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November 7, 2023

Samantha Deshommes
Chief, Regulatory Coordinator
Division Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

Re: Comment in Response to the DHS/USCIS Agency Information Collection Activities; Revision of a Currently Approved Collection: Application To Register Permanent Residence or Adjust Status; Docket No. USCIS–2009–0020; OMB Control Number 1615–0023

Dear Chief Deshommes,

The Immigrant Legal Resource Center (ILRC) submits the following comment in response to the Department of Homeland Security's (DHS) Agency Information Collection Activities; Revision of a Currently Approved Collection: Application to Register Permanent Residence or Adjust Status, published on September 8, 2023.

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity.

The ILRC also leads the New Americans Campaign, a national non-partisan effort that brings together private philanthropic funders, leading national immigration and service organizations, and over two hundred local services providers across more than 20 different regions to help prospective Americans apply for U.S. citizenship.

Through our extensive network with service providers, immigration practitioners, and immigration benefits applicants, we have developed a profound understanding of the barriers faced by vulnerable immigrant communities – including Black and Brown communities, survivors of intimate partner violence, sexual violence, human trafficking, or other forms of trauma and low-income communities – seeking to adjust status. As such, we welcome the opportunity to provide comments on Form I-485, Application to Register Permanent Residence or Adjust Status, especially given the importance of this form and its reach across almost all sectors of immigration law and practice. The recommendations that follow are gleaned from the experiences of many communities who we and our partners serve.

I. USCIS should revise Form I-485 to reduce the length and streamline the information sought and adjudication processes.

We urge U.S. Citizenship and Immigration Services (USCIS) to revise and shorten the I-485 in line with the current and previous versions of the form. The current form is already substantial at 20 pages with 44 pages of instructions. The proposed form is four pages longer and the instructions are one page longer. A form this length is onerous for all parties – applicants, preparers, representatives, and adjudicators alike. Navigating a long form with even longer instructions is burdensome for applicants – particularly those who are unable to secure representation either due to the cost or lack of representation options in their area. Further, the longer form presents more of a burden for all legal representatives but particularly representatives who provide free or low-cost services to indigent clients, causing a strain on resources that leads to diminished capacity to meet the demand for representation. Finally, for adjudicators, the longer form – coupled with a lengthy and often unnecessary, extreme vetting of already-approved, underlying applications – drains agency resources and contributes to backlogs and long processing times. Shortening the form could have a profound impact on those eligible to adjust as well as helping USCIS to meet its obligations under President Biden's Executive Orders on Restoring Faith in the Legal Immigration System[1] and Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government.[2] Further, streamlining the form will encourage *pro se* applicants to apply for adjustment of status on their own, thus reducing the burden on practitioners who could reserve their resources for complex cases.

USCIS should revise and streamline Form I-485 by ensuring that only information necessary for the adjudication of the application is sought, as it has done with other proposed forms published over the last few years. Additionally, the agency should review and revise the form to ensure that the agency is using its own records and other governmental sources to ascertain information in lieu of asking applicants to provide such information. By asking applicants to provide information – such as biometric information or adjudication information for underlying applications – the agency raises the chances that incorrect or inconsistent information will be provided by the applicant, which will then need to be clarified by the adjudicator. By using the information that the agency already has to determine eligibility and only asking applicants to provide information that the agency does not already have, USCIS can shorten the adjudication process and reduce backlogs.

Shorter, streamlined forms are also less of an adjudicatory burden for USCIS. In its proposed fee rule published in January 2023,[3] USCIS reported that the service-wide completion rate for Form I-485 was just over two hours.[4] As of June 30, 2023, there were over 800,000 I-485 applications pending at USCIS across

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[1] Executive Order 14012, *Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans*, 2021,https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/02/executive-order-restoring-faith-in-our-legal-immigration-systems-and-strengthening-integration-and-inclusion-efforts-for-new-americans/.

[2] Executive Order 14058, Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/13/executive-order-on-transforming-federal-customer-experience-and-service-delivery-to-rebuild-trust-in-government/

[3] U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 88 Fed. Reg 402-602.

[4] 88 Fed. Reg. 448.

all adjustment categories..[5] The application to adjust status is among the most important of all the benefit applications because of its wide use and the stability that lawful permanent residency provides. USCIS cannot reduce the backlog of I-485 applications by increasing the length of the form and, with it, the length of time needed to adjudicate it. We thus urge USCIS to streamline and reduce the length of the form to lessen the backlog and facilitate the pipeline to permanent immigration status.

