

I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES

Commenters:

Commenter 1 : IRLC
Commenter 2 : Marisol Angel
Commenter 3: Northwest Health Law Advocates
Commenter 4: Mass Law Reform Institute
Commenter 5: California Immigrant Policy Center
Commenter 6: The Center for Law and Social Policy
Commenter 7: National Immigration Law Center
Commenter 8: New York Immigration Coalition
Commenter 9: American Immigration Lawyers Association
Commenter 10: A. Fatah

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**I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES**

| FORM I-485 | | | |
|-------------------|------------------------|---|--|
| # | <u>Category</u> | <u>Comment</u> | <u>Response</u> |
| 1 | General Comment | <p>Commenter 1 states the length of the proposed Form contravenes the intent of the Paperwork Reduction Act. The agency has shown through its use of prior Form I-485s that it can gather the information needed for an Adjustment of Status with a less burdensome form. This form is overwhelmingly detailed, complex, and calls for extraneous information and legal conclusions that are not necessary to the document collection. Further, the Instruction Booklet is unwieldy and not organized in an intuitive manner. The time burden on an applicant to read the over 100 pages of instructions will be well over the 6 hours estimated by the agency.</p> | <p>The instructions are only 43 pages, not over 100 pages. Furthermore, each applicant only needs to read the general instructions (pages 1-18) and the one section in the additional instructions, if any, that is relevant to the filing category the applicant selected. The additional instructions the applicant needs to read vary depending on the applicant's filing category but are generally less than one page in length.</p> <p>The currently proposed version of the form includes many improvements over the prior version. USCIS believes the benefit of these improvements outweigh the cost of the lengthier form.</p> |
| 2 | General Comment | <p>Commenter 9 attached comments it submitted during in response to the 60-day Federal Register Notice.</p> | <p>USCIS addressed these comments received during the 60-day public comment period. (Responses to comments can be found at http://www.reginfo.gov/public/do/PRAMain.)</p> |

**I-485/485A Public Comments
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SUMMARY OF RESPONSES**

| FORM I-485 | | | |
|-------------------|---|--|--|
| # | <u>Category</u> | <u>Comment</u> | <u>Response</u> |
| 3 | Part 1, Recent Immigration History, Question 22 | Commenter 9 states “This question will cause confusion, especially for unrepresented applicants who may not understand what it means to be inspected, admitted, or paroled. Moreover, there will be situations that do not neatly or obviously fall into the listed categories. For example, individuals who enter without inspection initially and are later granted temporary protected status (TPS) may apply to adjust status under <i>Flores v. USCIS</i> , 718 F.3d 548 (6th Cir. 2013), or individuals who are waved-through a port of entry may apply to adjust status under <i>Matter of Quilantan</i> , 25 I&N Dec. 285 (BIA 2010). If applying pro se, individuals in both situations could be confused as to how they should fill out the form. USCIS should delete this section, or at a minimum, add an “other” box to allow applicants to explain more complicated situations.” | USCIS will revise this question as well as the corresponding question 23 to make questions 22 and 23 easier for applicants to understand. We will also add an “other” option as suggested. |
| 4 | Part 2, Application Type of Filing Category | Commenter 1 stated that Part 2, page 3 and 4 should be deleted. “It is not necessary to require the applicant to list the receipt number and priority date of the underlying petition, or to separate out whether he or she is the principal applicant or a derivative applicant, as this information will all be readily available on the face of the Form I-797 Approval Notice for the underlying petition that must be attached to the Form I-485. Requesting this information on the Form I-485 creates an additional burden on the applicant. Further, making the applicant | The ability to capture this information on the form allows USCIS to automatically input that data into systems and improve processing efficiency. The ability to capture the priority date is also important because the controlling priority date (for example, based on a previously approved I-140) may not always be reflected on the I-797 approval or receipt notice for the immigrant petition on which the adjustment application is based. Furthermore, capturing this information on the form allows USCIS to verify that the Form I-485 is correctly matched with the underlying petition, if applicable. |

