AMERICAN IMMIGRATION LAWYERS ASSOCIATION

November 7, 2023

Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Policy and Strategy
Regulatory Coordination Division
5900 Capital Gateway Dr.
Camp Springs, MD 20588-0009

Attn: Samantha L. Deshommes,
Chief, Regulatory Coordination Division

Submitted via www.regulations.gov
DHS Docket ID No. USCIS–2009–0020

Re: OMB Control Number: 1615-0023
Revision of a Currently Approved Collection: Form I-485, Application to Register Permanent Residence or Adjust Status; Supplement A to Form I–485, Adjustment of Status Under Section 245(i); Supplement J, Confirmation of Bona Fide Offer or Request for Job Portability Under Section 204(j).

Dear Ms. Deshommes:

The American Immigration Lawyers Association (AILA) respectfully submits the following comments in response to the above-referenced 60-day notice and request for comments on proposed revisions to Form I-485, Application to Register Permanent Residence or Adjust Status, and its related forms and instructions, published in the Federal Register on September 8, 2023.[1]

Established in 1946, AILA is a voluntary bar association of more than 16,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on the proposed revisions to Form I-485 and related supplements and believe that our members' collective expertise and experience makes us particularly well-qualified to offer views that will benefit the public and the government.

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General Comments

Initially, we greatly appreciate USCIS' efforts to add clarity to Form I-485, a goal that AILA has consistently endorsed in order to reduce confusion and mistakes. We do note, however, that the proposed Form I-485 is four pages longer than the already lengthy current version and we believe some of the questions add unnecessary detail that could potentially be confusing for some applicants. For example, the length of Part 2 of the form has essentially doubled as the section now includes an exhaustive list of eligibility categories. AILA believes the existing Form I-485, Part 2 already contains an extensive yet straightforward list of questions that, when accompanied by appropriate supporting documentation, has worked well in establishing the legal basis on which the applicant seeks lawful permanent residence. We encourage USCIS to revisit the design of this section and to continue in its efforts to make Form I-485 clearer, simpler and shorter for all applicants.

On a related point, we note with concern that Part 9 now includes 102 questions which, particularly for *pro se applicants,* seems potentially intimidating, confusing, and overly burdensome. Part 9 is replete with technical and legal references to complex legal issues such as eligibility under the Child Status Protection Act (See Part 2, Question 5) that require either a link to the section of the instructions providing guidance or a link directly to the USCIS website page for the particular issue. Failure to review Part 9 from the perspective of individual *pro se* users may result in inadvertently incorrect answers to many of these questions and we encourage USCIS to revise Part 9 to provide a more simplified and streamlined approach.

We specifically note that the proposed revisions at Part 9, Criminal Acts and Violations (items #22-42) add more substantive language, complex instructions and expands upon existing questions, thus creating a greater potential for confusion, misunderstanding and inadvertent error by applicants responding to each question, particularly victims or survivors, who may be unrepresented by an attorney. This can lead to an increase in RFEs or NOIDs, or potentially even denials, in situations in which adjustment of status applicants who are not subject to interviews, such as those seeking lawful permanent residence based on humanitarian grounds (i.e. U/T/SIJ classifications), are unable to correct any potential inaccuracies/discrepancies in a timely manner at an interview.

With respect to the revised section of Form I-485 relating to Public Charge, we appreciate this change as we have had members report confusion as to how to answer the public charge questions in the current form. We also understand this issue is likely part of the reason for a recent USCIS Policy Manual update.[2] In conjunction with the improved public charge related instructions for the proposed Form I-485, we believe that separating out this important section will help to ensure that both applicants and their attorneys answer the required public charge questions accurately in the future.

Finally, we commend USCIS for adding at Part 1, Question 5 an additional gender category for "Another Gender Identity" for those applicants who choose to identify neither as male or female and for expressly indicating that "[y]our selection will be reflected on secure documents if we approve your application."