Finally, an expansion of information collected and other measures that make the I-485 more difficult or intimidating to complete functions as a *de facto* barrier to naturalization. The Biden administration has taken many steps to reduce barriers to naturalization and ILRC applauds these efforts. However, any barriers to adjustment of status that are erected (such as a lengthened application form or extreme vetting practices in adjudications) will serve to keep more people from reaching naturalization eligibility and, in turn, reduce overall naturalization numbers. A commitment to promote naturalization cannot be limited to the naturalization processes for LPRs once they are eligible. That commitment must reach to all underlying applications to be truly effective in the long term. The ILRC urges USCIS to view its commitment to the naturalization process to begin with the first underlying application for relief and extend through the completion of the naturalization process.

To streamline and simplify the form, we offer the following suggestions and suggested language:

1. USCIS should revise the form to reduce duplicative, redundant or unnecessary questions either through elimination or combination with other questions.
    a. Part 2, Question 12: This new question regarding last entry and physical presence should be eliminated. The eligibility issues this question solicits are covered in Part. 9, Questions 88 and 89; including it here is unnecessary, inefficient, and invites inconsistent answers due to applicant confusion which delays adjudications.
    b. Part 2, Questions 15 and 16: These new questions regarding entry as an "alien crewman" could be eliminated to promote efficiency and added instead as an option to Question 10. The fourth option for Question 10 could be amended to read:

        Other (such as entry with "alien crewman" visa or to join a vessel as a crewman or seaman while serving in any capacity aboard a vessel or aircraft)

    c. Part 8: We note with gratitude that the categories of "Race" have been listed in alphabetical order, rather than with "White" as the first choice. However, the agency should consider removing Part 8 of Form I-485 altogether. This information is collected as part of biometrics processing and its presence on the form is redundant and unnecessary. If USCIS does not eliminate this section, Form I-485 should provide an additional option such as "*Other*" to include those who may not identify with the options listed. This change would be in line with the more inclusive gender markers in Part 1 of the proposed form, another welcome change.

2. Part 2 Generally: The proposed form expands the number of categories applicants can choose from. ILRC encourages USCIS, as an adjudication matter, to ensure that applicants are not unduly

[5] USCIS, Number of Service-wide Forms By Quarter, Form Status, and Processing Time, April 1, 2023-June 30, 2023, available at https://www.uscis.gov/sites/default/files/document/data/quarterly_all_forms_fy2023_q3.pdf.

disadvantaged (through application rejection, Requests for Evidence (RFEs), or other measures) for choosing the wrong category for adjustment in this section. Eligible applicants – particularly *pro se* applicants – may find this list of categories daunting and confusing and should not suffer consequences for making an innocent mistake, particularly where the mistake can be clarified in the interview. Adjudicators, not applicants, are in the best position to determine a person's eligibility category to adjust status and should allow for correction as part of the adjudication process at the interview, rather than having the applicant start the process over with a new application if the previous one is rejected. Doing so will save the agency time and resources and will reduce the burden on applicants.

3. Part 2. Question 3.a: The family-based categories do not currently take into consideration the Child Status Protection Act (CSPA) and could be confusing to *pro se* applicants who qualify under CSPA. The agency should add language to alert applicants of potential eligibility under CSPA on the form and provide more robust language in the instructions. While CSPA is treated further down in Part 2, Question 5, this information should be moved up to Question 3.a so as to alert applicants to the correct category of potential eligibility. If this change is made, then Part 2, Question 5 can be eliminated. As an example, the form could be amended as follows for the option "Unmarried child under 21 years of age of a U.S. Citizen":

   > *If you are immigrating as a child of a U.S. citizen or permanent resident and are presently over the age of 21, you may still be considered as a "child under 21" if you qualify under the "Child Status Protection Act*.

4. Part 2, Question 3.d: Relatedly, the new questions asking applicants to provide the date of the asylum grant or refugee admission is unnecessary, inefficient, and could cause confusion or problems in the future if the date provided is wrong and an applicant is erroneously granted adjustment within one year of the asylum or refugee grant. USCIS adjudicators have this information available to them as part of an applicant's A-file and are in a better position to assess eligibility than an applicant. The requirement that applicants provide the date of the asylum grant or refugee admission should be eliminated from the form.
5. Part 2, Question 4: USCIS should not delete the note on 245(i) that is on the current form. The proposed I-485 does not contain this note, which should be added back in, as it provides clarity for applicants and alerts them to the fact that there are additional requirements to apply under this provision. The note can be altered to account for the new wording of the question on the proposed form as follows:

   > ***NOTE:*** *If you answered "Yes" to Item Number 4., fill out the rest of this application* ***and*** *Supplement A to Form I-485, Adjustment of Status Under Section 245(i) (Supplement A). For detailed filing instructions, read the Form I-485 Instructions (including any* ***Additional Instructions*** *that relate to the immigrant category that you selected in* ***Item Numbers 1.a-1.g.****) and Supplement A Instructions.*

6. Part 3: This item should be rewritten as a question. As written, the item is a statement that will cause confusion for applicants who may not understand the exemption and may think that they have to request an exemption. We suggest the following changes to the item to provide clarity:

1. *Are you requesting an exemption from submitting an Affidavit of Support Under Section 213A of the INA (Form I-864 or Form I-864EZ)? Select only one option from the below list: . . . [options A-D remain the same]. . .*
   E. I am not requesting an exemption.

