Submitted via Regulations.gov

November 6, 2023

Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
United States Citizenship and Immigration Services (USCIS)
5900 Capital Gateway Drive
Camp Springs, MD 20746

RE: OMB Control Number 1615–0023, USCIS Docket No. USCIS-2009-0020; Public Comment on Application to Register Permanent Residence or Adjust Status

Dear Chief Deshommes,

The Catholic Legal Immigration Network, Inc. (CLINIC)[1] submits these comments regarding the current Notice of Proposed Rulemaking, or NPRM, titled Agency Information Collection Activities; Revision of a Currently Approved Collection: Application to Register Permanent Residence or Adjust Status, which would make significant changes to Form I-485, Application to Register Permanent Residence or Adjust Status, and its corresponding Instructions. CLINIC supports most of the proposed changes but opposes the elimination of current Form I-864W, Request for Exemption for Intending Immigrant's Affidavit of Support, and the transfer of questions on that form to the proposed Form I-485.

Embracing the Gospel value of welcoming the stranger, CLINIC has promoted the dignity and protected the rights of immigrants in partnership with a dedicated network of Catholic and community legal immigration programs since its founding in 1988. CLINIC's network, originally comprised of 17 programs, has now increased to more than 450 diocesan and community-based programs in 48 states and the District of Columbia. CLINIC is the largest nationwide network of nonprofit immigration programs. Through its Affiliates, CLINIC advocates for the just and humane treatment of noncitizens. Nearly all of CLINIC's Affiliates offer legal services to help qualified noncitizens to apply for permanent residence, the form affected by this proposed rulemaking. Due to our work and the work of our Affiliates with noncitizens around the country, we welcome the proposed changes with the exception of some aspects detailed below. We support the overwhelming number of proposed changes to Form I-485. They improve the language and correct certain ambiguities or errors in the current version of the form. We do have specific objections and concerns, however, as stated below.

[1] Charles Wheeler, Senior Attorney/Director Emeritus; Josette Ramirez, Staff Attorney; and Carolina Rivera, Federal Advocate & Liaison Attorney authored these comments. The authors would like to thank Val Christian, Program Assistant for her contributions to this comment.

I. CLINIC OPPOSES THE PROPOSED REGULATION'S ELIMINATION OF FORM I-864W.

We oppose the aspect of these changes that would result in the elimination of Form I-864W and transfer those questions to the I-485. Page 8, Part 3 of the proposed Form I- 485 adds a new section where the applicant requests an exemption to the Form I-864 requirement: **"Request for Exemption for Intending Immigrant's Affidavit of Support under Section 213A of the INA**." It states specifically that "applicants for adjustment of status are no longer required to submit Form I-864W, Request for Exemption for Intending Immigrant's Affidavit of Support." Presumably, the current Form I-864W will be eliminated and the applicant will "instead request [the exemption and specify the particular exemption] by completing **Part 3."**

The prior administration eliminated Form I-864W, but this administration restored it as part of other roll-back efforts regarding public charge. During that two-year period, its elimination caused tremendous confusion and difficulty for those who were unable to apply for adjustment of status but who instead were applying for an immigrant visa. Form I-864W allows those who are subject to the public charge ground of inadmissibility but exempt from filing Form I-864 to specify the category of exemption and attach the necessary supporting documentation. Without this form, there is no way for immigrant visa applicants to claim exemption of the I-864 filing requirement to the Department of State's (DOS's) National Visa Center (NVC). Applicants instead were being given varying and conflicting information as to how to claim such exemption. Many immigrant visa applicants were no doubt unaware that they could even claim an exemption. Those that were aware had to individually explain why they were exempt in a separate request to the NVC through their general public inquiry email form.

When the Form I-864 affidavit of support requirements were implemented in December 1997, no Form I-864W existed. It wasn't until three years later that the Immigration and Naturalization Service (INS) created a specific form where the applicant could claim an exemption. Practitioners applauded its creation and implementation so that applicants did not have to explain why they were exempt either to the INS or DOS. Eliminating the Form I-864W after 20 years of its use would be an unfortunate return to the days when applicants had to plead their case to the DOS. CLINIC urges USCIS not to take such action.

