

**I-821D Public Comments
Summary of Suggestions**

	<u>Category</u>	<u>Comment and Response</u>
Form I-821D	1	<p>Page 1. START HERE</p> <p>Comment: USCIS has developed detailed and informative instructions to accompany Form I-821D. However, an individual preparing Form I-821D may not immediately understand that the instructions are available because the form does not reference them until page 4. Given the complexity of the request process and the importance of the instructions in describing the DACA eligibility criteria and required evidence, reference to the instructions at the beginning of the form would be beneficial.</p> <p>Response: USCIS has modified the form based upon this recommendation.</p>
	2	<p>Part 1, U.S. Mailing Address (Enter the same address on Form I-765)</p> <p>Comment: A commenter indicated that the proposed change is helpful because it matches the proposed change for Question 3 of the Form I-765.</p> <p>Response: No Change is necessary.</p>
	3	<p>Part 1, Removal Proceedings. Items 3.a. and 3.b.</p> <p>Comment: A commenter indicated that the first part of the changes regarding additional description of removal proceedings is helpful. However, the options provided under 3.a. and 3.b. do not cover incidents where requestors do not remember or do not know if they have ever been in removal proceedings because they came to the United States when they were very young and 1) do not remember, 2) do not understand if they were ever subject to a removal order, or 3) their parents have been in removal proceedings and they do not know if they were included. The commenter recommends a third option in 3.a. that states “other” so requestors can write in “I do not remember,” or “I do not know.”</p> <p>Response: No change is required based upon this comment. This information is needed to determine if a child under the age of 15 is eligible to file Form I-821D.</p>

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4	Part 1, Removal Proceedings. Items 3.c.	<p>Comment: A commenter indicated that Form I-821D should include the following language parentheticals after “mm/dd/yyyy”: (an approximate date is acceptable) because some requestors may not remember exactly when certain events happened.</p> <p>Response: No change is required based upon this comment. Page 3 of the instructions to Form I-821D already provide guidance to requestors that individuals may provide approximate dates if the exact date is unknown.</p>
5	Part 1, Removal Proceedings. Items 3.c.	<p>Comment: A commenter indicated that USCIS should make it clear in the instructions what date the requestor should specify when the individual is currently or has been in removal proceedings.</p> <p>Response: USCIS has modified the form based upon this recommendation. Question 3.c. will ask requestors to provide the most recent date of proceedings, if applicable.</p>
6	Part 1, Information About you. Item 9	<p>Comment: A commenter recommended to add within parentheses “country where requestor currently resides” after Current Country of Residence because it is confusing for many requestors to determine if residence is the place where they live or where they have legal residency.</p> <p>Response: No change is required based upon this comment. The adjective “current” prior to country of residence provides sufficient explanation as to the desired response.</p>

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	7 Part 1, U.S. Entry and Status Information. Item 15	<p>Comment: Two commenters indicated that the revision to this question is helpful because it directly answers whether the requestor meets one of the guidelines. However, these commenters recommend deleting valid visas as sample answers (B2, F1) to the question to make this question even clearer.</p> <p>Response: USCIS has modified the form based upon this recommendation. The answer choices in the drop down menu will reflect No Lawful Status, Status Expired, and Paroled Expired.</p>
	8 Part 1, Education Information. Items 18 and 20	<p>Comment: A commenter indicated that the proposed changes to questions 18 and 20 are helpful because the examples match the possible answers. However, it is not clear whether requestors who are currently in school should write down the last date they attended class before filing their request (e.g. the day before) or “present.” On the current on-line form requestors may choose a date, but would need to write “present” on the form. The commenter recommends that the form be modified so that requestors can write a date or simply write “present.”</p> <p>Response: No change is required based upon this comment. The question indicates that if the requestor is currently in school, then the response should be the requestor’s date of last attendance. A date as a response is required in this field.</p>

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	9 Part 2. Arrival/Residence Information. Items 2.a-e, 3.a-e, and 4a-e.	<p>Comment: A commenter indicated that the order of the questions relating to a requestor’s address history is confusing. This commenter recommended that the form clearly state that the requestors should begin with their most recent address. This commenter also recommended that the boxes be modified to a single column style.</p> <p>Response: No change is required based upon this comment. The two column format improves optical character recognition (OCR) and reduces processing time at Lockbox facilities. This increased intake efficiency translates to expedited delivery of data and customer files to Service Centers.</p>
	1 0 Part 3, Criminal, National Security and Public Safety Information. Item 1.	<p>Comment: Two commenters recommended that Form I-821D be revised to delete the requirement of disclosure of the existence of juvenile adjudications and also exclude the requirement of disclosure of juvenile records regardless of the applicable state laws.</p> <p>Response: No change is required based upon this comment. Juvenile convictions will not automatically disqualify requestors; however, disclosure of juvenile convictions is required. Juvenile convictions are assessed on a case-by-case basis to determine whether, under the particular circumstances, a favorable exercise of prosecutorial discretion is warranted.</p>

