a legal process to do so, and may not understand whether this category applies to them. This also interacts unclearly with Questions 14-15 in this same Part, where the applicant must indicate the "Date" and "Place" at which a prior marriage "Legally Ended." Would legal separation count as "legally ending" a prior marriage? Likely not—but the liberal use of "legal" in this Part may create confusion, and the draft Instructions at "Initial Evidence" #6 do not provide much clarification.

Page 8, Part 7, Questions 1-2 - "Ethnicity" and "Race"
The concepts of ethnicity and race are not universally understood and so these questions create great confusion. Hence, these questions should include an "unknown" or "other" option, or simply instruct applicants that they need not answer if they do not know or do not identify with one of the listed ethnicities or races.

Page 8, Part 8, Question 1 - Membership in a Group
This question should still instruct applicants to only list memberships entered into "since [their] 16th birthday." Also, applicants are unlikely to remember the dates of any such membership to the day, and should be instructed that approximate dates of membership will suffice.

Page 9, Part 8, Questions 14-23 - Removal, Exclusion, Rescission, or Deportation
We commend USCIS for instructing applicants who are unsure of the appropriate response to this question to answer "no" and to provide an explanation. However, we suggest that the inclusion of an "unknown" or "unclear" checkbox would be more efficient and clear. We also encourage USCIS to define the legal terminology (rescission, exclusion, deportation, etc.) used throughout these questions.

Page 10, Part 8, Question 25 - "Health"
The issue of illicit drug use/abuse is a determination made by a civil surgeon. It is duplicative to include it on the Form I-485.

Page 9, Part 8, Questions 26-46 – Criminal Acts and Violations
Please clarify whether these questions on criminal history apply to acts inside the United States, or both inside and outside the United States. Also, include in the Instructions—and ideally, in the Form, an indication that arrests or criminal history do not necessarily bar adjustment. Many asylees, for example, had negative interactions with law enforcement officials in their countries that would, strictly speaking, require reporting here—but that formed part of their asylum claim and thus should not be made to appear as a potential barrier to adjustment (in so doing, encouraging underreporting or perhaps even a hesitation to apply for adjustment). Please specify on the Form I-485 or in the Instruction Booklet how children should be able to answer these questions. Please also remind applicants that they should disclose behavior even if it occurred while they were juveniles. Also, please include current language about there being no need to disclose traffic violations. Lastly, some of these questions are overbroad or vague; please track the language of the statute and/or cite the statute.

Page 10, Part 8, Question 27 - Whether the application has ever "committed a crime of any kind (even if you were not arrested, cited, charged with, or tried for that crime)"
This question is so broadly written that it includes criminal activity and behavior (e.g., jaywalking) that has no effect whatsoever on an applicant's eligibility for adjustment of status.

Page 10, Part 8, Questions 36-38 - Engaging in Prostitution
The phrasing of this question is much broader than the relevant ground of inadmissibility, and does not include specific exceptions (such as "within the last 10 years") contained in the statute.

Page 11, Part 8, Question 39 - "Bootlegging"
Please provide a definition of colloquial terms.

Page 11, Part 8, Question 48 - Whether the applicant will engage in "any activity that could have potentially serious adverse foreign policy consequences for the United States"
This language is confusing for most applicants and is unlikely to elicit an accurate response, as most applicants have little knowledge of what activities might involve foreign policy. Further, many unremarkable activities could have unintended but still "potentially serious adverse foreign policy consequences" (e.g., inviting the Dalai Lama to a conference), and it would be inappropriate for an LPR to be punished for material misrepresentation in light of an unforeseen externality of otherwise lawful expression after adjustment.

Page 11, Part 8, Questions 49-50
The "NOTE" under Question 50, which applies to Questions 49 and 50, makes no sense when applied to Question 50—because it asks about past activities in the past tense, whereas Question 50 is about future intentions.

Page 13, Part 8, Questions 61-62 - "Public Charge"
Please include a "Does Not Apply" option and revise the instructions to advise VAWA self-petitioners and T, U, and SIJS applicants to answer as "Does Not Apply."