7. Part 4, Employment and Educational History
   a. Employment history should include an option for "retired," which is distinguishable from unemployment.
   b. The requirement that applicants list their source of financial support for periods of unemployment should be eliminated as unnecessary, burdensome, and overly intrusive. USCIS already requires information about any public benefits received by applicants as part of its public charge inadmissibility inquiry. This new question as written will particularly disadvantage low-income applicants- many of whom may be unrepresented as they apply for permanent residence – who may face difficulty patching together sources of support for different periods. This question may thus act as a deterrent to apply for eligible low-income immigrants based on their financial status.
   c. The agency should amend the form to ensure that approximate dates are permitted for employment and educational history. Many applicants will not have access to records or exact dates for school attendance or employment and the requirement that the dates be exact increases the likelihood that incorrect information will be submitted or that eligible applicants will find the questions too burdensome to apply.

II. USCIS should revise Part 9 of the proposed form to eliminate broad, vague, and unnecessary questions.

USCIS should revise the proposed I-485 to eliminate questions in Part 9, General Eligibility and Inadmissibility Grounds, that are vague, over-broad, and ask applicants to draw legal conclusions and self-report any criminal activity even when there has been no contact with the criminal legal system. These questions are confusing and intimidating for applicants and increase the risk that erroneous information will be provided, or important information will be omitted. This results in more work for USCIS, as misinformation causes RFEs or denials of eligible applicants and thereby lengthens an already backlogged process. The overbroad nature of these questions – coupled with the agency's continued insistence on extreme vetting practices in adjudication – do not facilitate the adjudication of benefits. Rather, they cause a chilling effect for applicants. Further still, DHS and other agencies utilize surveillance and information-gathering tools as regular practice in adjudications, rendering the inclusion of questions that ask applicants to self-report criminal behavior and other matters of personal conduct unnecessary. Such collection in the age of digital criminal enforcement is a waste of time for the agency and can cause harm to applicants who may misunderstand a question and provide incorrect answers that are used to deny their application and potentially expose them to further immigration enforcement.

USCS is not an enforcement agency, but rather a customer-focused agency providing services to the public in the form of immigration benefits. Collection of information on immigration forms for the purposes of enforcement does not align with the agency's stated mission of promoting fairness, integrity,

and respect.[6] nor does it comport with President Biden's Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government..[7] Conflating the customer-service focus of USCIS with the immigration enforcement lens of other DHS agencies, can only further erode public trust in the agency and solidify barriers to immigration benefits. We thus urge USCIS to consider revising these questions to tailor them to eligibility for adjustment of status only and remove questions that seek collect information for enforcement purposes.

1. Questions 1-9: Generally, this section is confusing as to what is included as an "organization." The proposed instructions do not include any clarifying information, which will lead applicants – particularly *pro se* applicants – to list sports teams, parent-teacher associations, church groups, book clubs, and others that do not speak to eligibility for adjustment of status. By including this broad request for organizational membership, USCIS adjudicators will have to sift through irrelevant information, prolonging the adjudication time and use of agency resources. Furthermore, both the current and proposed form and instructions ask the applicant for exact dates of membership, which will be difficult for many applicants to provide, particularly when membership was many years in the past. USCIS should narrow these questions to ask about organizations where participation would speak to the applicant's eligibility only and should allow for approximate answers on dates of membership.
2. Question 14: This question about removal proceedings has the potential to severely confuse applicants, particularly ones who have been in the United States for a long time who may have been subject to proceedings under old laws. Further, it is difficult for applicants to ascertain what kind of proceedings they may have been in given the circumstances (e.g., expedited removal proceedings may not be distinguishable from other proceedings to someone who is unrepresented and was also unrepresented at the time). USCIS has ways to ascertain this information internally and should do so, reducing the risk of inconsistent or incorrect answers to this question.
3. Questions 22-42: Criminal Acts and Violations: Generally, requests to disclose conduct where no actual criminal record exists (e.g., Question 23) are overbroad and should be eliminated from the form. These questions should limit the inquiry to language about arrests, convictions, and actual terms of confinement, rather than asking for information on conduct that did not result in any contact with the criminal legal system or where conduct was subject to juvenile adjudications. Further, the word "committed" must be removed, as asking applicants about crimes they have "committed" requires the applicant to make a legal conclusion about what conduct may have violated what laws. For all applicants, but especially unrepresented applicants, this wording may lead to the inclusion of erroneous or omission of important information. USCIS should revise the language as suggested below to remove requests for information for conduct that does not involve contact with the criminal legal system. However, should the language remain on the form, USCIS should, at a minimum, alter any mention of "*criminal offense you committed*" to "*criminal offense you allegedly committed*."

