

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 National Immigration Project (NIPNLG) and the Legal Aid Society (LAS) submit this comment in response to the request for comments on proposed revisions to the United States Citizenship and Immigration Services (USCIS) form to “Register Permanent Residence or Adjust Status,” Form I-485.¹ We have significant concerns about several of the proposed revisions which we will address in this comment.

NIPNLG is a national membership organization of attorneys, advocates, and community members driven by the belief that all people should be treated with dignity, live freely, and flourish. For over 50 years, the organization has litigated, educated, advocated, and built bridges across movements so that those who are most harmed by the immigration and criminal systems are uplifted and supported. Additionally, we fight for fairness and transparency in immigration adjudication systems and believe that all noncitizens should be afforded the right to fair adjudication of their claims to remain in or return to the United States.

Additionally, The Legal Aid Society agrees with the points NIPNLG makes herein and signs onto this comment. LAS, the nation’s oldest and largest not-for-profit law firm for low-income individuals, was founded in 1876 to serve New York’s immigrant community. Although its mission has expanded since its inception, LAS has not wavered in its commitment to serve low-income immigrants in New York City. Our Immigration Law Unit utilizes the expertise of almost 100 attorneys, paralegals, and social workers to serve immigrant New Yorkers seeking legal assistance before the U.S. Citizenship and Immigration Services (USCIS) and in immigration and federal courts. We defend people threatened with removal, file habeas petitions seeking the release of people unlawfully detained, represent unaccompanied minors fleeing

¹ Victoria Neilson and Michelle N. Méndez are the primary authors of this comment. Matthew Vogel contributed to this comment.

violence in Central America, renew Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS) statuses, and apply for a wide range of immigration relief, including naturalization, adjustment of status, Violence Against Women Act (VAWA) self-petitions, U visas, T visas, asylum, Special Immigration Juvenile Status (SIJS), removal of conditions, and family petitions.

The proposed revisions to Form I-485 would lead to an unfair and opaque adjudication process. Accordingly, NIPNLG and LAS strongly object to the proposed changes identified below.

Overall, the proposed changes will harm a great number of adjustment applicants as well as create more work for USCIS and these proposals contradict NIPNLG's prior recommendations to the administration.

The proposed changes may seem benign, but it is important to understand how these will impact both adjustment applicants and USCIS. The proposed changes increase the length of the I-485 from 20 pages² to 24 pages, making it 20% longer than the current version.³ The I-485 Instructions page would also increase marginally from its current 44 pages version,⁴ to 45 pages. NIPNLG and LAS strongly favor shortening and simplifying USCIS forms. Individuals applying for lawful permanent residence are, by definition, citizens of other countries, the majority of whom do not speak English as a native language, and who are not well-versed in U.S. immigration law.

Indeed, in the fourth quarter of the 2022 fiscal year, 42 percent of new LPRs were from India, Mexico, China, Cuba, and the Dominican Republic and English is not the official language of any of these countries.⁵ It would be simply impossible for applicants who are not fluent in English to navigate a 24-page form and 45 pages of instructions without legal representation. However, not all adjustment applicants can afford legal representation. Adjustment applicants who lack English fluency and legal counsel are at the mercy of whatever interpreter they can secure to translate the I-485 form and instructions. But interpreters and “*notarios*” do not have the legal qualifications or authority to explain legal terms or the nuances of complicated questions. Adjustment applicants may therefore unintentionally answer an I-485 question incorrectly. Worse, adjustment applicants may fall victim to unauthorized practitioners of law in their quest for assistance to complete the I-485. A complicated and long I-485 thus sets traps for a large portion of adjustment applicants and these traps continue to exist well after adjustment. Whether adjustment applicants are prejudiced by these traps now or later will depend on

² USCIS, Form I-485 (edition Feb. 21, 2023) <https://www.uscis.gov/sites/default/files/document/forms/i-485.pdf>.