II. CLINIC OPPOSES THE PROPOSED LANGUAGE IN PART 3 OF THE FORM I-485

The proposed Part 3 of the I-485, Request for Exemption for Intending Immigrant's Affidavit of Support Under Section 213A of the INA, is where applicants would claim an exemption of the I-864 requirements. The proposed language incorporates the four most common categories where applicants for adjustment of status or an immigrant visa can claim an exemption. CLINIC recommends that a more thorough list of those who are subject to the public charge ground of inadmissibility but exempt from the I-864 requirements be included, such as the following: diversity visa lottery winners; alien entrepreneurs; and employment-based applicants where the Form I-140 petitioner is not a relative of the applicant and the applicant does not have a relative with a significant ownership interest in the business that filed the I-140.

The current Form I-864W is filed by adjustment or immigrant visa applicants who: (1) have earned or been credited with 40 qualifying quarters under Social Security law; (2) are widows or widowers; (3) are domestic violence victims; or (4) are children who would have derived citizenship upon immigrating pursuant to INA § 320.

The regulations reference victims of domestic violence self-petitioners who were granted relief under the Violence Against Women Act (VAWA) as exempt from the affidavit of support requirement at the adjustment of status stage.[2] But subsequent legislation exempted them from the public charge ground of inadmissibility.[3] Applicants exempt

[2] 8 CFR § 213a.2(a)(2)(ii)(A).

[3] INA § 212(a)(4)(E)(i), (iii).

from public charge are also exempt from the affidavit of support requirements and do not have to separately claim an exemption to filing an I-864. But at the present time VAWA self-petitioners are still required to complete and file an I-864W, even though they shouldn't be required to. Fortunately, the final regulations defining public charge officially designated VAWA recipients as exempt from public charge.[4] Unfortunately, when this administration restored Form I-864W, it retained that language requiring this exemption for VAWA self-petitioners.

If the USCIS chooses to eliminate the I-864W and migrate the exemption categories into Part 3 of the I-485, it should eliminate VAWA self-petitions from the list, as it is done with other categories exempt from the public charge ground of inadmissibility, such as refugee applicants.

III. CLINIC RECOMMENDS THE FOLLOWING ADJUSTMENTS TO THE PROPOSED CHANGES TO FORM I-485

CLINIC recommends the following adjustments to the proposed changes to Form I-485 to promote better understanding of the form:

- Page 1, Part 1, Number 2, should include "(if applicable)" after "Other Names You Have Used Since Birth," as this question will not apply to everyone.
- Page 2, Part 1, Number 4, it is redundant to both ask if the applicant has an A-number and then ask for an "A-number (if any)." The form could instead say: "If you answered yes, provide your A-number" (as it does later on in the form on page 4 as to applicant's social security number).
- Page 2, Part 1, Number 10, there should be check boxes next to each option as it will be confusing to fill out this part of the form without check boxes.
- Page 6, Part 2, Number 3c, the way the form is currently formatted makes it look like "Religious Worker" is a sub-heading for the rest of the Special Immigrant categories which do not relate to religious workers.
- Page 8, Part 4, Number 1, the wording of this question is confusing – it appears to be asking whether the applicant has applied for a visa outside of the United States to get LPR status *in* the United States but as written, it reads as whether the applicant has applied in (physically in the US) for an immigrant visa, then asks for location of US embassy or consulate, which would not be in the US. The previous language was "Have you ever applied for an immigrant visa to obtain permanent resident status at a U.S. Embassy or U.S. Consulate abroad?" The former language is clearer.
- Page 9, Part 4, Number 8, it is unclear why USCIS needs to know an applicant's source of financial support if applicant was unemployed just before entering the U.S.
- Page 17, Part 9, NOTE at bottom of the page, the note should refer to Numbers 58-68 because Number 57 already has a NOTE after the question asking for more information if the applicant marked yes to that question.

IV. CLINIC RECOMMENDS THE FOLLOWING CHANGES TO THE PROPOSED CHANGES TO THE INSTRUCTIONS FOR FORM I-485

CLINIC recommends the following changes to the proposed changes to the instructions for Form I-485 for better clarity.