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[6] USCIS, *Mission and Core Values*, Last Updated April 20, 2023, https://www.uscis.gov/about-us/mission-and-core-values#:~:text=Mission%20Statement,respect%20for%20all%20we%20serve.

[7] Executive Order 14058, Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/13/executive-order-on-transforming-federal-customer-experience-and-service-delivery-to-rebuild-trust-in-government/

We suggest the following revisions to the introductory paragraph which, in part, reverts the language back to the current version of the form.

For Item Numbers 22.-42., you must answer "Yes," to any question that applies to you. ~~*even if your records were sealed or otherwise cleared, or even if anyone, including a judge, law enforcement officer, or attorney, told you that you no longer have a record*~~*. You must also answer "Yes" to the following questions whether the action or offense occurred here in the United States or anywhere else in the world. Do not include offenses for which there is no official record or where a conviction has been vacated or otherwise kept confidential as a matter of law. Do not include offenses adjudicated in juvenile court. If you answer "Yes" to Item Numbers 22.-42., use the space provided in Part 14 Additional Information to provide an explanation for each instance related to an arrest, citation, charge or detention*~~*; offense, if applicable, that includes a description of the criminal offense;, when the criminal offense occurred; whether you were arrested, cited, charged, or detained for the criminal offense you committed*~~ *and the outcome or disposition of that event or case* ~~*of that criminal offense*~~ *(for example, convicted, placed in a diversion program, no charges filed, case dismissed; also state whether as part of any sentence, you served time in jail, or received probation or community service).* ~~*Your explanation must include the duration of any sentence to confinement (even if suspended).*~~

4. Question 23: This question should be eliminated entirely. Asking applicants if they committed a crime for which they were not arrested, the agency requires that applicants understand criminal law in the United States and in any country, they have ever been to. This type of question is at best over-broad and inefficient and at worst, an attempt to trap applicants into revealing something that will cause harm presently or at an undetermined time in the future. [8]
    a. First, adjudicators, not applicants, are best poised to draw the legal conclusions that this question requires. USCIS has access to information through inter-agency data sharing, biometrics collection, and other information collection tools to assess whether applicants have engaged in conduct that affects admissibility. Including this question increases the chances that irrelevant information will be submitted to adjudicators, which will require RFEs or other measures that will prolong adjudication time. Conversely, there is an increased chance that information will be unintentionally omitted and lead the agency to make an erroneous finding of fraud leading to an erroneous denial.
    b. Second, this question muddies the waters and relies on the over-inclusion of potentially irrelevant information, rather than tailoring the inquiry to the information needed to make an eligibility determination. Questions like these are particularly harmful to *pro se* applicants and applicants from communities that are historically over-policed (e.g., Black and Brown communities and Muslim communities) and where distrust of government processes is prevalent. Questions like these can cause a chilling effect for eligible applicants within these communities who are less likely to interact with government

[8] Immigration and Customs Enforcement routinely uses this question to identify subjects for enforcement under Operation False Haven (https://www.ice.gov/topics/operation-false-haven). While apparently limited in use at the present movement, we are concerned about the precedent this enforcement initiative presents and urge USCIS to reconsider the use of this type of question in any application.

agencies due to fear of enforcement.[9] Again, including this type of question on a benefits application is in direct contrast to President Biden's executive orders on restoring faith in the legal immigration system[10] and racial equity.[11]

