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<http://www.regulations.gov>*

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**Re: Request for Comments: Agency Information Collection Activities
*OMB Control Number 1615-0023; DHS Docket No. USCIS-2009-0020***

Dear Sir or Madam:

Thank you for the opportunity to comment on the federal notice concerning an information collection request regarding the proposed revision of a currently approved collection of information, Form I-485, the Application to Register Permanent Residence or Adjust Status, 82 Fed. Reg., No 61. Specifically, the proposed changes are to the instructions for completing Form I-485. The response of The Legal Aid Society is set forth below.

I. Background

With 22.1 percent of New York State residents being foreign-born,¹ and most of them residing in New York City, immigrants are vital to the strength and growth of our economy. The positive contributions of immigrants are felt in every corner of our communities, in myriad ways. Immigrants occupy numerous positions within our government. They work in the City's medical facilities. They are teachers and university students and corporate employees. In addition, they are consumers, and their presence keeps our city's industries thriving.

Therefore, we have a keen interest in ensuring that immigrants in our community are able to live safe and healthy lives, and, in pursuit of these ends, that they are able to access the services they need in order to flourish. In addition, recognizing that obtaining immigration status helps communities maintain economic stability, we also have a strong interest in supporting programs and policies that help immigrant residents of New York City apply for immigration benefits for

¹ See <http://www.indexmundi.com/facts/united-states/quick-facts/new-york/foreign-born-population-percent#map>.

which they are eligible.

The Legal Aid Society, the nation's oldest and largest not-for-profit law firm for low-income persons, was founded in 1876 to serve New York's immigrant community. Although the mission of The Legal Aid Society has expanded since then, the Society has not wavered in its commitment to serve low-income immigrants in New York City. The Legal Aid Society is organized into three practice areas: Civil, Juvenile Rights and Criminal Defense. The Civil Practice provides direct legal assistance to low-income families and individuals in over 32,000 client cases and matters annually through a network of 14 neighborhood legal services offices in all five boroughs of New York City and 23 city-wide specialized units.

The Immigration Law Unit of The Legal Aid Society, based within the Civil Practice, works collaboratively in all practice areas to serve Legal Aid's diverse immigrant clients through an integrated service model. The Immigration Law Unit staff represents immigrants before USCIS, before immigration judges in removal proceedings, in federal court on habeas corpus petitions and on administrative and judicial appeals. The Unit also partners with fourteen community based organizations in New York City to provide application assistance, comprehensive advice and workshops to low-income immigrants.

Part of our practice is counseling clients who seek our help for immigration needs on the impact receipt of public benefits could have on their ability to adjust and, where appropriate, help by advising them on how to apply for benefits needed to maintain their health, housing and other needs of daily life.

II. Comments on Revisions to Form I-485 – The New Instructions Must Be Consistent With Existing “Public Charge” Rules, Not Suggest a Broader Definition of Public Charge

The “Public Charge” ground of inadmissibility is defined by statute. See 8 U.S.C. § 1182(a)(4)(B). Pursuant to statute, the Attorney General must consider a range of factors in determining whether an individual is likely to become a public charge, including age, health, family status, assets, resources and financial status as well as education and skills. Id. (i)-(v). USCIS rules also limit those who may be found inadmissible to persons who receive non-in kind assistance such as cash assistance for income maintenance and/or to those who are or are likely to be institutionalized for long-term care at government expense.² In other words, unless a person has or is likely to receive cash assistance, and the totality of the individual's circumstances suggest that the person may need to rely on cash assistance long term for support, he or she will not be found inadmissible on public charge grounds. The current public charge definition is clear, and such clarity does not inhibit our clients from accessing other crucially needed services and resources that promote the health and safety of our communities, such as health services, domestic violence services, and emergency food and shelter.

² Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689, (Mar. 26, 1999) “Memorandum for All Regional Directors: Public Charge INA Sections 212(a)(4) and 237(a)(5),” from Michael A. Pearson, Executive Associate Commissioner, Officer of Field Operations, Immigration and Naturalization Service.

The suggested changes to Form I-485, questions 61 & 62, are misleading as they appear to broaden the definition of public charge. Instead of explaining the current inadmissibility rules, the proposed language suggests that simple receipt of any public benefit would put some at risk of being found a public charge.³ This instruction is misleading, as it suggests that the standard for public charge is much broader than it actually is under statute and agency rules as explained above. Such inconsistency with the current rules would negatively impact immigrants' access to important services and resources by deterring applicants or potential applicants from receiving crucial services needed to maintain healthy and safe families and communities.

As stated above, The Legal Aid Society maintains a strong interest in encouraging our clients to continue to avail themselves of public assistance and benefits for which they are eligible. Programs and services like public education, public hospitals and vaccinations, domestic violence services, emergency food and shelter, Supplemental Nutritional Assistance Program (SNAP), and Medicaid play a crucial role in ensuring that individuals are able to live and thrive to the greatest possible extent and to ultimately feel like an integral part of our community. Broadly tying any utilization of these public services to the likelihood of successfully adjusting to lawful permanent resident status, as the proposed instructions would do, may create a chilling effect on immigrants' use of these programs, which could impact the health, safety, and well-being of our clients in general. These harms might also extend to many immigrants with legal status and U.S.-born citizens whose immigrant family members may become afraid to seek help for their basic needs. In short, a decline in the willingness and ability of foreign-born populations to access public services and resources, including various public assistance programs, could have significantly negative impacts on the public health and overall economic security of our clients and our City.

In light of these interests, we express strong concern about DHS's current proposed changes to questions 61 and 62 on Form I-485. DHS proposes to ask applicants for adjustment of status to provide their entire history and likelihood of receiving public assistance from any source.⁴ We urge DHS to revise questions 61 and 62 to use more specific language that reflects its definition of "public charge." Questions 61 and 62 should only inquire about an individual's history or likelihood to receive cash assistance or to be institutionalized for long-term care.

Revising questions 61 and 62 to be more specific and clear will also help our clients and their representatives to prepare their adjustment applications and facilitate efficient determinations by U.S. Citizenship and Immigration Services (USCIS). New York City has invested significant resources in supporting our work to help more eligible immigrants apply for immigration benefits. We have an interest in encouraging the efficient and effective representation of low-income immigrants and the smooth adjudication of immigration benefits

³ The proposed revision to question 61 states: "Have you ever received public assistance in the United States from any source, including the U.S. Government or any state, county, city, or municipality (other than emergency medical treatment)." Question 62 asks the same question about the likelihood of receiving public assistance in the future.

⁴ DHS' currently proposed language on question 61 asks, "Have you received public assistance in the United States from any source, including the U.S. Government or any state, county, city, or municipality (other than emergency medical treatment)?"

applications so that residents of New York City who are eligible for adjustment of status are able to apply and receive a response from USCIS quickly.

A narrower question would help applying immigrants and their advocates provide the precise documentation that USCIS needs to make determinations relevant to public charge determinations, and move the application through the adjudication process.

We appreciate the opportunity to comment on this highly important topic and we look forward to a continuing dialogue with DHS on these and many other issues.

Sincerely,

A handwritten signature in blue ink, appearing to read "Hasan Shafiqullah".

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