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1 1	Part 3, Criminal, National Security and Public Safety Information. Item 1.	<p>Comment: A commenter indicated that USCIS should not require applicants to submit arrest records or charging documents as this places a huge burden on them. USCIS should only require submission of dispositions and sentencing documents, not arrest records.</p> <p>Response: No change is required based upon this comment. Requestors must show that they have not been convicted of a felony, significant misdemeanor, three or more misdemeanors, and do not otherwise pose a threat to national security or public safety. USCIS must have the opportunity to review a certified court disposition, arrest record, charging document, sentencing record, etc., for each arrest, unless disclosure is prohibited under state law in order to resolve issues of criminality and make the public safety determination.</p>
1 2	Part 4. Signature of Requestor. Item 4.	<p>Comment: A commenter stated that, as worded, parents who help gather records might be concerned that they have to sign Form I-821D. While the commenter agreed that USCIS should collect information to ascertain when community members assist with the form filling, the commenter suggested limiting this inquiry to only those that actually prepare the form, not just those who provide help in preparing the request, should fill out and sign part 5. Therefore, the commenter recommended changing Question 4 to “Did someone prepare this form or some portion of this form for you?”</p> <p>Response: USCIS has modified the form based upon this recommendation.</p>

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1 3	Part 5. Preparer's Declaration.	<p>Comment: A commenter believes it is not necessary for the individual who assisted the requestor in completing the form to sign the form. The commenter also recommends adding language such that the preparer's affirmation states: "I declare that I prepared this Form I-821D at the requestor's behest. <i>The answers provided are based on information of which I have personal knowledge and/or were provided to me by the above named person.</i>" [Proposed changes are in italics.]</p> <p>Response: USCIS has modified the form based upon this recommendation. The preparer's declaration will now reflect, "I declare that I prepared this Form I-821D at the requestor's behest, and it is based on all information of which I have knowledge." This statement is now consistent with other USCIS form types.</p>
1 4	Part 5, Item 1 [Note and item 1 have been deleted.]	<p>Comment: A commenter indicated that the proposed deletion is good because if a volunteer preparer is an attorney, he or she should not be required to submit a G-28 when they help a requestor fill out the forms, especially in a limited representation workshop setting. Additionally, the language in the deleted text was inconsistent with the Frequently Asked Questions released by USCIS.</p> <p>Response: No change is required based upon this comment.</p>

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Form Instructions	1 General Comments	<p>Comment: A commenter provided feedback on how to complete Form I-821D and submit required documentation. This commenter indicated that the time required and monetary costs to obtain documents to meet the guidelines (e.g., age, presence, continuous residence, currently in school) are reasonable. The commenter also indicated that, in general, the most difficult part of the request is Part 2. Arrival/Residence Information, because difficult for requestors to remember or to find all of the addresses where they resided since their initial entry into the U.S. However, the commenter stated that in instances where a requestor is unable to locate the address, he had provided the name of the city and state where the requestor resided. The commenter has not encountered any problems in completing the Form I-821D and has no recommendations to revise this form.</p> <p>Response: No change is required based upon this comment.</p>
	2 Page 1, When Should I Use Form I-821D?	<p>Comment: USCIS should amend the second sentence of this paragraph to mirror the FAQs (new language in italics): <i>An individual who has received deferred action is authorized by the Department of Homeland Security (DHS) to be present in the United States, and is therefore considered by DHS to be lawfully present during the period deferred action is in effect. However, deferred action does not confer lawful status upon an individual, nor does it excuse any previous or subsequent periods of unlawful presence.</i></p> <p>Response: No change is required based upon this comment. Form I-821D is a request for consideration of deferred action for childhood arrivals. The language within the instructions is meaningful to the filing process. The commenter’s suggestion is language that is meaningful once an individual has received deferred action. For this reason, USCIS believes this information should be excluded from the instructions to the filing process.</p>

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3	Page 1, What is Childhood Arrival for Purposes of This Form? Item 4.	<p>Comment: A commenter said this section clarifies that requestors can only request DACA while in the United States and cannot do so if abroad.</p> <p>Response: No change is required based upon this comment.</p>
4	Page 1, What is Childhood Arrival for Purposes of This Form? Item 5.	<p>Comment: This change is good because it clarifies the different ways someone can be eligible for DACA in regards to how they first entered the United States. Currently, the form states that someone is eligible if they entered without inspection or if they entered with lawful immigration status that expired as of June 15, 2012. The changes clarify that those two are not the only entries that will qualify someone for DACA.</p> <p>Response: USCIS further revised this section and we believe it continues to make clear which individuals may request consideration for deferred action as a childhood arrival. USCIS has provided a note to explain what “in unlawful status as of June 15, 2012” means in the section entitled Initial Evidence, part 8. What Documents May Show You Were in Unlawful Status as of June 15, 2012?</p>