Specific Comments

Form I-485

We also provide the following comments to specific items of the proposed Form I-485:

- Part 1, Item 3: The question asks if the applicant has ever used a different birth date. Given the length of the form, we are not certain this issue is sufficiently relevant to require a separate question.
- Part 1, Item 11: To avoid confusion and inconsistent completion of this section, we would recommend clarifying that the Form I-94 record information requested should come from the latest I-94 record provided, whether issued electronically by CBP in connection with the applicant's last entry or whether in the form of a tear-off I-94 record provided with a Form I-797 Approval Notice for a change or extension of status.
- Part 2, Item 3.a: It is unclear as to why K-1/K2 and widow or widower is seeming listed under the "Relative of a lawful permanent resident under family-based preference categories...." These categories should be listed separately.
- Part 2, Item 3.b.: This item asks: "Did a relative file the associated Form I-140 for you (or for the principal applicant if you are a derivative applicant) or does a relative have a significant ownership interest (5 percent or more) in the business that filed Form I-140 for you (or for the principal applicant, if you are a derivative applicant)?" seems confusing. A simpler alternative is:
    - Did a relative file the Form I-140 petition on which your eligibility for adjustment of status is based? (Y/N)
        - If Yes, the relative is your: _____
        - The relative is: a U.S. Citizen or national, lawful permanent resident or none of the above. _____
    - Does a relative have a significant ownership interest (5% or more) in the business that filed the Form I-140 on which your eligibility is based? (Y/N)
        - If Yes, the relative is your: _____
        - The relative is: a U.S. Citizen or national, lawful permanent resident or none of the above. _____
- Part 3: While we appreciate this additional section of the form is helpful in clarifying whether the Applicant is exempt from filing Form I-864, we believe this section may be better reworded as a question and placed at the outset of the Public Charge questions that are currently located at Part 9. The question of whether an affidavit of support is required is directly related to admissibility under public charge (INA §212(a)(4)) as discussed at INA §213A. Thus, this section logically flows with the questions at Part 9, items 69-79.
- Part 3, Item 1, Option E: The current option, "None of these exemptions apply to me" would appear inappropriate in the context of the question, "I am requesting an exemption from submitting an Affidavit of Support … because." A more appropriate option could be, "I am not requesting an exemption of the Affidavit of Support requirement." Also, we believe this question is more appropriately located with the rest of the Public Charge related questions at Part 9.

- Part 4, Item 6: the question asks, "Have you EVER held lawful permanent resident status which was later rescinded?" The question is confusing as the term rescinded is undefined. Does this specifically refer to being deported or is it a question about voluntary abandonment or does it relate to some other legal process? Without clarification as to what "rescinded" means, there is a significant probability of confusion and inconsistency in the answer to this question.
- Part 4, Items 7 and 8: In connection with the request for information about the applicant's employment and education history, the questions indicate, "[f]or each period of unemployment, list source of financial support." Inasmuch as Part 9 of the proposed Form I-485 has eleven questions relating to the public charge ground of inadmissibility, we believe this request for information is unnecessary, essentially redundant and should be removed in an effort to reduce the length of the form.
- Part 6, Item 19: The question asks, "How Marriage Ended with Prior Spouse" and lists an option of "other" for how marriage ended (in addition to annulled, divorced or death of spouse). While we are unclear as to the scenarios in which this option is needed, if it is to be retained, then there should be a reference adding an explanation at Part 14.
- Part 7, items 2 and 3: Part of these questions ask, "What is your child's relationship to you? (for example, biological child, stepchild, legally adopted child)." We recommend that USCIS provide definitional language in the instructions to the form clarifying the meaning of these terms.
- Part 9, Item 4: This question asks, "Name of Organization, including its purposes and activities, whether illicit or legitimate." This seems to be a typo as it apparently should be "Nature" and not "Name."
- Part 9, items 27 and 28: Both questions attempt to provide the following clarifying language for the term "controlled substances" as including any such "controlled substances, such as chemicals, illegal drugs, or narcotics." Because this language is illustrative and not definitional, we recommend that the form's instructions also include a reference to the definitional language found at 8 USC 212(a)(2(c) and 21 USC 802 in order to avoid confusion and potentially inaccurate answers.
- Part 9, Item 29: If you answered yes to the previous question, which asks if you benefitted as the spouse, son or daughter of a foreign national who engaged in trafficking of a controlled substance, this question asks "did you know or should you have reasonably known that this benefit resulted from this activity of your spouse or parent? While this question generally references the statutory language, it is unclear how an applicant is to determine whether they should have "reasonably known" of their relative's illegal activity, particularly as the activity would have presumptively occurred in a clandestine, discreet and secretive manner. Thus, this part of the question would appear to be of limited value to USCIS. If the "reasonably known" language is retained, we recommend that USCIS provide clarifying instructions based on relevant decisions or case law to guide applicants in interpreting the term "reasonably known."
- Part 9, Item 41: Similar to our concern with respect to the language of item 29, this question also contains "did you know or should you have reasonably known"