³ In addition to our substantive comments on the proposed changes in this federal register notice, we urge USCIS to include the proposed forms on the federal register website in an easily accessible form when it seeks comments on proposed changes. Forcing would-be commenters to sort through more than 100 supporting documents, or track down the actual proposed forms by contacting the agency directly, is counter-productive to seeking input from the public, and needlessly wastes the time of both commenters and government officials who are forced to respond to individual inquiries.

⁴ USCIS, Form I-485 Instructions (edition Feb. 21, 2023) <https://www.uscis.gov/sites/default/files/document/forms/i-485instr.pdf>

⁵ Department of Homeland Security, Legal Immigration and Adjustment of Status Report Fiscal Year 2022, Quarter 4 (Last updated Apr. 4, 2023) <https://www.dhs.gov/immigration-statistics/special-reports/legal-immigration>.

arbitrary factors like the identity of the USCIS officer or the enforcement policies of the presidential administration.

It is unclear why this administration is suggesting these burdensome changes to the I-485 given that these changes decrease access to immigration benefits and increase the USCIS backlog, a reality that NIPNLG and its partners have already shared with the administration. In June 2022, NIPNLG, working with the Ready to Stay Coalition, released a Report Card⁶ on the Biden Administration's successes and areas that need improvement in reducing barriers to accessing immigration benefits. In that Report Card, we highlighted the extraordinary adjudication backlogs in all categories at USCIS, and recommended changes that would help ameliorate the backlog. One of our key suggestions was to shorten and simplify USCIS forms.⁷

The longer a form is, the more time it takes for a USCIS officer to review it, and the more time each interview with an applicant requires. Moreover, as noted above, with the complexity of the questions on the I-485 form it is inevitable that applicants will misunderstand the question and answer erroneously. In turn, these errors will lead to Requests for Evidence (RFEs), lengthy interviews, and improper denials. In turn, improper denials will prompt the need for USCIS Administrative Appeals Office review, which will increase delays for the applicant and add to the USCIS backlog. USCIS does not explain why these changes would be helpful, and, as discussed in this comment, there are many clear reasons that the changes will be harmful. Overall, the proposed changes place adjustment applicants on a longer path towards naturalization, at best, or completely deprive them of the opportunity to naturalize, at worst, and this outcome is contrary to President Biden's Executive Order 14022 on promoting naturalization.⁸

I. NIPNLG and LAS urge USCIS to eliminate confusing and unfair criminal questions

A. 23. "Have you EVER committed a crime of any kind (even if you were not arrested, cited, charged with, or tried for that crime)?"

The question, "Have you EVER committed a crime of any kind (even if you were not arrested, cited, charged with, or tried for that crime)?" (question 23 on the proposed form) is confusing and unfair. Much confusion exists among natural-born U.S. citizens as to what conduct is subject to criminal penalties and what conduct is not, yet USCIS expects noncitizens who likely lack legal representation, to fully understand federal and state criminal laws in the United States. As a preliminary matter, this question raises serious issues regarding the Fifth Amendment to the U.S. Constitution's protection against self-incrimination insofar as it addresses uncharged criminal conduct. While certain conduct may be obviously criminal

⁶ Ready to Stay, Administrative Advocacy Working Group, Report Card on the Biden Administration's Efforts to Reduce Barriers to Accessing Benefits Through USCIS (June 2022) https://nipnl.org/PDFs/practitioners/reports/2022_June-report-card.pdf [Hereinafter "RTS Report Card."]

⁷ *Id.* at 15-16.