Page 13, Part 8, Question 63 - Whether the applicant has "failed or refused to remain in attendance at [his or her] removal, exclusion, or proceeding"
This question should track the statutory language at INA § 212(a)(6)(B) by including the language "without reasonable cause."

Page 13, Part 8, Question 65 - Whether the applicant has "lied about, concealed, or misrepresented any information" for an immigration benefit
This question should include an "unknown" option to address circumstances where applicants—for example, children—had applications completed for them and are unaware of their contents.

Page 13, Part 8, Question 70 - Whether the applicant has "ever obtained a student nonimmigrant visa and violated the terms or conditions of [the] student nonimmigrant status"
This question is redundant, as Question 17 on Page 9, Part 8 already addresses any violation of the terms or conditions of a nonimmigrant visa. Please consider deleting.

Page 13, Part 8, Question 74.a - Whether the applicant has been "unlawfully present in the United States for more than one year in the aggregate"
This question requires applicants to reach a complicated legal conclusion. At the least, the Instruction Booklet should address exceptions to unlawful presence and instruct applicants on how to make a determination of whether or not they have accrued unlawful presence.

Page 14, Part 8, Question 78 - Whether the applicant has ever "voted in any federal, state, or local election in the United States"
This question should be amended to include "in violation of law" so as to track the language of statute.

Page 14, Part 10, Question 1.a - "I can read and understand English"
The formulation of this question assumes that applicants are literate; the question of whether the applicant is able to read the Form I-485 should be separate from the question of whether he or she understands the Form I-485.

Page 14, Part 10, Question 1.b - "The interpreter named in Part 11 read to me every question and instruction on this application and my answer to every question . . . and I understood everything"
The form of the question should be revised, as an applicant cannot affirm that someone else has read them the entirety of the form, or that the applicant understood the entirety of the form.

Page 14, Part 10, Questions 3-5 - "Applicant's Contact Information"
Each of these questions should be revised to add "if any." The section should make clear that, if a Notice of Entry of Appearance as Attorney or Accredited Representative on Form G-28 is being included, all communication must be through attorney or accredited representative.

Pages 14-15, Part 10 - "Applicant's Certification"
The language of this certification should be revised to incorporate that the information the applicant is providing is correct "to the best of [the applicant's] knowledge." Further, the oath applicants are asked to sign at time of biometrics is duplicative of that on the Form I-485 itself and potentially problematic for clients who do not know how to read and/or do not speak English.

Page 15, Part 11 - "Interpreter's Contact Information, Certification, and Signature"
This portion of the Form I-485 does not take into account telephonic interpretation, in which the details requested on the Form I-485 would be unavailable and no signature can be made available. (2) In the "Interpreter's Certification," the last clause—"and has [sic] verified the accuracy of every answer"—should be deleted. The interpreter cannot verify an answer's accuracy, only the translation's accuracy.

Page 18, Part 14 - "Signature at Interview"
The language "to the best of my knowledge" should be added to the affirmation.

II. Recommended amendments to the Instruction Booklet:

We urge USCIS to exercise caution in proceeding with large-scale instruction manuals for immigration forms. Unlike policy memoranda, which are generally non-binding, form instructions carry the force of law.[2] Given their binding effect, form instructions should be carefully tailored to ensure they serve their limited purpose: to provide form-specific directions on how to complete a given form.

Page 2 - "Principal Applicant"

This section tries to identify a "principal applicant" by using a limited list of only few potential principal applicants ("asylee or refugee, selectee under the diversity visa lottery, a widow(er), or a victim of trafficking"). Such lists tend to confuse applicants who are unfamiliar with immigration law and do not see their specific applicant category listed.

Page 5 - "Biometric Services Appointment"

As mentioned in the comments to the proposed Form I-485, the language of this certification should be revised to state that the information the applicant is providing is correct "to the best of [the applicant's] knowledge." Further, the oath applicants are asked to sign at time of biometrics is duplicative of that on the Form I-485 itself, and potentially problematic for clients who do not know how to read and/or do not speak English.

Page 6 - "How to Fill Out Form I-485"

In practice, USCIS routinely rejects applications completed and signed in black ink because the black ink makes it difficult to verify any signature as original. USCIS should advise applicants to sign in blue ink.