**I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES**

| FORM I-485 | | | |
|-------------------|---|--|--|
| # | <u>Category</u> | <u>Comment</u> | <u>Response</u> |
| | | distinguish between principal and derivative applicant status introduces a legal distinction that may serve to confuse the applicant.” | The instructions clearly describe the difference between a principal applicant and a derivative applicant. USCIS believes it is important for applicants to understand if they are the principal applicant or derivative applicant. The Instructions are designed to provide requirements specific to principal and derivative applicants (when applicable) for each immigrant category. |
| 5 | Part 2, Application Type of Filing Category | <p>Commenter 1 stated that the immigrant categories set forth are unnecessary and complex. “The questions employ technical terms and are thus potentially confusing to an applicant. Further, the adjudicator can easily determine the category based on the facts of the application, so requiring that an applicant respond to this overly technical section is unnecessary. In addition, the confusion created by this section would not be easily resolved by looking at the Instruction Booklet. There is no clearly marked section in the Instructions Booklet to help an applicant understand how to complete this section on f the Form I-485.”</p> <p>Commenter 1 recommends keeping the version of Part 2, Application Type, that appears on the current Form I-485, which asks the applicant to choose from one of eight clearly explained bases for why he or she is applying for Adjustment of Status and is much easier for the applicant to</p> | <p>USCIS does not believe the questions are too lengthy, technical or inapplicable. The instructions have been ordered sequentially and numerically to match the form to help an applicant complete this section. No change will be made based on this comment. The Form I-485 currently in use only lists 8 categories (4 of which relate only to Cuban adjustments) for applicants to select as the immigrant category under which they are seeking to adjust status. The revised form is far more comprehensive and up-to-date. USCIS believes it is important for applicants to identify the immigrant category under which they are applying for adjustment, so they know they are submitting all the required documents for that category as well as allow them to follow specific instructions that relate to that category.</p> <p>In addition, the applicant’s selection of a particular immigrant category upon which the Form I-485 is based facilitates forms intake, file routing, and assignment to appropriate officers and adjudication.</p> |

**I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES**

| FORM I-485 | | | |
|-------------------|---|--|--|
| # | Category | Comment | Response |
| | | understand. | Finally, by including more immigrant categories, USCIS will be able to improve its data collection efforts. This will be particularly helpful for customers and government agencies who often request such information from USCIS. It will also aid procedures for determining immigrant visa availability for visa-retrogressed applicants waiting to adjust status. |
| 6 | Part 3, Information About Your Parents | Commenter 1 stated that Part 3, page 6, "Information About Your Parents" should be deleted: "The additional information that the revised proposed Form I-485 requests about the applicant's parents is not necessary for the adjudication of the I-485 and creates an additional burden on the applicant." | USCIS will not adopt this recommendation. These questions are incorporated from Form G-325A, such that applicants will not need to submit a separate Form G-325A with Form I-485. Sections 1 and 3 of revised Form I-485 meet the requirements of 8 CFR 245.2(a)(3) (i) by collecting the biographical information formerly required on Form G-325A. In addition, this information is used for background check purposes and for establishing identity -- especially for applicants with similar names and dates of birth. |
| 7 | Part 5, Information About Your Children | Commenter 1 states that Part 5, Information About Your Children should be deleted: "The additional address details of children that are requested on the revised Form are not necessary to the Form's adjudication and create an additional burden on the applicant to complete this unnecessary information." | The form does not request additional address details in the section titled "Information About Your Children." |
| 8 | Part 8, General Comment | Commenter 9 states, "In our previous comments, AILA raised a number of concerns regarding questions that were overly broad, beyond the scope of the corresponding inadmissibility ground, and/or irrelevant to the adjudication of | USCIS addressed these comments along with other comments received during the 60-day public comment period. (Responses to comments can be found at http://www.reginfo.gov/public/do/PRAMain .) |

**I-485/485A Public Comments
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SUMMARY OF RESPONSES**

| FORM I-485 | | | |
|-------------------|---------------------|--|---|
| # | Category | Comment | Response |
| | | <p>the adjustment applications. It appears most, if not all, of those concerns were not addressed in the current proposed Form I-485. We renew our objections to those questions in these comments.” Here are the questions that AILA raised concerns about as a result of the 60 day Federal Register Notice. For example, AILA raised concerns with the following questions: <i>“Have you EVER used any illegal drugs or abused any legal drugs?”</i>; <i>“Have you EVER been arrested, cited, charged, or detained for any reason by any law enforcement official (including but not limited to any U.S. immigration official or any official of the U.S. Armed Forces or U.S. Coast Guard)?”</i>; <i>“Have you EVER committed a crime of any kind (even if you were not arrested, cited, charged with, or tried for that crime)?”</i>; <i>“Have you EVER engaged in prostitution or are you coming to the United States to engage in prostitution?”</i>; <i>“Have you EVER directly or indirectly procured (or attempted to procure) or imported prostitutes or persons for the purpose of prostitution?”</i>; <i>“Have you EVER received any proceeds or money from prostitution?”</i>; <i>“Have you EVER received public assistance in the United States from any source, including the U.S. Government or any state, country, city, or municipality (other than emergency medical treatment)?”</i>.</p> | <p>Except for Questions 61 and 62 in Part 8, USCIS’s responses have not changed. (Note: As part of that response, USCIS did adopt the recommendation to remove the question: “Have you EVER used any illegal drugs or abused any legal drugs?”)</p> <p>To address commenters’ concerns regarding Items 61 and 62, USCIS will make edits to these questions to clarify their scope. See below for a full response to comments received on Items 61 and 62.</p> |
| 9 | Part 8, Question 14 | <p>Commenter 1 states that this question should be deleted. “This question asks whether the</p> | <p>USCIS disagrees with the commenters’ assertion that the term “admission” is confusing to non-lawyers and</p> |