⁸ Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans (Feb. 1, 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/>.

anywhere in the world, there is conduct that is criminalized only in the United States and that conduct may be criminalized in some municipalities or states but not others. For example, jaywalking was decriminalized in California in 2022 yet in other states, like Texas, jaywalking penalties are enforced.⁹

A more serious and evolving example is abortion. Today, twenty-one states ban abortion or restrict abortion rights earlier in pregnancy than the standard established by *Roe v. Wade*, 410 U.S. 113 (1973), which was recently overturned. These recent state laws criminalize not only the pregnant mother's conduct, but some, like Texas, also make it illegal for anyone to assist the pregnant mother in accessing an abortion. While the Texas law makes it possible for "drivers who provide transportation to a clinic, or those who help fund an abortion" vulnerable to a civil suit instead of criminal penalties, much confusion exists as to the nature of the penalties and it is entirely reasonable for noncitizens with a limited understanding of U.S. law and the legal system to believe that a civil infraction is actually a crime.¹⁰

Noncitizens likely will also not understand or be aware of any defenses or exceptions to criminal liability for which they may qualify. It is also entirely reasonable for noncitizens to not understand how retroactivity rules apply to conduct that recently became criminalized or decriminalized. As such, some noncitizens will feel compelled to include on the I-485 conduct that is no longer criminalized or conduct that was not criminalized when it happened but is now criminalized. Therefore, this question forces pro se adjustment applicants to make legal conclusions that they are not qualified to make.

NIPNLG and partners urged USCIS to eliminate this question entirely in the Ready to Stay Report Card.¹¹ As we explained in the Ready to Stay Report Card, this question, "lay[s] a trap for applicants who may feel compelled to disclose negative information that is not criminalized or relevant to eligibility for a form of relief."¹² Rather than eliminate this "damned if you do, damned if you don't" question, USCIS has *expanded* the scope of the question, on the proposed form. The instructions preceding the "Criminal Acts and Violations" section of proposed form I-485 would state:

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. If you answer "Yes" to **Item Numbers 22. - 42.**, use the space provided in **Part 14. Additional Information** to provide an **explanation, for each offense, if applicable, that includes a description of the criminal offense; where the criminal offense occurred; 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 criminal offense (for example, convicted, placement in a diversion program, no charges filed, charges dismissed, jail, probation, or community service). Your explanation must include the duration of any sentence to confinement (even if suspended).**

This proposed change would also force adjudicators to go into a resource-intensive fishing expedition on each I-485. Not only would a noncitizen have to determine whether any action

⁹ Colleen Shalby, *Jaywalking is decriminalized in California under new law*, LA TIMES, Oct. 1, 2022, <https://www.latimes.com/california/story/2022-10-01/jaywalking-decriminalized-in-california-under-new-law>.

¹⁰ Emma Bowman, *As states ban abortion, the Texas bounty law offers a way to survive legal challenges*, NPR, July 11, 2022, <https://www.npr.org/2022/07/11/1107741175/texas-abortion-bounty-law>.

¹¹ RTS Report Card at 15.

¹² *Id.*

they have ever engaged in could meet the definition of a crime, they now must also provide a factual description of the offense that they believe they may have committed. Lacking legal training and, often, legal representation means that the noncitizen will likely include irrelevant facts. For those responses containing irrelevant facts, USCIS will likely issue an RFE seeking relevant facts, but, without more guidance, the noncitizen will remain confused and respond to the RFE in an unhelpful manner.

Even if the described conduct is not criminal, and therefore not accurately responding to the question, USCIS adjudicators may nonetheless deny the I-485 under their subjective discretionary authority. Furthermore, USCIS adjudicators must be familiar with the current local, state, and federal criminal laws or have the resources that will allow them to quickly gain familiarity with criminal law. Without this required familiarity, USCIS will issue erroneous denials. A denial on discretionary grounds or based on error will place the noncitizen further away from the ultimate goal of U.S. citizenship. NIPNLG and LAS strongly object to this fishing expedition.

We urge USCIS to eliminate these new instructions, and this question (question 23 on the proposed form) entirely.