Page 6 - "Form I-94 Arrival-Departure Record" and "Passport and Travel Document Numbers"

The Instruction Booklet should specify that it is unnecessary for certain categories of applicants (such as VAWA self-petitioners) to include this information.

Page 8 - "Government-Issued Identity Document with Photograph"

The Instruction Booklet should provide more inclusive language here regarding acceptable government-issued identity documents. We suggested changing the second sentence of the first paragraph of this section to read, "Typically, this will be your passport, even if the passport is now expired, but can also be any other identity document issued by the United States or your country of citizenship."

[2] "Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, and such instructions are incorporated into the regulations requiring its submission." *See* 8 CFR § 103.2(a)(1).

Page 8 - “Birth Certificate”
These instructions state that USCIS will only accept a long-form birth certificate that lists “both parents.” The instructions should end at “long form birth certificate,” because as written, they are potentially confusing for people who have only one parent listed on their birth certificate.

Page 9 - “Inspection and Admission or Inspection and Parole”
Please note that VAWA self-petitioners for adjustment of status and asylees are also specifically exempted from having to demonstrate admission or parole into the United States.

Page 11 - “Certified Police and Court Records of Criminal Charges, Arrests, or Convictions”
Please note that many of the documents requested are unavailable in other countries. The Instruction Booklet should direct applicants to the Department of State visa reciprocity webpage for information on the availability of these records in their birth countries and instructions on how to obtain them.

Page 12 - “Documentation Regarding J-1 or J-2 Exchange Visitor Status”
Please note that many applicants who previously held J-1 nonimmigrant exchange visitor status no longer have copies of Form IAP-66 or Form DS-2019 and have no way of obtaining those forms other than by submitting a FOIA request to USCIS or the Department of State. Should USCIS require these forms to adjudicate an application for adjustment of status, they would be most easily accessible to USCIS, as they are available in the government’s own records.

Page 20 - “VAWA self-petitioner (Form I-360)”
The Instruction Booklet defines eligibility for VAWA as being tied to abuse by a U.S. citizen “son or daughter.” It would be helpful to explain the difference between “child” and “son or daughter” so that applicants may assess their eligibility for VAWA. Further, it would be helpful to add a note to these instructions about VAWA self-petitioners being exempt from public charge grounds of inadmissibility (and hence the affidavit of support).

Page 21 & 22 - “Special immigrant juvenile (Form I-360)”
On page 22, in discussing additional evidence requirements, the instructions provide confusing information regarding the submission of documents from the state juvenile court. As noted on page 21, some Special Immigrant Juveniles may not file their Forms I-360 and I-485 concurrently, and may file the Form I-485 long after the approval of the Form I-360. In situations when the Form I-485 is filed after the Form I-360, there should be no need to submit additional evidence from the state juvenile court; instead, the I-360 Approval Notice should be sufficient evidence of the applicant’s eligibility to apply for adjustment of status.

Pages 24 & 27 - “Evidence of Continuous Physical Presence” for T and U Nonimmigrants
In accordance with the regulations, these instructions should specify that if applicants do not have a passport or travel document they instead may include a valid explanation as to why such a document is not in their possession.

In addition, the instructions require that applicants provide the reason for any departure from the United States while holding T or U nonimmigrant status. As long as the applicant did not depart for a trip of more than 90 days or multiple trips of more than 180 days, the applicant’s reason for travel is irrelevant and requiring an applicant to provide an explanation is ultra vires of statutory and regulatory requirements.

Page 28 - “Evidence of Compliance with Reasonable Requests for Assistance in the Investigation or Prosecution of the Qualifying Criminal Activity”
The instructions for submission of an affidavit attesting to evidence of ongoing compliance with reasonable requests for assistance are poorly organized. Following “If you submit an affidavit, it must include…”, only points 1, 2, 3, and 5 relate to information that would be included in an applicant’s affidavit. Point 4, referring to “court documents, police reports, news articles” and other documents, does not track the language of the regulation. It should either be deleted or included as a separate paragraph at the end of this section immediately preceding the note about assistance from persons other than the principal applicant.

We thank you for the opportunity to submit these comments.

Respectfully submitted,

/s/

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