<u>Changes to VAWA section (pp. 23-24)</u>

- The word "confidentiality" was removed from the sentence starting "Special confidentiality protections" to now say only "Special protections." It is unclear why since 8 USC § 1367 does provide confidentiality

[4] 87 Fed. Reg. 55472, 55638 (Sept. 9, 2022), adding 8 CFR § 212.23(a)(20).

protections for VAWA adjustment applicants.[5]

- The NOTE that starts "VAWA-based applicants for adjustment of status are exempt" discusses how VAWA applicants need not have been inspected and admitted or paroled, then ends with "See Instructions for Form I-864 for more information…" This does not make sense as Form I-864 does not pertain to inspection and admission or parole. Further, the I-864W is purportedly no longer required for VAWA applicants so reference to Form I-864 is unnecessary, unless stating that it is no longer required. Further, the word "parole" in this paragraph should be "paroled."

Changes to Special Immigrant Juvenile Status ("SIJS") section (p. 26)

- The last sentence of this section refers the applicant to the USCIS webpage for the Form I-485 checklist, but there is a USCIS webpage more specific to those granted special immigrant juvenile status that includes a list of what to submit: https://www.uscis.gov/green-card/green-card-eligibility/green-card-based-on-special-immigrant-juvenile-classification. CLINIC recommends the webpage be substituted for the more specific one on SIJS.

T nonimmigrant status section (pp. 27-31)

- The proposed language, "If you are a derivative applicant, you may file Form I-485 only once the principal applicant has met the eligibility requirements for principals and has filed Form I-485" does not account for the fact that qualifying derivatives can file their Form I-485 at the same time as the principal. The principal does not need to have already filed their Form I-485 before the derivative can file theirs.
- The word "confidentiality" was removed from the sentence starting "Special confidentiality protections" to now say only "Special protections." It is unclear why since 8 USC § 1367 does provide confidentiality protections for T status adjustment applicants.[6]
- Under Evidence of Continuous Physical Presence, it says "You do not need to submit documentation showing that you were in the United States on every single day during the requisite period of physical presence, but you should not have significant chronological gaps in your documentation." USCIS should provide more specific instructions on this or define what they mean when they say "significant chronological gaps" since different officers accept different periods of time for gaps between evidence, though the standard seems to be at least every 3-4 months, to avoid unnecessary RFEs, NOIDs, and denials.[7]
- Under Evidence of Good Moral Character, the instructions don't specify the period for which the applicant has to show good moral character, which according to the policy manual is for the time "since first being admitted as a T-1 nonimmigrant and during the entire time your Form I-485, Application to Register Permanent Residence or Adjust Status, is pending."[8]

U nonimmigrant status section (pp. 31-34)

- The word "confidentiality" was removed from the sentence starting "Special confidentiality protections" to now say only "Special protections." It is unclear why since 8 USC §1367 does provide confidentiality protections for U status adjustment applicants.[9]
- The following language was removed: "Evidence of Financial Support - If you are filing Form I-485 as a U nonimmigrant, you do not need to submit evidence of financial support." It is unclear why it was removed,

[5] 8 U.S.C. § 1367(a)(1)(A)
[6] 8 U.S.C. § 1367(a)(1)(F)
[7] Neither 8 CFR § 245(e)(2)(i) nor 8 CFR § 245.22 provide language describing how much time between dates for evidence of physical presence is allowed.
[8] 8 CFR § 245(a)(5)
[9] 8 USC § 1367(a)(1)(E)

as this would be helpful to ensure applicants understand they do not have to submit an affidavit of support. It might be helpful to add the following language: "If you are filing Form I-485 as a U nonimmigrant, you do not need to submit evidence of financial support. U nonimmigrants are exempt from the public charge ground of inadmissibility and, therefore, do not need to submit form I-864."[10]

- Under Additional Evidence Requirements, the statement "In addition, principal applicants must submit evidence that they complied with reasonable requests for assistance in the investigation or prosecution of the qualifying criminal activity" should be added as no. 4 to that section since it is an additional requirement.[11] It can be a little confusing that it is separate and apart.
- Under Evidence of Continuous Physical Presence, it says "You do not need to submit documentation showing that you were in the United States on every single day of the three-year U nonimmigrant status period, but you should not have significant chronological gaps in your documentation." USCIS should provide more specific instructions on this or define what they mean when they say "significant chronological gaps" since different officers accept different periods of time for gaps between evidence, though the standard seems to be at least every 3-4 months to avoid unnecessary RFEs, NOIDs, and denials.[12]

