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May 17, 2024

Samantha Deshommès
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: Petition for U Nonimmigrant Status, USCIS–
2010–0004; OMB Control Number 1615-0104.

Dear Chief Deshommès,

The Immigrant Legal Resource Center (ILRC) submits the following comment in response to the U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security’s (DHS) Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition for U Nonimmigrant Status, published on April 17, 2024.

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

The ILRC is also a leader in interpreting family-based immigration law as well as VAWA, U, and T immigration relief for survivors, producing trusted legal resources including webinars, trainings, and manuals such as *Families & Immigration: A Practical Guide*; *The VAWA Manual: Immigration Relief for Abused Immigrants*; *The U Visa: Obtaining Status for Immigrant Survivors of Crime*; and *T Visas: A Critical Option for Survivors of Human Trafficking*. Through our extensive network with service providers, immigration practitioners, and immigration benefits applicants, we have developed a profound understanding of the barriers faced by vulnerable immigrant and low-income communities – including survivors of intimate partner violence, sexual violence, human trafficking, or other forms of trauma. We welcome the opportunity to provide comments on Form I-918 Petition for U Nonimmigrant Status and related forms.

I. The ILRC requests that the agency provide extended grace periods for form changes.

The ILRC is appreciative of the many positive changes made to the U visa forms and reiterates our suggestions for improvements to the forms from our previous submission during the open comment period. However, we write to request that the agency provide extended grace periods once new versions of the U Visa forms are published to allow for the submission of previous versions of the forms for approximately one year.

Without an extended grace period, changes in the forms will create significant hardship for survivors of crime seeking U nonimmigrant status. Particularly, in the context of Form I-918 Supplement B, U Nonimmigrant Status Certifications, law enforcement agencies (LEA) often take several months or longer to process certification requests. Further, many LEAs will not certify a second Form I-918, Supplement B, due to workload constraints or other internal policies. Requiring LEAs to use a new form without a longer grace period will exacerbate these delays and create additional barriers to protection for crime survivors. Thus, without a longer grace period, requiring the new forms will create severe hardship to LEAs, as well as to crime survivors, and to the attorneys and advocates that assist them in the preparation of their U Visa applications.

USCIS has recognized the need for extended grace periods for these applicants in the past and should continue to do so as a matter of routine course if and when new versions of the U visa forms are published. Longer grace periods will ensure that vulnerable applicants are not denied access to benefits for which they are eligible due to administrative barriers outside of their control.

II. The ILRC Requests USCIS to Make Further Changes to Form I-918 and Form I-918A to Reduce Barriers to U Nonimmigrant Status

We thank the agency for the detailed feedback to our comments from the previous collection¹ and wish to reiterate some points from our previous comment.

a. USCIS should remove questions that ask applicants to draw legal conclusions.

Question 8 in Part 2 of Form I-918 and Form I-918A should be eliminated entirely, and the agency should revise the introductory language under the heading “Criminal Acts and Violations” such that applicants are not required to draw legal conclusions. By asking applicants if they have committed a crime for which they were not “arrested, cited, charged with, tried for that crime, or convicted,” this question asks applicants to understand the local, state, and federal penal codes everywhere they have lived and to draw a legal conclusion that their actions rise to the level of criminality. Over-broad questions such as these run the risk that erroneous or incorrect information will be submitted necessitating Requests for Evidence (RFEs) that slow down adjudication. Given the broad nature of the question, there is also a risk that relevant information will be omitted unintentionally, which could lead to a finding of fraud during an

¹ See ILRC Comment on Form I-918, <https://www.ilrc.org/resources/comment-on-proposed-changes-to-u-visa-forms#:~:text=ILRC%20commended%20the%20agency%20for,expansion%20of%20Form%20I%2D918B> (submitted Jan. 8, 2024).

adjudication or even later at adjustment or naturalization. Questions like this disadvantage pro se applicants in particular, as they require legal expertise.

Though the agency conveyed in a prior response that this question is needed to assess inadmissibility grounds when adjudicating an application, broad stroke questions such as these lead to confusion for applicants and delays for adjudicators. We continue to urge the agency to reconsider the utility of this type of question and whether the results yielded justify the costs in both time, effort, and resources.

- b. USCIS should amend the forms to ensure that juvenile records are not included in eligibility inquiries.

USCIS should reconsider its position and cease the consideration of juvenile records in applications for U nonimmigrant status. To that end, USCIS should make clear on Form I-918, Form I-918A, and all instructions that juvenile arrests, charges, and dispositions need not be disclosed, and juvenile records need not be provided. Across the United States, juvenile justice systems – civil systems that adjudicate violations of the law by children – recognize the significant developmental differences between children and adults and accordingly focus on early intervention, community-based resources, and rehabilitative efforts rather than punishment. In fact, most juvenile justice systems, including the federal system, have confidentiality provisions to protect young people from collateral consequences of juvenile court involvement that can occur when information and records from juvenile court proceedings are publicly available. Requiring people to disclose their youthful violations of the law to USCIS is at odds with the law and policy undergirding juvenile justice systems.