- B. 22. *“Have you EVER been arrested, cited, charged, or permitted to participate in a diversion program (including pre-trial diversion, deferred prosecution, deferred adjudication, or any withheld adjudication), or detained for any reason by any law enforcement official in any country including but not limited to any U.S. immigration official or any official of the U.S. armed forces or U.S. Coast Guard or by a similar official of a country other than the United States?”*

The proposed question, “Have you EVER been arrested, cited, charged, or permitted to participate in a diversion program (including pre-trial diversion, deferred prosecution, deferred adjudication, or any withheld adjudication), or detained for any reason by any law enforcement official in any country including but not limited to any U.S. immigration official or any official of the U.S. armed forces or U.S. Coast Guard or by a similar official of a country other than the United States?” is also unfair. This question expands on current question 25, which is already lengthy, by requiring adjustment applicants to disclose information about criminal adjudications that do not result in a guilty finding:

22. Have you EVER been arrested, cited, charged, or permitted to participate in a diversion program (including pre-trial diversion, deferred prosecution, deferred adjudication, or any withheld adjudication), or detained for any reason by any law enforcement official in any country including but not limited to any U.S. immigration official or any official of the U.S. armed forces or U.S. Coast Guard or by a similar official of a country other than the United States? Yes No

Forcing adjustment applicants to disclose dispositions that do not result in a criminal conviction treats the applicant as guilty and disincentivizes noncitizens from negotiating these types of dispositions on criminal charges. Prosecutors routinely offer to resolve criminal cases with dispositions that do not result in a criminal conviction, including, but not limited to, diversion, or deferred or withheld adjudication or prosecution. Such dispositions are often

attractive to the accused because, generally, such a disposition does not carry the same consequences as a criminal conviction. Cases resolved with such dispositions generally have not been presented to a fact-finder, and therefore the prosecution’s factual allegations have not been tested, and, because they frequently occur early in the criminal legal process, the prosecution’s legal theories have typically not been thoroughly tested before a judicial official either. Fundamentally, therefore, this proposed question treats factually and legally untested allegations as though they were proven, which, at base, undermines a basic constitutional tenet of the U.S. criminal legal system across nearly all jurisdictions: that somebody is innocent until they are *proven* guilty.

While the adjustment applicant may not have been harmed by the adjudication of the criminal charges, the adjudication will harm them in the adjustment process if USCIS adjudicators choose to deny the application as a matter of discretion. Moreover, it is unfair to the noncitizen applicant to have to disclose this information when they reasonably believed this type of disposition insulated them from the kinds of ancillary consequences that come with a conviction. If noncitizens understand that such dispositions must be reported to USCIS, they will be less likely to agree to these types of dispositions, which will further stress overburdened state and federal criminal court systems.

C. *“27. Have you ever trafficked in or benefited from, or knowingly aided, abetted, assisted, conspired or colluded in the illegal trafficking of any controlled substances, such as chemicals, illegal drugs, or narcotics?”*

29. If your answer to Item Number 28 is ‘Yes,’ did you know or should you have reasonably known that this benefit resulted from this activity of your spouse or parent?”

It is unreasonable to expect an adjustment applicant—especially a child adjustment applicant—to know about a family member’s controlled substance crimes and whether those crimes constitute “trafficking” offenses. Yet proposed questions 27 and 29 require an adjustment applicant to supply information about the possibility that family members have engaged in controlled substance trafficking crimes and whether the family member has benefitted financially from those crimes.

- 26. Have you **EVER** violated (or attempted or conspired to violate) any controlled substance law or regulation of a state, the United States, or a foreign country? Yes No
- 27. Have you **EVER** trafficked in or benefited from, or knowingly aided, abetted, assisted, conspired or colluded in the illegal trafficking of any controlled substances, such as chemicals, illegal drugs, or narcotics? Yes No
- 28. Are you the spouse, son, or daughter of a foreign national who illicitly trafficked or aided (or otherwise abetted, assisted, conspired, or colluded) in the illicit trafficking of a controlled substance, such as chemicals, illegal drugs, or narcotics and you obtained, within the last 5 years, any financial or other benefit from **this** activity of your spouse or **parent**? Yes No
- 29. If your answer to **Item Number 28** is “Yes,” did you know or should you have reasonably known that this benefit resulted from this activity of your spouse or parent? Yes No

As with the concerns we raise above that noncitizens cannot be expected to understand the intricacies of U.S. criminal law, NIPNLG and LAS are concerned that these questions require the applicant to understand what actions constitute “trafficking” by another person. It is not uncommon for individuals who suffer from addiction to resell controlled substances to other addicts. Whether or not this constitutes “trafficking” in controlled substances, will vary based on differing state and federal definitions. Furthermore, some adjustment applicants may believe that because marijuana is legal or decriminalized in various states, that selling marijuana cannot qualify as a trafficking offense.