Asylum Status section (p. 34)

- The following language was removed: "Evidence of Financial Support – If you are filing Form I-485 as an asylee, you do not need to submit evidence of financial support." It is unclear why this was removed, as it would be helpful to ensure applicants understand they do not have to submit an affidavit of support. It might be helpful to add the following language: "If you are filing Form I-485 as an asylee, you do not need to submit evidence of financial support. Asylees are exempt from the public charge ground of inadmissibility and, therefore, do not need to submit form I-864."[13]

Cuban Adjustment Act section (pp. 33-34)

- The following language was removed: "Evidence of Financial Support – If you are filing Form I-485 based on the CAA, you do not need to submit evidence of financial support." It is unclear why this was removed, as it would be helpful to ensure applicants understand they do not have to submit an affidavit of support. It might be helpful to add the following language: "If you are filing Form I-485 based on CAA, you do not need to submit evidence of financial support. Those adjusting status under the CAA are exempt from the public charge ground of inadmissibility and, therefore, do not need to submit form I-864."[14]
- Under the two bullet points beneath "Additional Evidence Requirements," there should be a bullet point referring to the inspection and admission or parole requirement, even though it is subsequently discussed to make clear that this very important requirement also exists from the outset.[15]
- There is no clear divide between the "Evidence of Cuban Citizenship" section and the section that discusses the requirements for derivative applicants. A title such as "Derivative Applicants" should be inserted between these two sections.

CAA for Abused Spouses and Children section (pp. 35-36)

- Under the Additional Evidence Requirements section, the phrase "Evidence that the abusive Cuban spouse

[10] 8 CFR § 212.23(a)(19)(i)
[11] 8 CFR § 245.24(e)(1)
[12] Neither 8 CFR § 245.24(9) nor 8 CFR § 245.22 provide language describing how much time between dates for evidence of physical presence is allowed.
[13] 8 CFR § 212.23(a)(2)
[14] 8 CFR § 212.23(a)(6)
[15] CAA § 1

died within two years of when you filed an application for adjustment of status (if applicable)" was changed to "If your Cuban spouse is deceased, evidence that the abusive Cuban spouse died within two years of when you filed an application for adjustment of status (if applicable)." The word "abusive" should be added to the new phrasing to make it: "If your abusive Cuban spouse is deceased…" Otherwise, this is good phrasing since this will not apply to all cases, only those where the death of the abusive spouse occurred. In the same sentence, therefore, "If your Cuban spouse is deceased" and "(if applicable)" are repetitive.
- Given *Matter of Cabrera-Fernandez*, a note should be made in reference to its ruling that those released on conditional parole rather than humanitarian parole have not been inspected and admitted or paroled.[16]

V. CLINIC APPLAUDS THE FOLLOWING PROPOSED CHANGES TO THE INSTRUCTIONS FOR FORM I-485

CLINIC applauds the following proposed changes to the instructions for Form I-485 for better clarity.

Changes to VAWA section (pp. 23-24)

- The word "immigrant" was added before the word "visa" in the sentence beginning "If a visa is immediately available." This is better, clearer wording.
- The wording under the "Derivative Applicants" section was changed from "U.S. citizen son or daughter" to "U.S. citizen over 21 years old," which is going to be easier to understand for the average applicant.

Changes to Special Immigrant Juvenile Status ("SIJS") section (p. 26)

- The word "findings" was changed to "determinations," relating to determination made by a juvenile court as to the best interest of the applicant. This is an improvement as the new language better matches the language in the policy manual.[17]
- The phrase "If you are filing your Form I-485 under the special immigrant category" was added, which is good as it makes clearer the statement following it about the EB-4 preference category.
- The word "immigrant" was added before the word "visa" in the sentence beginning, "If a visa is immediately available," which we believe is better wording.

Changes to Certain Afghan or Iraqi national (Form I-360) section (p. 26)

- The following was added: "Form DS-157, Petition for Special Immigrant Classification for Afghan SIV Applicants." This is a good change, as it makes the requirements for adjustment of status under this category clearer.
- The word "immigrant" was added before the word "visa" in the sentence, "If a visa is immediately available," which I think is better wording.
- A Department of State website link was added for applicants to get more information on who qualifies for this type of adjustment, which should be helpful.