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	<p>5 Page 1, What Is a Childhood Arrival for Purposes of This Form? Item 5</p>	<p>Comment: A commenter proposes to modify this portion of the I-821D instructions, in particular the fifth criterion. Proposed subpart (b), may create additional confusion by combining the words “lawfully admitted” and “without being given any immigration status.” The use of the term “lawfully admitted” seems to imply formal contact or interaction with a U.S. Customs and Border Protection agent and does not clearly include scenarios where a person was “waived through” at a port of entry or where a person presented fraudulent documents to an immigration official. Individuals may more easily recognize their situation in subpart (b) if it were amended to read (new language in italics): <i>Was admitted before June 15, 2012, but without any immigration status.</i></p> <p>Response: USCIS further revised this section and we believe it continues to make clear which individuals may request consideration for deferred action as a childhood arrival. USCIS has provided a note to explain what “in unlawful status as of June 15, 2012” in the section entitled Initial Evidence, part 8. What Documents May Show You Were in Unlawful Status as of June 15, 2012?</p>

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	6 Page 2, Who May File Form I-821D?	<p>Comment: A commenter proposes modifying the section, “Who May File Form I-821D,” should be amended to read (new language in <i>italics</i>):</p> <p style="padding-left: 40px;">1. Childhood Arrivals Who Have Never Been in Removal Proceedings. If you have never been in removal proceedings, but were in unlawful status as of June 15, 2012, submit this form to request that USCIS consider deferring action in your case. For deferred action for childhood arrivals, unlawful status means your lawful immigration status expired as of June 15, 2012, you entered the United States without inspection, <i>or were admitted before June 15, 2012 but without any immigration status.</i></p> <p>Response: USCIS agrees that further clarity is needed regarding what is meant by not having a status on June 15, 2012, and has revised the instructions to provide such clarity. The revised guidance will appear on page 1, rather than in this section.</p>

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	7 Page 2, Who May File Form I-821D?	<p>Comment: Proposed amendments to this section describe the steps an individual must take if he or she is currently in detention and wishes to request DACA. The instructions state that a detained individual may not request deferred action from USCIS using Form I-821D, but must identify him or herself to a detention officer or contact the ICE Office of the Public Advocate. This information, however, is provided as a “note” to this section of the instructions and does not include the same level of detail as the USCIS FAQs.</p> <p>Response: No change is required based upon this comment. USCIS did not include the level of detail within the FAQ on Form I-821D because the Office of Public Advocate’s email address and telephone number is subject to change. The instructions provide a sufficient level of detail to direct a requestor to the correct point of contact.</p>

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	8 Page 3, Initial Evidence, Item 1(b)(5)(b)	<p>Comment: A commenter proposes modifying the section, “Initial Evidence” (new language in <i>italics</i>):</p> <p style="padding-left: 40px;">1. What Documents Should You Submit With Your Form I-821D?</p> <p style="padding-left: 80px;">(b) ...</p> <p style="padding-left: 80px;">(5) Did not have a lawful immigration status on June 15, 2012; AND (a) Entered without inspection before June 15, 2012; or (b) <i>was admitted before June 15, 2012 but without any immigration status</i>; or</p> <p style="padding-left: 80px;">(c) Were admitted or paroled but your lawful immigration status or parole expired before June15, 2012.</p> <p>Response: USCIS is revising this section to be consistent with other changes being made to similar language throughout the instructions. USCIS has provided a note to explain what “in unlawful status as of June 15, 2012” means in the section entitled Initial Evidence, part 8. What Documents May Show You Were in Unlawful Status as of June 15, 2012?</p>

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	<p>9 Page 4. Initial Evidence.</p>	<p>Comment: The proposed amendments to the instructions do not include any changes to the section describing documents that may be submitted to demonstrate that a person continuously resided in the United States during the 5-year period immediately before June 15, 2012 and up to the present date. Immigration practitioners and DACA requesters have reported that lack of evidence supporting continuous residence has resulted in requests for additional evidence.</p> <p>In addition, the instructions do not include any new language corresponding to the new USCIS FAQ requiring an individual who arrived in the United States before turning 16, left, and then returned to the United States prior to June 15, 2007, to have “established residence” prior to turning 16. According to the FAQs, a DACA requester must submit evidence demonstrating that he or she established residence, which may include records showing school attendance, work in the United States, or residence in the United States for multiple years prior to turning 16.</p> <p>Response: USCIS has modified the form based upon a portion of this recommendation. USCIS believes the instructions provide sufficient information on pages 4 and 5 for the requestor to determine whether or not he or she is able to satisfy the period of continuous residence. To be consistent with the FAQ, USCIS modified the instructions and form to include information about how a requestor is to establish residence before the age of 16.</p>