Difficult as it is for applicants who have themselves engaged in this conduct to navigate complex trafficking definitions, it is nearly impossible for a spouse or child to respond to questions about conduct by family members. Furthermore, this question could potentially require a spouse to incriminate a spouse, in spite of state laws which provide spousal immunity from this type of incrimination. Moreover, requiring a child to understand the exact nature of criminalized activity in which a parent may be engaged, and further ascertain what financial benefits (food, shelter, clothing) may derive from criminal gains, as opposed to legitimate work, is unreasonable and not legally relevant to the child, son, or daughter’s eligibility for adjustment of status. Perhaps USCIS intends for these questions to not apply to children adjustment applicants or to “benefits” that the adjustment applicant may have derived as a child, but, if true, neither delineation is clear in the question. Nonetheless, NIPNLG and LAS strongly object to these questions that seemingly seek to ensnare entire families under the “reason to believe” controlled substance inadmissibility ground. Additionally, these questions open the door for USCIS adjudicators to target families from drug-producing countries.

II. NIPNLG and LAS urge USCIS to eliminate burdensome, unreasonable, and unfair evidentiary requirements that may be impossible to meet

The proposed instructions to Form I-485 impose a nearly impossible evidentiary burden on applicants. The current instructions require an applicant who cannot obtain certified copies of court disposition to include, “An explanation of why the documents are not available, including (if possible) a certificate from the custodian of the documents explaining why the documents are not available.” This current requirement allows the noncitizen to seek such an explanation from the documents’ custodian, and explain, if relevant, why the custodian was unable to provide the documents.

The new proposed instructions impose significant new burdens on the applicant, requiring them to provide *three separate* types of documentation if they are unable to provide certified copies of the dispositions, which may be old, destroyed, or unavailable for reasons completely beyond their control. Adjustment applicants may be seeking lawful permanent residence many years after establishing residence in the United States. Some jurisdictions destroy records after a period of time as a matter of course, and some types of dispositions are sealed immediately or after a specified period of time. This change in the instructions would create a greater burden on adjustment applicants whose contact with the criminal system was more distant in time, occurred while they were a juvenile, or was deemed sufficiently minor to seal.

The proposed instructions state:

If you are not able to obtain certified copies of any court disposition relating to **Items 10.A. - 10.D.**, please submit all three items below:

- A written explanation on government letterhead from the custodian of the documents of why the documents are not available, unless the documents are generally unavailable from the custodian of the document;
- A written statement from the applicant that explains why the record is not available and describes the criminal charge, arrest, or conviction; the final outcome or disposition; and any rehabilitation completed (including but not limited to compliance with court-mandated conditions (such as parole, probation, counseling, or payments), not violating any laws, and making an effort to positively contribute to your community since your last arrest or conviction); and
- Any other secondary evidence that shows the disposition of the criminal case; or if secondary evidence is also not available, one or more written statements, signed under penalty of perjury under 28 U.S.C. section 1746 by someone other than the applicant, who has direct personal knowledge of the disposition of the criminal case.