5. Question 47: It is unclear what is included as "weapons training" in this context. This question, as written, could solicit the information about a gun an applicant legally purchased for personal use and any firearm safety classes that were taken or any other recreational class or activity that involves archery, or a similar instruction. This is distinguishable from paramilitary or military training which are part of the same question, and the grouping of these options has the potential to be confusing for applicants. This question should be revised to include only military or paramilitary training and eliminate the use of the vague term "weapons training."
6. Question 49: We commend the agency for revising this question to add the phrase "with the intent to endanger the safety of another person or people or cause damage to property." However, USCIS should revert to existing language of "substantial property" rather than "property." The removal of the word "substantial" could result in an overbroad collection of information encompassing even minor vandalism. This fear is compounded by the lack of clarity around what constitutes a "weapon" or "dangerous device." The opacity of these terms, once again, can lead to submissions or omissions that will necessitate further scrutiny and more time spent on an application.
7. Question 51, 63-68: Questions about inciting any of the described activities compound the concerns we have raised about the disclosure of information in this section. Specifically, an expanded question such as this encompasses far more activity than previously contemplated by this form and broad and vague terms like "incite" can only lead to further confusion. USCIS should eliminate Question 51 from the proposed Form I-485 to reduce the chances of confusion for applicants and adjudicators alike. Similarly, USCIS should amend the language before Question 63 on the proposed form to read:

   Have you ever ~~ordered, incited, called for,~~ committed, assisted, helped with, or otherwise participated in the following:

III. USCIS should eliminate public charge questions from the form or, in the alternative, provide clarification for public charge questions to reduce confusion for applicants.

ILRC continues to hear confusion from practitioners and advocates on whether checking "yes" to Part 8, Question 61 on the current version of the I-485 is stating that the applicant is a public charge or will be

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[9] As an example, increases in hate crimes and race- and religion-based harassment and violence often go underreported due to fear of law enforcement. See John Eligon, *Hate Crimes Increase for the Third Consecutive Year, F.B.I. Reports*, New York Times, (Nov. 13, 2018), available at https://www.nytimes.com/2018/11/13/us/hate-crimes-fbi-2017.html.

[10] Executive Order 1401, *Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans*, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/02/executive-order-restoring-faith-in-our-legal-immigration-systems-and-strengthening-integration-and-inclusion-efforts-for-new-americans/.

[11] Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, 2021, https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government.

found likely to become a public charge, rather than simply subject to the public charge ground of inadmissibility. We have also heard from our local San Francisco USCIS Field Office that confusion with this question is leading applicants to answer this question incorrectly, requiring issuance of an RFE (if applicants mistakenly check "no" to this question, they skip the next several questions pertaining to public charge). This question is also on the proposed form at Part 9, Question 69 as well as questions that require more information about benefits received in Questions 70-79. **ILRC recommends all questions about applicability of the public charge ground of inadmissibility be eliminated in the updated version of the I-485 form.** Due to the complicated nature of a public charge inadmissibility inquiry as well as confusion as to what public benefits are at issue for public charge, USCIS should stop collecting this information from applicants unless a need arises during adjudication which can be handled during the interview or through an RFE requesting specific documentation. Otherwise, applicants will continue to answer these questions incorrectly, leading to the omission of information required for adjudication and necessitating multiple RFEs, further slowing down case processing. If these questions are not eliminated, ILRC proposes the following changes to provide clarity for applicants.

1. **Add guidance regarding applicability of public charge ground to the Form I-485 instructions, including the "Additional Instructions" section, based on application type or filing category.**

ILRC suggests adding guidance to the Form I-485 instructions to guide applicants to properly complete this section of the I-485 and avoid unnecessary RFEs, which cause delays and worsen backlogs. The proposed instructions refer applicants to the USCIS Policy Manual for a list of who is subject to the public charge ground of inadmissibility, which could pose problems for unrepresented applicants who are not familiar with the Policy Manual and may not understand how to apply the general policy guidance and legal information to complete the Form I-485. Specifically, ILRC recommends adding a list of those who *are* subject to the public charge ground of inadmissibility in the form instructions. ILRC recommends adding the following wording to the Form I-485 Instructions:

> 9. Part 9. General Eligibility and Inadmissibility Grounds, Public Charge.
> For Part 9, Item Number 69, applicants for adjustment of status are generally subject to the public charge ground of inadmissibility, unless exempt. You should answer "Yes" if ~~unless~~ you are applying for adjustment of status under one of the following categories or programs:
>
> - Family-based adjustment of status applicants, including those applying as the spouses, children, and parents of U.S. citizens; unmarried sons and daughters of U.S. citizens and their children; spouses, children, and unmarried sons and daughters of LPRs; married sons and daughters of U.S. citizens and their spouses and children; brothers and sisters of U.S. citizens; fiancé(e)s of U.S. citizens; Amerasians based on preference category, born on or after December 31, 1950, and before October 22, 1982; and spouses, widows, or widowers of U.S. citizens;
> - Employment-based adjustment of status applicants, including those applying as priority workers; professionals with advanced degrees or noncitizens of exceptional ability; skilled workers, professionals, and other workers; and investors;
> - Special immigrants applying as religious workers; certain employees or former employees of the U.S. government abroad; Panama Canal Zone employees; foreign medical school

graduates; retired employees of international organizations; U.S. armed forces personnel; and international broadcasters; and

- Other adjustment of status applicants, including those applying as diplomats or high-ranking officials unable to return home; persons born in the United States under diplomatic status; diversity visa immigrants; certain entrants before January 1, 1982; and S nonimmigrants (noncitizen witness or informant).