language. We reiterate our concerns with respect to the utility of this subjective language and recommend appropriate clarification.

- Part 9, Item 69: We believe this question is still unclear and requires additional explanatory language relating to the meaning of the term "subject to" to help reduce any confusion as to how to answer the question of whether the applicant is either "subject to" or exempt from the requirement of documenting that they will not be subject to the public charge ground of inadmissibility. As such, we believe it could be helpful to include a reference to the instructions at Page 6, Item 9 on public charge within the question.
- Part 9, Items 69 – 79: We believe that the public charge questions have been well drafted and the inclusion of several multiple-choice questions will be helpful to applicants and their attorneys in providing required information. Also, the instructions are significantly helpful and provide valuable guidance in answering each question related to public charge and we appreciate that USCIS has provided detailed guidance on these questions.
- Part 10, item 4: As part of the Applicant's Certification and Signature, the proposed certification now contains an authorization to release "any and all records that USCIS may need" to make an eligibility determination. We believe the certification language in the existing form which authorizes release of the applicant's "USCIS records" more accurately reflects agency practice and that the certification should be reworded to state "any and all USCIS records that may be needed" to make an eligibility determination.
- Part 11, Interpreter Certification and Signature: The certification language requires the Interpreter to certify that they interpreted every question on the application and instructions and answers from the applicant, and that the applicant understood every question and answer. Given the length and generally technical nature of the proposed Form I-485 and accompanying instructions, this seems likely to create significant reluctance among interpreters to sign the certification. It should also be noted that this additional language arguably requires the interpreter to provide a broader certification than the applicant, who is only required to certify the accuracy of their answers to the questions on the form.
- Part 12, Preparer's Certification: The changed language in the certification no longer requires a preparer's statement identifying whether the preparer is an attorney or accredited representative. Nor does it allow for notice of limited representation of the applicant. We believe this information is necessary to ensure that USCIS recognizes the existence of an attorney/representative-client relationship as well as any limitations on the scope of that relationship. We are concerned by the removal of this component of the preparer's statement as it provides adjudicators with a quick, easy and readily identifiable means to confirm whether an attorney/representative-client relationship exists. While Form G-28 is the primary means by which USCIS is notified of this relationship, that form can be separated or misplaced from Form I-485.
- Part 12, Preparer's Certification: Additionally, the new certification states: "...I prepared this application for the applicant at their request and with express consent and *that all of the responses and information contained in and submitted with the application are complete, true, and correct and reflects only information provided by*

the applicant. The applicant reviewed the responses and information and informed me that they understand the responses and information in or submitted with the application." This might be read to imply that the Preparer is certifying the accuracy of the information, when in fact, the Preparer can certify only that the applicant has confirmed the accuracy of the information. We therefore suggest the language be clarified to read: "I prepared this application for the applicant at their request and with express consent, and *the applicant has confirmed that* all of the responses and information contained in and submitted with the application are complete, true, and correct and reflects only information provided by the applicant. The applicant reviewed the responses and information and informed me that they understand the responses and information in or submitted with the application."