**I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES**

| FORM I-485 | | | |
|-------------------|---|---|---|
| # | <u>Category</u> | <u>Comment</u> | <u>Response</u> |
| | | applicant has ever been denied admission to the United States. "Admission" is a legal term of art, and will be confusing to non-lawyers. Further, this question is irrelevant to eligibility for Adjustment of Status. It is inappropriate and confusing for USCIS to add questions to Form I-485 that are beyond the scope of the Form I-485's purpose." | is irrelevant to eligibility. Applicants who are unsure of their manner of arrival into the U.S. may provide more information in Part 14, Additional Information. |
| 10 | Part 8, Question 25 | Commenter 1 states that this question should be deleted in its entirety. In the alternative, use the phrase "federally controlled substances" rather than "drugs." This question asks: "Have you EVER used any illegal or abused legal drugs? This question is vague and overbroad in that it refers to drugs rather than federally controlled substances. Further the information requested in this question is not necessary to the USCIS adjudicator, who much rely on the health determinations made by a Civil Surgeon or Panel Physician that are submitted to USCIS in the sealed I-693, along with Form I-485. USCIS adjudicators are not trained in identifying health-related grounds of inadmissibility, which requires medical professionals to make determinations based on existing medical standards, as determined by the current version of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM)." | This question was deleted from the 60-day version of the I-485 and did not appear in the 30-day version of the I-485 revision. |
| 11 | Part 8, Instructional language on p. 10 | From Commenter 1....The instructions to Part 8, Criminal Acts and Violations, which appear on | USCIS may require the final disposition of a juvenile adjudication for federal immigration purposes. Where |

**I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES**

| FORM I-485 | | | |
|-------------------|------------------------|---|--|
| # | <u>Category</u> | <u>Comment</u> | <u>Response</u> |
| | | <p>page 10 of the proposed revised Form state: “If you answer “Yes” to Item Numbers 26. - 46., use the space provided in Part 13. Additional Information to provide an explanation that includes why you were arrested, cited, detained, or charged; where you were arrested, cited, detained, or charged; when (date) the event occurred; and the outcome or disposition (for example, no charges filed, charges dismissed, jail, probation, community service.)” Requesting this kind of detailed information without clarifying that it is not required in cases where the applicant was arrested as a juvenile in a state with confidentiality laws that prevent disclosure of such information invites violations of state juvenile confidentiality laws which may carry both civil and criminal penalties. Further, the Department of Homeland Security is clearly prohibited by federal regulation from obtaining and using confidential information.</p> <p><i>Recommendation:</i> Revise the instructions in this section as follows (additional language in bold and italics):</p> <p>If you answer “Yes” to Item Numbers 26. - 46., use the space provided in Part 13. Additional Information to provide an explanation that includes why you were arrested, cited, detained, or charged; where you were arrested, cited,</p> | <p>a state law provides that juvenile records may not be disclosed this information is still within USCIS’s jurisdiction to determine whether the state finding corresponds to the Federal Juvenile Delinquency Act and therefore does not qualify as a conviction for immigration purposes. An applicant must either provide the records or secondary evidence and document a good faith effort to obtain the record if the record is unavailable. For these reasons, USCIS retained the original language.</p> |

**I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES**

| FORM I-485 | | | |
|------------|---------------------|--|---|
| # | <u>Category</u> | <u>Comment</u> | <u>Response</u> |
| | | <p>detained, or charged; when (date) the event occurred; and the outcome or disposition (for example, no charges filed, charges dismissed, jail, probation, community service), <i>unless your case was handled in juvenile court and state confidentiality laws prevent disclosure of such information.</i></p> <p>This approach is consistent with USCIS’s approach in Form I-821D Deferred Action for Childhood arrivals and should be used in all USCIS applications.</p> | |
| 12 | Part 8, Question 29 | <p>Commenter 1 states that this question should be deleted.</p> <p>This questions asks: “Have you EVER been ordered punished by a judge or had conditions imposed on you that restrained your liberty (such as a prison sentence, suspended sentence, house arrest, parole, alternative sentencing, drug or alcohol treatment, rehabilitative programs or classes, probation, or community service)?”</p> <p>The wording of this question is so broadly phrased that it could be interpreted to include all kinds of situations that are not relevant to the determination of the applicant’s eligibility for Adjustment of Status, for example, a child’s being sent to detention or being put on trash pick-up duty at school. Further, this question is</p> | <p>No change will be made based on this comment. This information is relevant to determining whether an applicant may be inadmissible based on criminal grounds and to the discretionary determination.</p> |