The following applicants should check "No" to **Part 9.**, **Item Number 69.**, as those who are NOT subject to the public charge ground of inadmissibility:

- VAWA self-petitioner (Form I-360);
- Special Immigrant Juvenile (Form I-360);
- Certain Afghan or Iraqi national (Form I-360 or Form DS-157);
- Asylee (Form I-589 or Form I-730);
- Refugee (Form I-590 or Form I-730);
- Victim of qualifying criminal activity (U Nonimmigrant) under INA section 245(m) (Form I-918, Form I-918A, or Form I-929);
- Any category other than INA section 245(m) but you are in valid U nonimmigrant status at the time you file your application for adjustment of status. (This exemption only applies if, at the time of the adjudication of the Form I-485, you are still in valid U nonimmigrant status. If, at the time of adjudication of the Form I-485, you are no longer in valid U nonimmigrant status, you will be subject to the public charge ground of inadmissibility).
- Human trafficking victim (T nonimmigrant) under INA section 245(l) (Form I-914 or Form I-914A);
- Any category other than INA section 245(l), but you either have a pending application for T nonimmigrant status (Form I-914) that sets forth a prima facie case for eligibility, or are in valid T nonimmigrant status at the time you file your application for adjustment of status. (This exemption only applies if your Form I-914 is still pending and deemed to be prima facie eligible, or you are in valid T nonimmigrant status when we adjudicate your adjustment of status application.);
- Cuban Adjustment Act;
- Cuban Adjustment Act for battered spouses and children;
- Dependent status under the Haitian Refugee Immigrant Fairness Act;
- Dependent status under the Haitian Refugee Immigrant Fairness Act for battered spouses and children;
- Cuban and Haitian entrants applying for adjustment of status under section 202 of the Immigration Reform and Control Act of 1986;
- A Lautenberg Parolee;
- National of Vietnam, Cambodia, or Laos applying under the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 2001;
- Continuous residence in the United States since before January 1, 1972 ("Registry");
- Amerasian Homecoming Act;
- Polish or Hungarian Parolee

- Nicaraguans and other Central Americans under section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA);
- American Indian Born in Canada (INA section 289) or the Texas Band of Kickapoo Indians of the Kickapoo Tribe of Oklahoma, Public Law 97-429 (Jan. 8, 1983);
- Section 7611 of the National Defense Authorization Act for Fiscal Year 2020 (Liberian Refugee Immigration Fairness);
- Syrian national adjusting status under Public Law 106-378; or
- Spouse, child, or parent of a U.S. active-duty service member in the armed forces under the National Defense Authorization Act (NDAA) (Form I-130 or Form I-360).

ILRC also recommends USCIS add guidance on whether to check "Yes" or "No" based on filing type or category in the "Additional Instructions" section of the Form I-485 instructions, since Part 2 of the proposed I-485 application refers applicants to see additional instructions that relate to the specific immigrant category they select in Part 2. These special instructions should address applicability of the public charge ground of inadmissibility, and which applicants must select "Yes" to Part 9 Question 69 and fill out Part 9 Questions 70-79, based on their application type and filing category.

2. Add reference to Form I-485 application in USCIS Policy Manual guidance on applicability of public charge ground of inadmissibility.

To reiterate, the ILRC recommends that Part 8, Question 61 on the current version of Form I-485 and Part 9, Question 69 of the proposed Form I-485 **be eliminated in its entirety**, as the question is causing confusion for applicants and creating a heavier burden for adjudicators who are in a better position to make a determination on the public charge ground of inadmissibility than applicants. However, should the question remain on the form, in addition to changes on the I-485 instructions, ILRC suggests adding the following wording to the USCIS Policy Manual updated sections B and C in Volume 8, Part G, Chapter 3:

B. Applicants for Adjustment of Status

The public charge ground of inadmissibility will generally apply to all applicants for adjustment of status unless they are specifically exempt from the public charge ground of inadmissibility.

