MAURICE A. DEANE SCHOOL OF LAW
HOFSTRA LAW

HOFSTRA LAW CLINIC

108 Hofstra University
Hempstead, NY 11549

tel: 516-463-5934
fax: 516-463-5937
lawclinic@hofstra.edu
law.hofstra.edu

March 12, 2018

Department of Homeland Security
USCIS Citizenship and Immigration Services
Office of Policy and Strategy
20 Massachusetts Ave. NW
Washington, DC 20529-2140

The Deportation Defense Clinic submits this comment in opposition to a proposed revision to Form I-765, Application for Employment Authorization, and its instructions that would require asylum seekers to disclose arrest and/or conviction records and permit USCIS Officers to determine whether a conviction constituted an aggravated felony and adjudicate Employment Authorization Document (EAD) Applications based on those determinations. These revisions will be detrimental to vulnerable asylum seekers who seek refuge in the United States.

Hofstra Law's Deportation Defense Clinic, one of the school's three clinics that cater to our immigrant populations, was recently created to specifically address and serve the needs of the growing deportation issues that plague the immigrant population in Long Island, New York. As students of the law, we are concerned about how this proposed change will affect our future clients.

This proposed change will contradict the very purpose of the Form I-765–which is to provide a benefit allowing approved applicants to legally work in the United States for a specified period. By denying an EAD to asylum applicants with arrest and/or conviction records, this change will wedge these applicants between a rock and a hard place: working unlawfully (which is exactly what our government seeks to prevent) or becoming unable to support themselves and their families and potentially becoming public charges.

This proposed change to Form I-765 allows USCIS officers, who are not licensed attorneys trained in legal analysis, the power to make the determination as to whether an applicant's convictions meet the definition of aggravated felony under Federal, State, or foreign law. The legal analysis required decipher divisibility and whether the statute of conviction is a categorical match to the aggravated felony definition in INA 101(a) (43) is a complex one, which has

MAURICE A. DEANE SCHOOL OF LAW
HOFSTRA LAW

HOFSTRA LAW CLINIC

108 Hofstra University
Hempstead, NY 11549

tel: 516-463-5934
fax: 516-463-5937
lawclinic@hofstra.edu
law.hofstra.edu

often required the Supreme Court's intervention.[1] The determination of whether a conviction constitutes an aggravated felony is a complicated determination and USCIS should not be given discretionary authority to make this determination. It would be an incredible waste of time and resources to now train USCIS officers to interpret Federal, State, and foreign criminal law. This is particularly true given that the same analysis must then be undertaken by the immigration judge in conjunction with the decision on the merits of the application for relief.

The proposed change would also permit USCIS officers to consider virtually any crime, and not just aggravated felonies, as grounds for an EAD denial. USCIS officers, under their discretion, would be able to discriminate against any asylum applicant with an arrest or conviction record. This is particularly troublesome since not all criminal convictions impact eligibility for relief or carry immigration consequences.

While it is important to protect our systems from being abused by applicants who are ineligible for asylum, this change will neither prevent nor dispose of fraudulent applications. Instead, this change unfairly burdens low-income individuals seeking safety under the process provided for by our immigration laws by placing the burden on asylum applicants to obtain their US as well as their overseas arrest or conviction records. By requiring foreign records, this change will burden those individuals affected with appealing to a government that persecuted them, is likely to persecute them in the future, or which they felt could not protect them from their persecutor. It is a gross imposition on USCIS's part to require that applicants put themselves or their families at risk to obtain this information before it is required or requested by an immigration judge.

This proposed change will increase appeals to the Administrative Appeals Office and further clog the system with unnecessary litigation. A process exists for any arrests or criminal convictions to be examined and their impact on an applicant's eligibility for asylum to be decided. This proposed change does nothing more than waste governmental resources at the expense of taxpayers and vulnerable asylum seekers who wish to become self-supporting, tax-paying contributors to the US economy.

[1] *Lopez v. Gonzales*, 549 U.S. 47 (2006); *Carachuri-Rosendo v. Holder*, 560 U.S. 563 (2010); *Mellouli v. Lynch*, 135 S.Ct. 1980 (2015); *Moncrieffe v. Holder*, 569 U.S. 184 (2013).