**I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES**

| FORM I-485 | | | |
|-------------------|--|--|--|
| # | Category | Comment | Response |
| | | unnecessary given the plethora of other questions that seek information about the existence of a criminal history. | |
| 13 | Part 8, Question 53 | Commenter 9 states, "...the following question was revised and expanded since the last proposed version of Form I-485: <i>Page 12, Part 8, Question 53: 'Have you EVER worked, volunteered, or otherwise served in any prison, jail, prison camp, detention facility, labor camp, or any other situation that involved detaining persons?'</i> This question is overly broad. Admitting to have worked, volunteered, or served in any prison, jail, prison camp, detention facility, or labor camp does not make an individual inadmissible. For example, this question would require applicants to answer "yes" if they volunteered as a Legal Orientation Program (LOP) translator in DHS's own detention facilities. USCIS should narrowly tailor this question to elicit only relevant information." | No change will be made based on this comment. The question is intended to elicit a broad response. USCIS must elicit relevant information to adjudicate the immigration benefit request. If there is no conduct that applies to the question, the applicant should answer no. If there is conduct that applies or might apply, the applicant should answer yes. However, it is important to note that an answer of yes does not necessarily mean that the applicant will be found inadmissible on the related ground. If the applicant is unsure of his or her answer to this question, the applicant may provide more information in Part 14, Additional Information. |
| 14 | Part 8, Questions 61 and 62 and corresponding instructions | Commenter 1 states Questions 61 and 62 are overly broad and unnecessary. Both questions should be limited only to cash aid, as other forms of public assistance will not affect eligibility for Adjustment of Status, or, in the alternative, the questions should track USCIS's own guidance as stated in the Public Charge Fact Sheet. | Although USCIS will not use the exact edits recommended by the commenter, USCIS has edited Questions 61 and 62 on the Form as well as the corresponding instructions on page 8 of the Form I-485 Instructions to reflect USCIS's public charge policy. These edits are in line with the spirit and intention of the public charge guidance. |

I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES

| FORM I-485 | | | |
|------------|----------|---|--|
| # | Category | Comment | Response |
| | | <p>Recommendations: Revise Question 61 to read (additions in bold and italics; deletions in strikethrough): Have you EVER received public assistance <i>in the form of cash aid</i> in the United States from any source, including the U.S. Government or any state, country, city or municipality (other than emergency medical treatment)? Revise Question 62 to read: Are you likely to receive public assistance <i>in the form of cash aid</i> in the future? Or, in the alternative, revise both questions to track USCIS’s own guidance as stated in the Public Charge Fact Sheet.</p> | <p>The Form I-485’s question 61 will now read: “Have you EVER received any form of public cash assistance for income maintenance, or been institutionalized for long-term care at government expense? Y/N”</p> <p>The Form I-485 question 62 will now read: “Are you likely to receive public cash assistance for income maintenance or be institutionalized for long-term care at government expense in the future? Y/N”</p> <p>The Form I-485 instructions will now read: “In Part 8, Item Numbers 61 and 62, you must include all types of public benefits that are cash assistance for income maintenance that you have received or believe that you are likely to receive from the U.S. Government or a U.S. state or local government. You must also include whether you are, or believe you are likely to be, institutionalized for long-term care at government expense.</p> <p>If you are not sure whether the public benefits you have received from the government are cash assistance for income maintenance, you may check “yes” and USCIS will determine whether it may be considered. Receiving public benefits that are cash assistance for income maintenance or being</p> |

**I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES**

| FORM I-485 | | | |
|------------|--|--|--|
| # | <u>Category</u> | <u>Comment</u> | <u>Response</u> |
| | | | <p>institutionalized for long-term care at government expense does not necessarily make you ineligible for adjustment of status. USCIS will look at all relevant factors to determine whether you are likely to become a public charge.</p> <p>Several categories of individuals who seek adjustment may not be subject to public charge inadmissibility. If you are seeking adjustment under a provision that makes you exempt from public charge inadmissibility, your answers to these items will not lead to denial of your case on public charge grounds.</p> <p>Please visit https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge and www.uscis.gov/news/fact-sheets/public-charge-fact-sheet for information about:</p> <ul style="list-style-type: none"> • Which public benefits qualify as “cash assistance for income maintenance;” and • The categories of adjustment applicants to whom the public charge ground of inadmissibility does not apply.” |
| 15 | Part 8, Questions 61 and 62 and corresponding instructions | Commenters 3, 4, 5, 6, 7, 8, and 9 all recommend re-writing questions 61 and 62 as follows: | See response above. |