The tables below indicate which applicants for adjustment of status are subject to the public charge ground of inadmissibility~~:~~.[15] Such applicants should check "Yes" to the question, "*Are you subject to the public charge ground of inadmissibility under INA section 212(a)(4)?*" on the Form I-485, Application to Register Permanent Residence or Adjust Status. Please note that answering "yes" to this question on the I-485 *does not* indicate that the applicant will be found inadmissible under the public charge ground or is likely to be a public charge in the future, this question merely identifies whether the applicant is generally among the types of adjustment applicants, indicated below, who immigration law says must be screened for public charge inadmissibility.

…

C. Exemptions

The public charge ground of inadmissibility does not apply, based on statutory or regulatory authority, to the following applicants for visas, admission, and adjustment of status~~:~~.[39] Applicants for adjustment of status who fall within the exempted categories listed below should check "No" to the question, "*Are you subject to the public charge ground of inadmissibility under INA section 212(a)(4)?*" on the Form I-485, Application to Register Permanent Residence or Adjust Status.

3. **Consider adding guidance on Form I-485 webpage regarding applicability of public charge ground, under dropdown tab "Special Instructions."**

Finally, ILRC recommends adding information on applicability of the public charge ground under the dropdown tab for "Special Instructions" at https://www.uscis.gov/i-485. ILRC suggests adding the following language:

> Which Box to Check in Part 9, Item 69. of Form I-485 (Public Charge)
>
> In general, if you are filing a Form I-485 based on a family-sponsored or employment-based petition, you must check "Yes" to **Part 9, Item 69.,** and fill out **Part 9, Items 70-79.**, as an applicant who is subject to the public charge ground of inadmissibility. This *does not* mean that you will be denied for public charge, simply that you are categorically subject to a public charge inadmissibility screening as part of your adjustment of status application, based on your filing type or category.
>
> If you are filing a Form I-485 in any of the following categories, you should check "Yes" for **Part 9, Item 69.,** and fill out **Part 9, Items 70-79.**
>
> - Family-based adjustment of status applicants, including those applying as the spouses, children, and parents of U.S. citizens; unmarried sons and daughters of U.S. citizens and their children; spouses, children, and unmarried sons and daughters of LPRs; married sons and daughters of U.S. citizens and their spouses and children; brothers and sisters of U.S. citizens; fiancé(e)s of U.S. citizens; Amerasians based on preference category, born on or after December 31, 1950, and before October 22, 1982; and spouses, widows, or widowers of U.S. citizens;
> - Employment-based adjustment of status applicants, including those applying as priority workers; professionals with advanced degrees or noncitizens of exceptional ability; skilled workers, professionals, and other workers; and investors;
> - Special immigrants applying as religious workers; certain employees or former employees of the U.S. government abroad; Panama Canal Zone employees; foreign medical school graduates; retired employees of international organizations; U.S. armed forces personnel; and international broadcasters; and
> - Other adjustment of status applicants, including those applying as diplomats or high-ranking officials unable to return home; persons born in the United States under diplomatic status; diversity visa immigrants; certain entrants before January 1, 1982; and S nonimmigrants (noncitizen witness or informant).

If you are filing as an asylee, refugee, special immigrant juvenile, victim of human trafficking (T nonimmigrant), victim of qualifying criminal activity (U nonimmigrant), or self-petitioner under the Violence against Women Act (VAWA), or any other category you should check "No" to **Part 9, Item 69.,** and skip **Part 9, Items 70-79.**

For other applicants, see the USCIS Policy Manual Volume 8, Part G, Chapter 3 at https://www.uscis.gov/policy-manual/volume-8-part-g-chapter-3

In a related matter, USCIS should add additional information to **Part 3, Request for Exemption for Intending Immigrant's Affidavit of Support Under Section 213A of the INA** to clarify that this section applies only to those who need to submit an Form I-864W, Request for Exemption for Intending Immigrant's Affidavit of Support and does not include those who are already exempt from filing a Form I-864, Affidavit of Support Under Section 213A of the INA.

IV. The I-485 form and instructions should be amended to affirmatively exclude juvenile arrests, charges, and adjudications.

USCIS should cease the consideration of juvenile records in applications for adjustment of status and to that end make clear on the Form I-485 and instructions that juvenile arrests, charges, and dispositions need not be disclosed, and juvenile records need not be provided. Across the United States, juvenile justice systems – civil systems that adjudicate violations of the law by children – recognize the significant developmental differences between children and adults and accordingly focus on early intervention, community-based resources, and rehabilitative efforts rather than punishment. In fact, most juvenile justice systems, including the federal system, have confidentiality provisions to protect young people from collateral consequences of juvenile court involvement that can occur when information and records from juvenile court proceedings are publicly available.[12] Requiring people to disclose their youthful violations of the law to USCIS is at odds with the law and policy undergirding juvenile justice systems.