The first requirement that the noncitizen must provide a written explanation on government letterhead from the custodian of the documents of why the documents are not available is unreasonable. Obtaining compliance from an external government official is completely beyond the control of the noncitizen and it is extremely unlikely that overworked government employees will have, or be willing to take, the time to issue this written explanation. In fact, if the government employee has anti-immigrant views, they may refuse to issue the written explanation for that reason alone and the adjustment applicant would not know to ask a different government employee. Even if the government employee were willing to issue the written explanation, requiring issuance on government letterhead will likely force the government employee to ask supervisors for permission to issue the written explanation. However, if this request is seen as unorthodox in that jurisdiction, the supervisor may refuse to issue the written explanation. If the adjustment applicant wanted to avail themselves of the only exception to providing this information, which is that the custodian can provide a statement saying, “the documents are generally unavailable from the custodian of the document,” the same concerns apply. This requirement is burdensome, unreasonable, and unfair.

The second requirement of a written statement from the adjustment applicant is at least within the adjustment applicant’s control, but assumes that the adjustment applicant knows more than they may actually know about the criminal charge and disposition and is able to provide cogent explanations for these. For the reasons raised under Section II.A., adjustment applicants likely do not know the required information and, in attempting to answer the question, will likely unintentionally provide inaccurate information that may lead to a denial of the I-485 or the N-400 or even denaturalization in the future. This requirement is therefore unfair.

The third requirement, that the noncitizen obtain secondary evidence or written statements signed under penalty of perjury with direct personal knowledge of the disposition of the criminal charges may likewise be impossible obtain. Once again, USCIS assumes adjustment applicants will have access to additional documentation or people with the requisite personal knowledge. However, adjustment applicants may not know what secondary evidence may exist or how to obtain that evidence if it does exist. Furthermore, unless there was a hearing on the criminal disposition and the adjustment applicant’s loved ones were present, it is likely that no

one else but the adjustment applicant will have personal knowledge of the disposition. It may be impossible for the adjustment applicant to find people other than themselves to describe the disposition. This requirement is burdensome and unfair.

NIPNLG and LAS urge USCIS to leave the instructions as they currently are written and not add impossible burdens to noncitizens to obtain records that may not exist.

III. NIPNLG and LAS urge USCIS to eliminate the confusing question concerning expedited removal

Noncitizens are often unable to easily assess if they have a prior immigration judge-issued order of removal or deportation, yet USCIS proposes to complicate this assessment further by asking about expedited orders of removal. The proposed form would expand the question on any prior removal proceeding history to ask the applicant whether they have ever been in expedited removal, adding:

14. Are you presently or have you **EVER** been in removal, exclusion, rescission, or deportation proceedings, Yes No including expedited removal proceedings?

In our experience, while noncitizens are generally aware of whether they have been in INA section 240 removal proceedings, because counsel can ask questions about whether they have been in a courtroom and seen an immigration judge in a robe, they often do not know the specific outcome of those proceedings and how the outcome impacts whether they were formally in proceedings. Fortunately, the 1-800 Executive Office for Immigration Review (EOIR) automated system and webpage are helpful, free tools in understanding what transpired before the immigration judge. Through these tools adjustment applicants can generally accurately answer if they were ever in removal proceedings. But there is no similar public-facing information recording expedited removal history.

It is even less common for noncitizens to understand whether they were placed in expedited removal proceedings, or even what expedited removal proceedings are, for several reasons. Conditions at the border are often chaotic. Border policies have changed drastically since the Trump administration and continue to evolve under the Biden administration. Detention outcomes are numerous and vary from individual to individual. Some noncitizens are paroled¹³ into the United States without being placed into expedited removal; some are served with notices to appear and some are not; some are placed in expedited removal and pass a fear-based interview with an asylum officer others have a negative interview overturned by an immigration judge, others still may eventually be paroled out of detention even without have a fear-based interview. The possible outcomes at the border are so complex that a Primer on the topic issued

¹³ Highlighting the complicated nature of parole alone, the Board of Immigration Appeals recently issued a decision, *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747 (BIA 2023), reaffirming its view on the difference between “humanitarian parole” and “conditional parole,” only the former of which satisfies the INA section 245(a) requirement that a noncitizen must have been admitted or paroled to qualify for adjustment of status. As parole continues to confound legal practitioners, is unlikely that unrepresented noncitizens could understand the nuances of this issue.

by the American Bar Association is 39 pages long.¹⁴ Expecting a noncitizen to understand whether or not they were subjected to expedited removal is unreasonable.