T nonimmigrant status section (pp. 27-31)

- Overall requirements to adjust status under this category were reformatted from one large paragraph to bullet points, which makes them much clearer and easier to understand.
- The following language was added: "You must file your Form I-485 with USCIS, even if you are in removal proceedings in Immigration Court. USCIS has exclusive jurisdiction over adjustment of status applications

[16] Matter of Cabrera-Fernandez, 28 I&N Dec. 747 (BIA 2023)
[17] USCIS Policy Manual, Volume 6, Part J, Section C

filed under INA section 245(l).” This makes the instructions more complete and correct as well as helpful to applicants for whom this is applicable to make clear where jurisdiction lies.
- The word “abuser” was replaced with “traffickers or perpetrators” which is more in line with the T status category.
- Under the heading “Discretion,” it states that “If you answered ‘Yes’ to any question in Part 9. General Eligibility and Inadmissibility Grounds, and any of the acts or circumstances relate to you having been a victim of a severe form of trafficking, include a detailed description of how your victimization relates to the inadmissibility ground(s). USCIS may consider all factors, including those acts that would otherwise make you inadmissible.” This is a good change, as this will be helpful to applicants to ensure that they address any such issues of inadmissibility sufficiently in their application.

U nonimmigrant status section (pp. 31-34)

- Overall requirements to adjust status under this category were reformatted from one large paragraph to bullet points, which makes them much clearer and easier to understand.
- The word “qualifying” was added before “criminal activity,” which makes the language more correct and specific.
- The following language was added: “You must file your Form I-485 with USCIS, even if you are in removal proceedings in Immigration Court. USCIS has exclusive jurisdiction over adjustment of status applications filed under INA section 245(m).” This makes the instructions more complete and correct as well as helpful to applicants for whom this is applicable to make clear where jurisdiction lies.
- Under Additional Evidence Requirements, the following language was added: “Evidence you were lawfully admitted in U nonimmigrant status and continue to hold such status at the time you file Form I-485.” This is helpful and makes the instructions more complete and whole.
- The title “Failure to Maintain Continuous Physical Presence” was added above the section describing it. This is helpful to break up the sections under U-Visa and made it clearer that this is an important issue to avoid.
- Under Evidence of Compliance with Reasonable Requests for Assistance in the Investigation or Prosecution of the Qualifying Criminal Activity, the phrase “law enforcement authorities” was replaced with: “a law enforcement agency or official that had responsibility for the investigation or prosecution of persons in connection with the qualifying criminal activity.” This is better language as it makes it clearer that the certifying officials do not necessarily have to be law enforcement officers such as police but can be other organizations, such as any that investigated the crime.[18]
- Throughout the section titled “Evidence of Compliance with Reasonable Requests for Assistance in the Investigation or Prosecution of the Qualifying Criminal Activity,” the phrase “criminal investigation” was replaced with only “investigation,” which is better language as not necessarily all investigations that may pertain to U Visa cases will all take place in criminal court or by authorities investigating crime. The same is true as to the change from “criminal proceedings” to “any proceedings.”

Asylum Status section (p. 34)

- The following language was added to the beginning of this section: “you are not firmly resettled in any foreign country, and you still meet the definition of refugee found in INA section 101(a)(42)(A) or are the spouse or child of such an asylee. Only time spent in the United States will count toward the one-year physical presence requirement. If you travel outside the United States after being granted asylum, you will not meet the one-year physical presence requirement until the total amount of time spent in the United States is one year.” This is a good addition as it rounds out the requirements and makes them more complete. It

[18] 8 CFR § 245.24(e)(1)

might be even more helpful to change the phrasing of the second statement above to ensure applicants understand that the total time spent in the U.S. doesn't have to be consecutive.[19]

- The following language was added: "Each applicant must file a separate Form I-485 regardless of whether they are a principal or a derivative asylee." This is a good addition to avoid confusion sometimes caused by fact that you can file Form I-589 for the principal and include derivatives directly on the form, to ensure that applicants know this is not the case for the asylee adjustment process.[20]
- The following language was added: "Asylees are not required to submit a photocopy of their birth certificate; however, if the birth certificate is available, asylees should submit a copy of the birth certificate." This is a good addition, so as not to discourage applicants from submitting adjustment applications when otherwise eligible just because they cannot access a copy of their birth certificate.