Further, immigration law does not support consideration of juvenile justice records as a matter of discretion in immigration adjudications. The seminal case on the exercise of discretion in immigration adjudications remains *Matter of Marin*.[13] In *Matter of Marin*, the BIA lists several factors that could be deemed adverse for purposes of discretionary determinations: "the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency, and seriousness, and the presence of other evidence indicative of a respondent's bad character or undesirability as a permanent resident of this country."[14] Juvenile delinquency adjudications do not fit anywhere within this rubric. First, juvenile justice systems are civil in nature and accordingly state laws forbid the consideration of juvenile delinquency adjudications as "crimes" or youth adjudicated delinquent as "criminals." Second, evidence of a juvenile record simply is not evidence of "bad character." Even the Supreme Court has

[12] See Juvenile Law Center, *Youth in the Justice System: An Overview*, https://jlc.org/youth-justice-system-overview.
[13] *Matter of Marin,* 16 I&N Dec. 581 (BIA 1978); see also 1 USCIS-PM E.8(C)(2).
[14] 16 I&N Dec. 581, 584 (BIA 1978)

recognized that youthful violations of the law may not be indicative of adult character and behavior.[15] In recognition of the distinctions between criminal and juvenile proceedings, the BIA held that juvenile adjudications are not treated as convictions for purposes of immigration law.[16] This differential treatment must be extended to the exercise of discretion, especially considering that delinquency does not appropriately fit into the existing legal framework for discretionary determinations.

To better align USCIS policy with both state laws and immigration laws, the language in the proposed Form I-485 and proposed Form I-485 Instructions should be amended to affirmatively exclude juvenile arrests, charges, and adjudications.

Form I-485

- Page 15, Part 9, Items 22 through 42

    - Insert in the first paragraph after the second sentence, ending in "anywhere else in the world.": "However, if you were arrested as a minor and your case was handled in a juvenile court system, you need NOT answer any of the following questions related to any criminal history."

- Page 21, Part 10, *Applicant's Certification and Signature*

    - Delete the following sentence from the *Applicant's Certification and Signature* (indicated by strikethrough text). It is at odds with state laws that make juvenile records confidential for the express purpose of shielding young people from stigma and collateral consequences that can result when juvenile records are made publicly available. Also note that in some states, including California, the person who is the subject of the juvenile records cannot authorize the disclosure of their own records to a third party; this authority is vested solely with the juvenile court.[17]

      ~~"Furthermore, I authorize the release of any information from any and all of my records that USCIS may need to determine my eligibility for an immigration request and to other entities and persons where necessary for the administration and enforcement of U.S. immigration law."~~

[15] See *Roper v. Simmons* 543 U.S. 551, 570 (2005) (stating "The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.")
[16] See *Matter of Devison*, 22 I&N Dec. 1362, 1365 (BIA 2000).
[17] See*, e.g., In re Gina S.* (2005) 133 Cal. App. 4th 1074, 1081-1082 ("the juvenile court has exclusive authority to determine the extent to which confidential juvenile records may be released and controls 'the time, place and manner of inspection.'").

Instructions

- Page 15, Bullet point 10
    - Revise the following paragraph as indicated by the strikethrough and additional text in red:

"You must disclose all arrests and charges, ~~even if~~ unless the arrest occurred when you were a minor and your case was handled in a juvenile court system. An adjudication of juvenile delinquency is not a 'conviction' under U.S. immigration law, but a juvenile can be charged as an adult for an offense committed while a juvenile. If you were convicted as an adult – even if you were a minor – there is a conviction, and you must disclose its existence ~~regardless of whether you were tried before a criminal court or a juvenile court~~. ~~An adjudication of juvenile delinquency could also be relevant to the exercise of discretion. If you claim that an arrest resulted in adjudication of delinquency, and not in a conviction, you must submit a copy of the court document that establishes this fact.~~"

V. Conclusion

It is our hope that USCIS will reconsider the revisions to the Form I-485 to increase efficiency for both the applicants and adjudicators. The higher the barriers to both parties, the more backlogged and inefficient the adjudicatory process will be. DHS generally, and USCIS specifically, have made great strides to address backlogs in many application streams in the last few years, but further steps can be taken to ensure that forms are accessible for applicants and streamlined for adjudicators. Form I-485 is among the most widely used and important forms available for all noncitizens in the United States and the benefits of streamlining and simplifying the form to the agency, applicants, and practitioners alike cannot be overstated.

Please don't hesitate to contact us if there are any questions at etaufa@ilrc.org.

Sincerely
/s/Elizabeth Taufa
Elizabeth Taufa
Policy Attorney and Strategist
Immigrant Legal Resource Center