Instructions to Form I-485

We also provide the comments to the proposed instructions for Form I-485:

- Page. 1: To avoid any confusion among applicants, we recommend that USCIS add the following sentence to the first page of the instructions: "*You must be physically present in the United States to file this application."*
- Page 5: USCIS Online Account Number: We commend USCIS for adding a helpful description of the USCIS Online Account Number.
- Page 5: Gender: Again, we commend USCIS for providing an alternative gender option and for expressly indicating that "[y]our selection will be reflected on secure documents if we approve your application."
- Page 11: Photographs: The revised instructions indicate that any photo of the face of the applicant, not just a passport-sized photo, on a white background face is now acceptable. We are uncertain as to why this change is necessary and concerned that this change will result in USCIS receiving an increased number of unusable photos.
- Page 12: Evidence of Admission: We commend USCIS for the clear and concise information and explanation with respect to the electronic Form I-94.
- Page 14, item 9: Report of Medical Examination and Vaccination Record: We are strongly opposed the following language, "If you are required to submit Form I-693, you **must** submit it at the **same** time you file your Form I-485. Otherwise, your application may be rejected." Because processing times for Form I-485 have often exceeded the validity of the Form I-693, this requirement will result in a completely unnecessary waste of time and money for applicants, many of whom may have limited financial means, as they will be required to obtain new medical exam results not only for themselves but also for all dependent family members. Furthermore, there are valid reasons why an applicant may need to file a Form I-485 without a Form I-693, such as an unexpected and imminent retrogression in a visa category. Accordingly, we request that USCIS remove this language from the instructions.
- Page16: Affidavit of Support Under Section 213A of the INA: This section, indicates, "[f]ailure to submit an Affidavit of Support ... when required, **will** result in a denial of your Form I-485." (emphasis added) As noted previously, there is still a substantial potential for a good-faith misunderstanding of whether an applicant is "subject to" the affidavit of support requirement. We believe this language should be

removed from the instructions as unnecessary or, if it is retained, we recommend that the language "when required, will" should be replaced with "when requested by USCIS, may" to clearly articulate that adjudicators may issue a Request for Evidence if Form I-864 is inadvertently admitted.

Supplement J

We also provide the following comments to Supplement J:

- Part 1 "Note to all applicants": The proposed language indicates that leaving any blank fields could result in a rejection or denial of the application. The corresponding section in the Form I-485 indicates that failure to completely fill out the application could result in denial. We believe the language in the Form I-485 is more appropriate. There are situations where a form can have blank fields yet still be completely filled out, for example, fields for middle names, in care of names, etc., may not apply to all applicants. Alternatively, if the current proposed language is to be used, we propose adding instructions on how inapplicable fields should be completed, for example "please indicate 'N/A' in any fields that are not applicable or would otherwise be left blank."
- Part 2, Question 10 appears to have a typo in "Unknown."
- Part 5, Preparer's Certification: The new certification states: "... I prepared Parts 1-4 of this supplement for the applicant at their request and with express consent and that all of the responses and information contained in and submitted with the application are complete, true, and correct and reflects only information provided by the applicant. The applicant reviewed the responses and information and informed me that they understand the responses and information in or submitted with the application." Again, this language might be read to imply that the Preparer is certifying the accuracy of the information, when in fact, the Preparer can certify only that the applicant has confirmed the accuracy of the information. We therefore suggest the language be clarified to read: "I prepared Parts 1-4 of this supplement for the applicant at their request and with express consent, and **the applicant has confirmed that** all of the responses and information contained in and submitted with the application are complete, true, and correct and reflects only information provided by the applicant. The applicant reviewed the responses and information and informed me that they understand the responses and information in or submitted with the application."
- Part 8, Question 6: As part of the Employer's Certification and Signature, the proposed certification now contains an authorization to release "any information from any and all of my records as authorized signatory and the individual employer's records that USCIS may need to determine the individual employer's eligibility for an immigration request and to other entities and persons where necessary for the administration and enforcement of U.S. immigration law." We believe certification language which authorizes release of the employer's **"USCIS records"** more accurately reflects agency practice and the certification should be reworded to state "any and all USCIS records that may be needed" to make an eligibility determination.

Conclusion

We urge USCIS to continue to review the content and clarity of its forms as well as reduce their size and scope and we support efforts by USCIS to redesign and re-engineer important forms like Form I-485 in order to make the information collection document shorter, simpler and easier for applicants to understand. We believe our proposed recommendations contained herein, will facilitate a more fair and efficient adjustment of status process.

We appreciate the opportunity to comment on the proposed revisions to Form I-485 and look forward to a continuing dialogue with USCIS on this important matter.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION