

August 25, 2016

U.S. Citizenship and Immigration Services,
Department of Homeland Security
Washington, D.C.

OMB Control Number 1615-0023; USCIS-2009-0020

Re: Comments on USCIS, OMB Control # 1615-0023, Agency Information Collection Activities: Application To Register Permanent Residence or Adjust Status, Form I-485, and Adjustment of Status Under Section 245(i), Supplement A to Form I-485; Revision of a Currently Approved Collection

Dear Sir or Madam:

Thank you for the opportunity to comment on the federal notice concerning an information collection request regarding the estimated public burden of Form I-485, the Application to Register Permanent Residence or Adjust Status. 81 Fed. Reg. No. 143 (484336, July 26, 2016) and previously published in the Federal Register on March 31, 2016, at 81 FR 18636.

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 is again soliciting public comments on the revision of the Form I-485, and we have attached our comments of May 31, 2016 re same, addressed to Samantha Deshommes, Acting Chief of the Office of Policy and Strategy, Regulatory Coordination Division of USCIS. We ask that USCIS consider these comments and the following comments with respect to the further revisions of Part 8 of Form I-485.

We are, quite frankly, alarmed to learn that USCIS has proposed to broaden the concept of what benefits are considered "public assistance," apparently intended to capture information on a wide and undefined net of programs and services potentially used by the applicant for adjustment. Rather than properly defining and limiting the definition to means-tested cash assistance programs, USCIS proposed revision to Question 61 moves in the opposite direction by asking applicants for adjustment:

Have you **EVER** received *any form* of public assistance in the United States from any source, including the U.S. Government or any state, country, city, or municipality (other than emergency medical treatment)? [Y/N]

We strongly believe that the proposed Question 61 within Form I-485 and its accompanying instructions will increase confusion and fear among immigrant families, versus help to clarify the programs that could trigger a “public charge” finding. We are extremely worried that otherwise eligible immigrants will be less likely to apply for critical benefits for which they or their family members—including citizen children—might be eligible. Lack of access to these critical benefits serves no objective public policy goal, other than to result in negative public health consequences for American communities. We also worry about individuals who have reached adulthood may not know that they once received free school meals, or that their mother’s received WIC during pregnancy and toddler years – and yet they are obliged to attest to the fact that they did not “EVER receive any form of public assistance.”

We also believe that the proposed wording of Question 61 may cause immigrants who are members of military service families or veterans to erroneously conclude that federal benefits they received could trigger a public charge finding, such as Aid to Military Families, educational benefits, Veterans Administration Pensions, VA Compensation, VA Dependent’s allowances, Base Housing Allowances and other benefits provided to members of the armed services, their dependents. We know this is indeed inconsistent with how USCIS determines “public charge”, but the wording of Question 61 is so overly broad as to suggest that possibility.

USCIS is required to act to address “considerable public confusion about the relationship between the receipt of federal, state and local public benefits” and “public charge” determinations in immigration law.¹ Questions 61 and 62 of Part 8 on Form I-485 fail to distinguish between cash and noncash benefits, which is at the core of the “public charge” determination.

Recommendations:

If questions pertaining to the use of public benefits are deemed necessary, they must be revised to track the rules governing the public charge grounds for admissibility, and inquire only about benefits that are relevant to public charge determinations. We offer the revised questions below as recommendations:

- *Have you received Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), or cash welfare from state and local income assistance programs?*
- *Have you been in long-term institutional care—such as in a nursing home or mental health institution—paid for by Medicaid?*

The Instructions for Form I-485 must be revised to track the long-standing USCIS policy on public charge. We recommend the following revisions to the public charge instructions on page 7:

¹ U.S. Department of State Foreign Affairs Manual Volume 9, Fam 40.41 Public Charge, INA 212(A)(4)
<http://www.state.gov/documents/organization/86986.pdf>

In Part 8., Item Numbers 61. and 62., you must include ~~all~~ only cash welfare received ~~or believe that you are likely to receive~~ from the U.S. Government or a U.S. state or local government, or if you have received long-term institutional care, such as in a nursing home or mental health institution, paid for by Medicaid. Receiving public assistance does not necessarily make you ineligible for adjustment of status. ~~but USCIS needs to know all types of U.S. Federal, state, and local public benefits you have received, or believe you are likely to receive, in order to determine relevancy to the public charge analysis.~~

Additionally, the Instructions for Form I-485 should include a section explaining these questions by:

- Specifying that noncash benefits such as SNAP, Medicaid, CHIP, WIC, housing benefits, child care services, energy assistance, emergency disaster relief, foster care and adoption assistance, education assistance, job training are not considered in the public charge determination.
- Specifying that receipt of monthly cash benefits for income maintenance purposes—SSI, TANF, cash from state and local income assistance programs and long-term institutional care—may be considered as a factor in the public charge determination, but does not automatically make an individual ineligible to adjust status to lawful permanent residence on public charge grounds.

The Massachusetts SNAP Coalition, Massachusetts advocates and social service workers report that otherwise eligible non-citizen households express reluctance to apply for nutrition assistance or SNAP based on a belief that receipt of these and other noncash benefits for themselves and/or US citizen household members will prevent them from becoming a lawful permanent resident. This misunderstanding of USCIS policy will only be made worse if questions 61 and 62 of Part 8 of Form I-485 are not corrected. The questions promote confusion among immigration attorneys as well as USCIS officials. It is understandable why immigrants are wary of applying for noncash benefits.

Because these questions on the adjustment forms are overly broad, asking about the use of public benefits generally, including those that are not relevant to the public charge inquiry, the resulting responses and data collected must be considered flawed, unnecessary for the agency's functioning, and lacking in practical utility.

Thank you for considering these and the attached comments submitted to USCIS on 5/31/16.

Sincerely,



Patricia Baker
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