**I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES**

| FORM I-485 | | | |
|------------|-----------------|--|-----------------|
| # | <u>Category</u> | <u>Comment</u> | <u>Response</u> |
| | | <p><input type="checkbox"/> Have you received Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), or cash welfare from state and local income assistance programs?</p> <p><input type="checkbox"/> Have you been in long-term institutional care—such as in a nursing home or mental health institution—paid for by Medicaid?</p> <p>Commenters 3, 4, 5, 6, 7, 8, and 9 all recommend revising the instructions for Form I-485 to track the long-standing USCIS policy on public charge. They recommend the following revisions to the public charge instructions on page 7:</p> <p>In Part 8., Item Numbers 61. and 62., you must include all only cash welfare received or believe that you are likely to receive from the U.S. Government or a U.S. state or local government, or if you have received long-term institutional care, such as in a nursing home or mental health institution, paid for by Medicaid. Receiving public assistance does not necessarily make you ineligible for adjustment of status. but USCIS needs to know all types of U.S. Federal, state, and local public benefits you have received, or believe you are likely to receive, in order to determine relevancy to the public charge analysis.</p> <p>Additionally, commenters 3, 4, 5, 6, 7, 8, and 9 all</p> | |

**I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES**

| FORM I-485 | | | |
|------------|-----------------|--|-----------------|
| # | <u>Category</u> | <u>Comment</u> | <u>Response</u> |
| | | <p>recommend that the Instructions for Form I-485 should include a section explaining these questions by:</p> <p><input checked="" type="checkbox"/> Specifying that noncash benefits such as SNAP, Medicaid, CHIP, WIC, housing benefits, child care services, energy assistance, emergency disaster relief, foster care and adoption assistance, education assistance, job training are not considered in the public charge determination.</p> <p>Specifying that receipt of monthly cash benefits for income maintenance purposes—SSI, TANF, cash from state and local income assistance programs and long-term institutional care—may be considered as a factor in the public charge determination, but does not automatically make an individual ineligible to adjust status to lawful permanent residence on public charge grounds.</p> <p>Commenter 3 specifically states that “rather than clarifying the agency’s rules on public charge, the proposed Form I-485 and its accompanying instructions will increase confusion and fear among immigrant families. Immigrants will be less likely to apply for critical benefits for which they or their family members—including citizen children—might be eligible, which will result in negative public health consequences for American communities.”</p> | |

**I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES**

| FORM I-485 | | | |
|------------|----------|--|----------|
| # | Category | Comment | Response |
| | | <p>Specifically, commenter 3 states that “USCIS must act to address ‘considerable public confusion about the relationship between the receipt of federal, state and local public benefits’ and ‘public charge’ determinations in immigration law Questions 61 and 62 of Part 8 on Form I-485 fail to distinguish between cash and noncash benefits.”</p> <p>Commenter 3 states that “advocates, attorneys and social service workers report that otherwise eligible non-citizen households express reluctance to apply for nutrition assistance or SNAP based on a belief that receipt of these and other noncash benefits for themselves and/or US citizen household members will prevent them from becoming a lawful permanent resident. This misunderstanding of USCIS policy will only be made worse if questions 61 and 62 of Part 8 of Form I-485 are not corrected.</p> <p>The questions promote confusion among immigration attorneys as well as USCIS officials. It is understandable why immigrants are wary of applying for noncash benefits.</p> <p>Because these questions on the adjustment forms are overly broad, asking about the use of public benefits generally, including those that are not relevant to the public charge inquiry, the resulting</p> | |

**I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES**

| FORM I-485 | | | |
|------------|-----------------|---|-----------------|
| # | <u>Category</u> | <u>Comment</u> | <u>Response</u> |
| | | <p>responses and data collected must be considered flawed, unnecessary for the agency’s functioning, and lacking in practical utility.”</p> <p>Commenter 4 specifically states it is alarmed to learn that USCIS has proposed to broaden the concept of what benefits are considered “public assistance,” apparently intended to capture information on a wide and undefined net of programs and services potentially used by the applicant for adjustment. Rather than properly defining and limiting the definition to means-tested cash assistance programs, USCIS proposed revision to Question 61 moves in the opposite direction.</p> <p>Commenter 4 states that it strongly believes that the proposed Question 61 within Form I-485 and its accompanying instructions will increase confusion and fear among immigrant families, versus help to clarify the programs that could trigger a “public charge” finding. MLRI is worried that otherwise eligible immigrants will be less likely to apply for critical benefits for which they or their family members—including citizen children—might be eligible. Lack of access to these critical benefits serves no objective public policy goal, other than to result in negative public health consequences for American communities. MLRI worries about individuals who have reached</p> | |

**I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES**

| FORM I-485 | | | |
|------------|----------|---|----------|
| # | Category | Comment | Response |
| | | <p>adulthood may not know that they once received free school meals, or that their mother’s received WIC during pregnancy and toddler years – and yet they are obliged to attest to the fact that they did not “EVER receive any form of public assistance.”</p> <p>Commenter 4 believes that the proposed wording of Question 61 may cause immigrants who are members of military service families or veterans to erroneously conclude that federal benefits they received could trigger a public charge finding, such as Aid to Military Families, educational benefits, Veterans Administration Pensions, VA Compensation, VA Dependent’s allowances, Base Housing Allowances and other benefits provided to members of the armed services, their dependents. This is indeed inconsistent with how USCIS determines “public charge”, but the wording of Question 61 is so overly broad as to suggest that possibility.</p> <p>USCIS is required to act to address “considerable public confusion about the relationship between the receipt of federal, state and local public benefits” and “public charge” determinations in immigration law. Questions 61 and 62 of Part 8 on Form I-485 fail to distinguish between cash and noncash benefits, which is at the core of the “public charge” determination.</p> | |