The only way for an adjustment applicant to confirm if they were ever in expedited removal proceedings is by filing a Customs and Border Protection or Office of Biometric Identity Management (OBIM) Freedom of Information Act (FOIA) request with DHS, which will delay the adjustment filing process. Unfortunately, Department of Homeland Security (DHS) may choose to deny the FOIA request pursuant to the fugitive disentitlement doctrine leaving the noncitizen confused as to how to answer this question.¹⁵ Moreover, USCIS, as a branch of DHS, is able to access this information if it is legally relevant. However, it is difficult to imagine why this information would be legally relevant since an individual who is eligible to adjust status would have to have had their expedited removal order vacated through a positive credible fear finding or an act of discretion by DHS. This addition to the question should be eliminated as legally unnecessary and confusing to the applicant.

IV. NIPNLG and LAS urge USCIS to eliminate confusing questions concerning public charge and the need for financial sponsorship

The public charge assessment is complicated given the exemptions to this inadmissibility ground and the financial calculations that those subject to it must make based on the current poverty guidelines. Instead of keeping the public charge question as is or eliminating it entirely from the I-485 so that the only Form I-864 Affidavit of Support addresses this issue, the proposed form adds a new public charge question. asking the applicant to check boxes regarding their potential exemption from the need to file an I-864. That proposed question is as follows:

Part 3. Request for Exemption for Intending Immigrant's Affidavit of Support Under Section 213A of the INA

1. I am requesting an exemption from submitting an Affidavit of Support Under Section 213A of the INA (Form I-864 or Form I-864EZ) because (select only one):
- A. I have earned or can receive credit for 40 qualifying quarters (credits) of work in the United States (as defined by the Social Security Act (SSA)). (Attach your SSA earnings statements. Do not count any quarters during which you received a means-tested public benefit).
 - B. I am under 18 years of age, unmarried, the child of a U.S. citizen, am not likely to become a public charge, and will automatically become a U.S. citizen under INA section 320, upon my admission as a lawful permanent resident.
 - C. I am applying under the widow or widower of a U.S. citizen (Form I-360) immigrant category.
 - D. I am applying as a VAWA self-petitioner.
 - E. None of these exemptions apply to me.

The question asks the adjustment applicant to check boxes regarding their potential exemption from the need to file an I-864. As written, the question is confusing because it lists some, but not all, categories of applicants for lawful permanent residence who are not required to

¹⁴ See American Bar Association, PRIMER: Immigration Enforcement Mechanisms at the U.S. Border, (Updated Oct. 2023) <https://www.americanbar.org/content/dam/aba/administrative/immigration/border-primer.pdf>.

¹⁵ Emily Creighton, American Immigration Council, The Fugitive Disentitlement Doctrine: FOIA and Petitions for Review (Apr. 29, 2013) https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/fugitive_disentitlement_doctrine_-_foia_and_petitions_for_review_4-29-13_fin.pdf.

file an I-864. There are other categories of noncitizens who are exempt from the public charge ground of inadmissibility including asylees, refugees, U visa beneficiaries, T visa beneficiaries, and Special Immigration Juvenile Status beneficiaries. By including some, but not all, exemptions from the I-864 requirement in this question, pro se applicants might erroneously conclude that by correctly checking box E, that none of “these exemptions apply,” they would be required to file an affidavit of support. We therefore urge USCIS to eliminate this new question, which is incomplete as written, confusing, and simply serves to make the lengthy form longer.

V. Conclusion

NIPNLG and LAS appreciate the opportunity to comment on these proposed revisions and hope that you will seriously consider the concerns we raised. Please do not hesitate to contact Michelle N. Méndez at michelle@nipnlg.org if you have any questions or need any further information. Thank you for your consideration.

Respectfully,



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