Further, immigration law does not support consideration of juvenile justice records as a matter of discretion in immigration adjudications. The seminal case on the exercise of discretion in immigration adjudications remains *Matter of Marin*. In *Matter of Marin*, the BIA lists several factors that could be deemed adverse for purposes of discretionary determinations: “the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency, and seriousness, and the presence of other evidence indicative of a respondent's bad character or undesirability as a permanent resident of this country.”² Juvenile delinquency adjudications do not fit anywhere within this rubric. First, juvenile justice systems are civil in nature and accordingly state laws forbid the consideration of juvenile delinquency adjudications as “crimes” or youth adjudicated delinquent as “criminals.” Second, evidence of a juvenile record simply is not evidence of “bad character.” Even the Supreme Court has recognized that youthful violations of the law may not be indicative of adult character and behavior.³ In recognition of the distinctions between criminal and juvenile proceedings, the BIA held that juvenile adjudications are not treated as convictions for purposes of immigration law. This differential treatment must be extended to the exercise of discretion, especially considering that delinquency does not appropriately fit into the existing legal framework for discretionary determinations.

² 16 I&N Dec. 581, 584 (BIA 1978).

³ See *Roper v. Simmons* 543 U.S. 551, 570 (2005).

To better align USCIS policy with both state laws and immigration laws, the language in the proposed Form I-918, Form I-918A, and related instructions should be amended to affirmatively exclude juvenile arrests, charges, and adjudications. Specifically, the introduction language to Part 2 “Criminal Acts and Violations” should be altered in the following way:

*For **Item Numbers 7.-31. [7-29. for I-918A]**, 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 in the United States or anywhere else in the world. **However, do not include offenses that were handled in a juvenile court system.***

- c. USCIS should reduce the expanded questions about unlawful presence and immigration violations.

The proposed Forms I-918 and I-918A ask more questions in general about entries and exits that could be combined. We want to start by thanking USCIS for removing the previously proposed Question #6, recombining the question regarding whether someone has been denied a visa or denied admission to the United States, and adding an “unknown” option for the type of proceedings the petitioner was in. These changes will help on streamline the petition and reduce confusion.

We also reiterate our ask that the new Question #4 in Part 2 be removed. It asks if the applicant has ever departed the United States after having been ordered excluded, deported, or removed. However, Question #3 asks whether the applicant has been issued a final order; Question #2 asks for removal proceedings with date of action; and the section begins by asking for a list of all entries and departures. Thus, Question #4 is unnecessary and redundant and these questions could be combined or simplified.

The new Question 28 asks if the petitioner has ever claimed to be a U.S. citizen in writing or any other way. The inadmissibility ground at INA § 212(a)(6)(C)(ii) requires that the false claim be made for a purpose or benefit under the INA or any other federal or state law. While this new question could help identify the false claim to U.S. citizenship ground of inadmissibility at the time of the initial U visa petition but note that the current wording is overbroad and could lead to confusion for petitioners and misreporting. The agency could revise this question to add a disclaimer that the law requires a finding of inadmissibility where the false claim was made for the purpose of obtaining a benefit. Adding this clarifying language will help pro se applicants as they navigate potential grounds of inadmissibility before filing the application. We also urge USCIS not to use incorrect information on the questions in this section, particularly from pro se applicants, to assume fraudulent intent or deny otherwise eligible petitions.

III. ILRC Requests USCIS Make Changes to Form I-198B

We thank USCIS for reducing the redundancies of the prior proposed questions regarding helpfulness and reverting back to the prior language regarding known or documented injury. We offer the following suggestions to aid USCIS in its effort to streamline Form I-918B and to make the certification process easier for both applicants and the certifying agencies.

a. Eliminate unnecessary questions on Form I-198B

As noted in the instructions, the purpose of Form I-198B is to “provide evidence that the petitioner is a victim of a qualifying criminal activity and was, is, or is likely to be helpful in the detection, investigation, prosecution of that activity, or in the conviction or sentencing of the perpetrator.” To do this, it is necessary for this certification to contain questions that help certifying agency give information on the crime, who is certifying and where they work, and how the petitioner helped in reporting or investigating the crime. Not all questions added to the amended I-918B help serve this purpose and instead unnecessarily lengthen the form.

On amended Form I-918B, USCIS has provided space for the certifying agency to address the following requirements:

- Part 2, Information about the Certifying Agency and Officer
- Part 3, Case Information
- Part 4, Qualifying Criminal Activity Category
- Part 6, Helpfulness of the Victim

Within these sections, USCIS should streamline what information is collected, reduce the blank lines provided to shorten the form, and remove repetitive and unnecessary questions.

III. Conclusion

We urge USCIS to consider these suggestions and amend the proposed revisions to Forms I-918, I-918A, and I-918B. Again, we are appreciative of the many positive changes proposed and encourage USCIS to maintain those changes while also addressing the concerns we have raised here with the proposed forms. These measures will aid in the agency’s goals of streamlining adjudications processes and reducing backlogs. Please don’t hesitate to contact us if there are any questions at akamhi@ilrc.org.

Sincerely

/s/

Alison Kamhi
Legal Program Director
Immigrant Legal Resource Center