**I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES**

| FORM I-485 | | | |
|------------|-----------------|--|-----------------|
| # | <u>Category</u> | <u>Comment</u> | <u>Response</u> |
| | | <p>Commenter 5 states rather than clarifying the agency’s rules on public charge, the proposed Form I-485 and its accompanying instructions will increase confusion and fear among immigrant families. Immigrants will be less likely to apply for critical benefits for which they or their family members—including citizen children—might be eligible, which will result in negative public health consequences for immigrant communities.</p> <p>Commenter 5 states USCIS must act to address “considerable public confusion about the relationship between the receipt of federal, state and local public benefits” and “public charge” determinations in immigration law. Questions 61 and 62 of Part 8 on Form I-485 fail to distinguish between cash and noncash benefits.</p> <p>Commenter 6 states that rather than clarifying the agency’s rules on public charge, the proposed Form I-485 and its accompanying instructions may increase confusion and fear among immigrant families. Immigrant families who already face barriers to accessing publicly funded assistance may be even less likely to apply for critical benefits for which they or their family members might be eligible, which will result in negative social and public health consequences for American communities. In 2014, 17.5 million children ages 18 and younger – one quarter of all</p> | |

**I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES**

| FORM I-485 | | | |
|------------|-----------------|--|-----------------|
| # | <u>Category</u> | <u>Comment</u> | <u>Response</u> |
| | | <p>children in the U.S. -- lived with at least one immigrant parent.1 Public benefits, including nutrition assistance, health insurance, and other supports, are vitally important for many of these children’s well-being.</p> <p>Commenter 6 states that USCIS must act to address “considerable public confusion about the relationship between the receipt of federal, state and local public benefits” and “public charge” determinations in immigration law. Questions 61 and 62 of Part 8 on Form I-485 fail to distinguish between cash and noncash benefits.</p> <p>Commenter 6 writes about the importance of the recommended changes. Discouraging citizen children from receiving benefits has lasting negative consequences for both those children and society. Children’s and mothers’ access to health insurance during pregnancy and in the first months of life is linked to significant reductions in infant mortality, childhood deaths, and the incidence of low birthweight. Recent rigorous studies of both SNAP and public health insurance have demonstrated the positive effects of access as a child to these safety net programs on life outcomes into adulthood. For example, a paper by the National Bureau of Economic Research finds that having access to SNAP in early childhood improves adult outcomes including</p> | |

**I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES**

| FORM I-485 | | | |
|------------|-----------------|--|-----------------|
| <u>#</u> | <u>Category</u> | <u>Comment</u> | <u>Response</u> |
| | | <p>health and economic self-sufficiency. Expanding health insurance coverage for low-income children has large effects on high school completion, college attendance, and college completion. Child care assistance can help support both family economic stability as parents are able to work and children’s access to quality child care that supports their healthy development. Given the large share of children in immigrant families, any policy that intentionally or inadvertently discourages families from accessing benefits that contribute to their children’s wellbeing can have lasting impacts on our youngest citizens and their ability to succeed in life.</p> <p>Commenter 6 states, “In our research on immigrant families’ access to child care and early education, conversations with immigrant service providers and others revealed that fear related to public charge was a barrier to families accessing child care assistance, Head Start and other programs children were eligible for, despite these programs not triggering public charge related consequences.⁷ It is understandable why immigrants are wary of applying for noncash benefits. Other research confirms that across a wide range of benefit programs, otherwise eligible immigrant households express reluctance to apply for help based on a belief that receipt of</p> | |

**I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES**

| FORM I-485 | | | |
|------------|-----------------|--|-----------------|
| # | <u>Category</u> | <u>Comment</u> | <u>Response</u> |
| | | <p>benefits for themselves and/or US citizen household members might impact either a parent’s application for permanent residency or citizenship or the family’s ability to bring other family members to the United States. Without adequate instructions for Form I-485, the proposed language may reinforce these concerns among immigrant families, including those lawfully present and including many with citizen children. Moreover, because misconceptions about policy are often transmitted within a community, this language will have repercussions far beyond the number of people who fill out this form.”</p> <p>Commenter 6 states the misunderstandings of USCIS policy related to public charge would only be made worse if questions 61 and 62 of Part 8 of Form I-485 are not corrected. Moreover, because these questions on the adjustment forms are overly broad, asking about the use of public benefits generally, including those that are not relevant to the public charge inquiry, the resulting responses and data collected would likely be flawed and lacking in practical utility.</p> <p>Commenter 7 states, “It is helpful that the public charge section is set apart from other general eligibility and inadmissibility grounds questions; however, the questions contained within are</p> | |