Refugee Status section (p. 35)

- The phrase "must apply" was added to the beginning section. This is a good addition since it is a requirement, and the previous language did not express this.[21]
- The following language was added: "Only time spent in the United States will count toward the one-year physical presence requirement. If you travel outside the United States during your first year of residence as a refugee, you will not meet the one-year physical presence requirement until the total amount of time spent in the United States is one year." This is a good addition as it rounds out the requirements and makes them more complete. It might make sense to change the phrasing to ensure that applicants understand that the total time spent in the U.S. doesn't have to be consecutive.[22]
- The following language was added: "Each applicant must file a separate Form I-485 regardless of whether they are a principal or a derivative refugee." This is a good addition to avoid confusion sometimes caused by the fact that the principal refugee applicant can include derivatives who are also granted refugee status when the principal is, to ensure that applicants know this is not the case for the refugee adjustment process.[23]
- The following language was added: "Refugees are not required to submit a photocopy of their birth certificate; however, if the birth certificate is available, refugees should submit a copy of the birth certificate." This is a good addition, so as not to discourage applicants from submitting adjustment applications when otherwise eligible just because they cannot access a copy of their birth certificate.[24]

Cuban Adjustment Act section (pp. 33-34)

- The statement "Whether your relationship began before or after your Cuban spouse or parent became a lawful permanent resident does not matter" was changed to "It does not matter whether your relationship began before or after your Cuban spouse or parent became a lawful permanent resident." This is a good change as it entails less confusing wording.
- Under the section that discusses derivatives, the following language was added: "Evidence that you are the spouse or child of the qualifying Cuban applicant." This is good addition to ensure that derivatives do not leave out this required evidence.
- Under the section that discusses derivatives the phrase "evidence of Cuban birth or citizenship" was changed to "evidence of being a Cuban native or Cuban citizen." This is a good change as it is a better way of phrasing this.
- The following language was added: "The requirements of 8 CFR 245.2(a)(3)(iv) to submit (1) Form I-485

[19] USCIS Policy Manual, Volume 7, Part M, Chapter 2
[20] Id. at Chapter 4, Section A
[21] 8 CFR § 209.1(a)(1)
[22] 8 U.S.C. § 1159(b)(2)
[23] USCIS Policy Manual, Volume 7, Part L, Chapter 4, Section A
[24] Id. at Section B

Supplement A, (2) Form I-643, and (3) clearances from local police jurisdictions are satisfied by completing this Form I-485 and the background checks conducted by USCIS. Applicants applying based on the CAA do not need to submit Form I-485 Supplement A, Form I-643, or clearances from local police jurisdictions." This is a good addition to avoid applicants completing or submitting unnecessary documentation when USCIS biometrics is sufficient.

CAA for Abused Spouses and Children section (pp. 35-36)

- Under the Additional Evidence Requirements section, the phrase "Evidence that the termination of your marriage was connected to the abuse (if applicable)" was changed to "If your marriage was terminated, evidence that the termination of your marriage was connected to the abuse (if applicable)." This is better phrasing since this will not apply to all cases, only those where divorce occurred. In the same sentence, therefore, "If your marriage was terminated" and "(if applicable)" are repetitive.

VI. CONCLUSION

While CLINIC supports most of the proposed changes to the Application to Register Permanent Residence or Adjust Status, we also urge USCIS to consider the proposed changes detailed above such as, not eliminating the Form I-864W, changes regarding wording in the Form I-485 and its instructions, and language regarding VAWA self-petitioners in Part 3 of the I-485. CLINIC applauds the efforts of the agency to improve the language and correct certain ambiguities or errors in the current version of the form. These changes will assist legal services organizations that directly serve noncitizens filing these applications.

Thank you for your consideration of these comments. Please do not hesitate to contact Karen Sullivan, Director of Advocacy, at ksullivan@cliniclegal.org, with any questions or concerns about our recommendations.

Sincerely,

Anna Gallagher
Executive Director