**I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES**

| FORM I-485 | | | |
|------------|-----------------|---|-----------------|
| # | <u>Category</u> | <u>Comment</u> | <u>Response</u> |
| | | <p>confusing to applicants, attorneys, advocates, and adjudication officials, and are inconsistent with USCIS policy on public charge. Furthermore, the Instructions for Form I-485 instruct the applicant to list all forms of public assistance received, including those that are not considered in public charge determinations. The instructions then provide a link to the existing USCIS policy,¹ where it is clearly stated that non-cash benefits and special-purpose cash benefits are not considered in public charge determinations. The instructions, as written, offer conflicting instructions to applicants that are at odds with the referenced USCIS policy on public charge.</p> <p>Most importantly, the questions, as written, perpetuate a longstanding misunderstanding and concern among immigrants that receiving <i>any form of public assistance</i> will undermine their ability to adjust their status or will otherwise put them at risk, because they will be considered a “public charge.” This, in turn, has a chilling effect on immigrants’ willingness to apply for critical benefits for themselves or their children.</p> <p><i>Rather than clarifying the agency’s rules on public charge, the proposed Form I-485 and its accompanying instructions will increase confusion and fear among immigrant families. Immigrants will be less likely to apply for critical benefits for</i></p> | |

**I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES**

| FORM I-485 | | | |
|------------|---------------------|--|--|
| # | Category | Comment | Response |
| | | <p><i>which they or their family members—including citizen children—might be eligible, which will result in negative public health consequences for American communities.”</i></p> <p>“... USCIS must act to address ‘considerable public confusion about the relationship between the receipt of federal, state and local public benefits’ and ‘public charge’ determinations in immigration law. Questions 61 and 62 of Part 8 on Form I-485 fail to distinguish between cash and noncash benefits.”</p> | |
| 16 | Part 8, Question 63 | <p>Commenter 1 states this question asks whether the applicant has failed or refused to attend, or to remain in attendance at his or her removal, exclusion, or deportation proceeding. This question is overly complex and will likely cause confusion to the reader.</p> <p>Recommendation: Delete this question, or in the alternative, revise it to read: “Have you EVER failed to attend your removal, exclusion, or deportation proceeding?”</p> | <p>USCIS has revised the question to better capture when an applicant claims a “reasonable cause” exception. It now reads,</p> <p>63.a. Have you EVER failed or refused to attend or to remain in attendance at any removal proceeding filed against you on or after April 1, 1997? Y/N</p> <p>63.b. If your answer to Item 63.a is “YES,” do you believe you had reasonable cause? Y/N</p> <p>If your answer to Item 63.b is “YES,” attach a written statement explaining why you had reasonable cause.”</p> |

| FORM I-485 INSTRUCTIONS | | | |
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| # | Category | Comment | Response |
| 1 | General Comment | Commenter 9 states that it “...continues to be | USCIS has revised the Form I-485 to make the form |

**I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES**

| FORM I-485 INSTRUCTIONS | | | |
|--------------------------------|-----------------|---|---|
| # | Category | Comment | Response |
| | | <p>concerned with the extensive changes proposed to the Form I-485, Supplement A, and instructions, including changes that broaden the evidentiary requirements and information requested for adjustment of status. For example, many of the questions regarding the applicant’s criminal history have been broadened to inquire about conduct that would fall outside the scope of the grounds of inadmissibility articulated at INA §212(a).”</p> <p>Commenter 9 states, “... the requirements spelled out in the additional instructions for applicants filing under special adjustment programs, additional categories, and Registry, seem to have been expanded. We note that under 8 CFR §103.2(a)(1), ‘[e]very benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions . . . and such instructions are incorporated into the regulations requiring its submission.’ Thus, all of the new language that is included in the proposed instructions will be incorporated by reference into the Title 8 of the Code of Federal Regulations without the opportunity for full notice and comment. The proposed changes exceed DHS’s statutory authority, and should instead be promulgated by regulation in accordance with the Administrative Procedure Act (APA).”</p> | <p>more user-friendly for both the public and USCIS officers, while bringing the form up-to-date to reflect various laws enacted by Congress over the last several years. With respect to the instructions, instead of having separate Form I 485 supplements with specific instructions for certain categories (which currently exists), all instructions are now consolidated in one place (split into two sections – general instructions and additional instructions).</p> <p>The revised Form I-485 will be easier for applicants to understand and fill out. Applicants will be able to file complete and accurate applications with all required evidence. More specifically, the section on “What Evidence Must You Submit with Form I-485?” gives much more detail than the current “Initial Evidence” section on the Form I-485 Instructions. For example, there are robust explanations about birth certificates, criminal history, and employment letters.</p> <p>The revisions should minimize the need for requests for evidence (RFEs) and may reduce processing times. In addition, the revised form enhances national security and benefits integrity and supports the USCIS mission to grant immigration benefits only to those applicants deemed eligible by Congress.</p> <p>Eligibility requirements have not changed; USCIS is simply updating its form and instructions to be more precise in its collection of information necessary to</p> |

**I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES**

| FORM I-485 INSTRUCTIONS | | | |
|--------------------------------|---|---|--|
| # | <u>Category</u> | <u>Comment</u> | <u>Response</u> |
| | | | assess eligibility for benefits sought. |
| 2 | Page 9, Birth Certificate | Commenter 9 states, "Since asylees and refugees are not required to submit a photocopy of their birth certificate, this section should also make it clear that they do not have to prove unavailability or nonexistence if a birth certificate is not available." | USCIS has edited the instructions to clarify that asylees and refugees do not have to submit a photocopy of their birth certificate or prove unavailability or nonexistence of the birth certificate. |
| 3 | Certified Police and Court Records of Criminal Charges, Arrests, or Convictions | <p>Commenter 1 states: "Revise the Instructions to read (deletions in strikethrough): Certified Police and Court Records of Criminal Charges, Arrests, or Convictions."</p> <p>The instructions state that everyone must provide "[c]ertified police and court records of criminal charges, arrests, or convictions." Requiring certified police records of criminal charges is unnecessary and creates an extra burden on the applicant. First, for most inquiries, police records are irrelevant to determine whether a criminal conviction causes inadmissibility under the categorical approach. Second, even where the question is about the person's conduct rather than the conviction, police records and even charging documents are considered not reliable. Arrest records and charging documents are by definition <i>allegations</i> of criminal conduct; they are not proof of such conduct. A conviction does not mean that the conviction was a result of the information contained in the arrest report or charging document, or that information alleged in those</p> | Police records are relevant to both the inadmissibility and discretionary determination. An applicant may be found inadmissible based on conduct for which they were arrested but not convicted. An immigration benefit may also be denied as a matter of discretion based on conduct for which an applicant was arrested but not convicted. The reliability of the records and the weight given this evidence is for an officer or an immigration judge to consider as part of the adjudication. The applicant has the burden of proof to demonstrate that the conduct does not make the applicant ineligible for adjustment of status. |

**I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES**

| FORM I-485 INSTRUCTIONS | | | |
|--------------------------------|------------------------|--|---|
| # | <u>Category</u> | <u>Comment</u> | <u>Response</u> |
| | | documents is accurate. When the arrestee is an immigrant who may have limited English skills, police reports may involve dramatic miscommunications with the defendant that further undermines their reliability. 8 Accordingly, in criminal court, arrest records (police reports) are excluded by rule as inherently untrustworthy hearsay. Consulting inherently unreliable police reports will only lead to inaccurate assessments of the offense. | |
| 4 | Juvenile Records | <p>Commenter 1 states, “It is inappropriate for USCIS to request state court records when it is aware that state confidentiality laws may, and often do, prevent disclosure of juvenile state court files without a court order. In the context of SIJS petitions, USCIS has recognized that state confidentiality laws may prevent disclosure of documents from the juvenile court file. Further, in a different context – that of Deferred Action for Childhood Arrivals (DACA) – USCIS has also officially recognized that state court files may be confidential, and disclosure may be prohibited under state law.”</p> <p>Recommendation: Revise this item as follows (additions in bold and italics; deletions in strikethrough): Certified police and court records of criminal charges, arrests, or convictions, <i>unless disclosure is prohibited under state law.</i></p> | <p>USCIS may request a juvenile adjudication for federal immigration purposes, even where a state law provides that a juvenile adjudication no longer exists. Disclosure of this information is required given the differences in how states address juvenile offenders. USCIS’s will determine whether the state finding corresponds to the Federal Juvenile Delinquency Act and therefore does not qualify as a conviction for immigration purposes. If the record is unavailable, an applicant must provide documentation of why the record is unavailable. For these reasons, USCIS retained the original language.</p> |

**I-485/485A Public Comments
30-Day Period (July 26, 2016 – August 25, 2016)
SUMMARY OF RESPONSES**

| SUPPLEMENT A INSTRUCTIONS | | | |
|----------------------------------|-----------------|--|--|
| # | Category | Comment | Response |
| 1 | General | Commenter 2 urges USCIS to extend adjustment of status under 245i. | The Immigration and Nationality Act (INA) Section 245(i) program is not being renewed or reinstated. The program has existed continuously since Congress first created it in 1994 and later set a final deadline to file a qualifying petition or application by April 30, 2001. The updates we made to Supplement A and the accompanying instructions are only to make the existing INA 245(i) program easier to understand and to facilitate efficient processing and adjudication. Because there is a limited number of qualifying immigrant petitions or permanent labor certification applications that were filed by the April 30, 2001, deadline, most of which have since been used for adjustment filings, fewer and fewer 245(i) applications are filed each year. |

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