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January 8, 2024

Samantha Deshommes
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 Deshommes,

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 November 9, 2023.

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 commends the agency for positive changes made to the U visa forms.
 - a. Shorter Length for Form I-918 and Form I-918A

The ILRC commends USCIS for reducing the length of both Form I-918 and Form I-918 Supplement A (“Form I-918A”). Shorter forms are more user-friendly, particularly for pro se applicants, and more efficient for the agency.¹

b. Streamlining Form Sections

We also appreciate the measures the agency has taken to streamline the form, which makes the form less intimidating and easier to access for survivors of trauma. These changes include:

- Streamlining the address sections by combining the foreign and domestic address sections on both Form I-918 and Form I-918A;
- The addition of Questions 14 and 15 in Part 1, Information about You, on Form I-918 and Questions 12 and 13 in Part 1, Information about your Qualifying Family Member, on Form I-918A, which provide options, and may reduce confusion, for applicants who may not have a passport or I-94;
- The addition of a chart for arrivals and departures from the United States, which takes up less space and makes it easier for applicants to accurately provide information for multiple entries;
- The addition of “if applicable” for an applicant’s middle name, which will reduce issues that may result from blank entries on the form;
- The removal of the requirement for mailing addresses for interpreters and preparers;
- The removal of the unnecessary question about having received voluntary departure;
- Combining questions about uncommon grounds of inadmissibility, such as combining whether the applicant intends to engage in prostitution, gambling, bootlegging, or child pornography and combining hijacking, sabotage, and assassination;
- The removal of questions regarding membership in a Community Party or Nazi Party;
- The removal of questions regarding uncommon grounds of inadmissibility such as J-1 visas, 274C final orders and civil penalties, avoiding draft, communicable disease, polygamy, stowaway, use of biologic agent, aiding terrorism, etc.;
- The addition of Questions 2 and 3 in Part 1, Family Member’s Relationship To You, on Form I-918A which will allow for easier triage and matching files between derivative petitions and principal petitions that have already been filed;
- The removal of unnecessary questions about spouse and children from Form I-918A; and
- The removal of questions regarding having a physical or mental disorder and behavior from Form I-918A;
- The removal of questions regarding being a drug abuser or drug addict from Form I-918A;
- Changing the order of the first questions on Form I-918B so that the applicant’s name is first and not their A#, which is a more user-friendly order for certifiers;
- Changing the language in new Question 3 in Part 4 on Form I-918B to check the category under which the qualifying criminal activity “appears” to fall;
- Adding new Question 4 in Part 4 on Form I-918B that gives agencies the space to explain how the criminal activity is similar to the categories noted in the list of qualifying crimes, with the example of felonious assault given; and
- The addition of language clarifying that USCIS (not the certifying agency) is solely responsible for determining whether the crime is a “qualifying criminal activity” for purposes of U eligibility on Form I-918B.

¹ We note that this change is in line with President Biden’s Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government, and we urge the agency to continue to assess immigration benefit forms with this customer experience and service lens.

c. Gender Inclusive Options and Language

We applaud the agency for its use of gender inclusive options on Form I-918 and Forms I-918A and I-918B. We have commended USCIS for this change on other forms revisions and reiterate our thanks here. Having the option of “Another Gender Identity” is inclusive for all applicants and we urge the agency to make this change to all immigration benefit forms. Relatedly, we applaud the gender-neutral use of “qualifying family member” as opposed to “he or she.”

d. Safe Address Guidance

We are also appreciative of the safe address guidance on the form itself. This change brings the form in line with the USCIS Policy Manual for which updated guidance was published in April 2023.² However, we urge USCIS to go further and provide this information on all forms where survivors of crime may need to protect their addresses (e.g. Form I-485, Application to Register Permanent Residence or Adjust Status).

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

While we are appreciative of the positive changes made to Form I-918 and Form I-918A mentioned above, we offer the following suggestions to aid the agency in its effort to streamline the form and to make the process easier for applicants and adjudicators alike.

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 introduction 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. USCIS should also clarify in this section that traffic citations do not need to be included. Over-broad questions 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 Question 8, there is also a risk that relevant information will be omitted unintentionally, which could lead to a finding of fraud during an adjudication or even later at adjustment or naturalization. Questions like this disadvantage pro se applicants in particular, as they require legal expertise.

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

USCIS should 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.

² <https://www.uscis.gov/newsroom/alerts/uscis-updates-policy-guidance-on-safe-mailing-address-and-case-handling-procedures-for-certain>.

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.”³ 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.⁴ 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.

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. While it is important to help applicants flag potential immigration issues for which they should seek a waiver, some of the added questions are unnecessary and redundant. For example, the new Question 5 in Part 2 asks if the applicant has ever departed the United States after having been ordered excluded, deported, or removed. However, Question 4 asks whether the applicant has been issued a final order; Question 3 asks for removal proceedings with date of action; and the section begins by asking for a list of all entries and departures. Thus, Question 5 is unnecessary and redundant.

Similarly, the new Question 6 in Part 2 asks specifically whether the applicant has entered the United States without being inspected and admitted or paroled. However, on the same page, applicants are required to fill out a chart with all entries and manners of entries. Thus, this question is entirely repetitive and should be removed.

Moreover, the current question regarding whether someone has been denied a visa or denied admission to the United States has been split into two questions. Given how rare it is for U visa petitioners to be denied a visa prior to applying for U nonimmigrant status and the potential difficulty of parsing the difference between these two types of denials for pro se petitioners, we recommend re-combining these questions to streamline the application.

The new Question 3 regarding the type of immigration proceedings the petitioner was in should include an “unknown” option. This option is critical for petitioners, particularly those who are unrepresented, who may not know what type of proceedings were brought against them. The new Question 4 and Question 5 should also include a similar “unknown” option for petitioners who may not know that they had an expedited removal order or a

³ 16 I&N Dec. 581, 584 (BIA 1978).

⁴ See *Roper v. Simmons* 543 U.S. 551, 570 (2005).

removal order in absentia. Here, too, such an option is important to make sure that petitioners with incomplete information can answer the question to the best of their ability without incurring suspicions of fraud. Moreover, USCIS should rely on its own agency records to determine a U petitioner's immigration history and not assume that conflicting information provided by a petitioner is willful or fraudulent.

In addition, the new Question 26 in Part 2 is redundant and overbroad. It asks whether the petitioner has ever submitted fraudulent or counterfeit documentation to any U.S. government official. If this question is trying to solicit information about the document fraud inadmissibility ground at INA § 212(a)(6)(F), it is overbroad as that ground requires the person to be the subject of a final order for a violation of INA § 274C. See current Form I-918 Part 3 Question 22 ("Are you now under a final order or civil penalty for violating section 274C of the INA (producing and/or using false documentation to unlawfully satisfy a requirement of the INA)?"). If this new question is instead trying to solicit information about fraud more generally, it is unnecessary, as the following new Question 27 asks whether the petitioner has ever "lied about, concealed, or misrepresented any information." New Question 26 should thus be eliminated.

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. We agree that 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. 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

The proposed Form I-918B is two pages longer than the current form and contains more narrative portions for the certifier to complete. The expanded length and more onerous questions will increase the amount of time certifiers need to complete the form, which in turn will delay and impede the certification process. This added inefficiency will create further barriers for immigrant survivors of crime to access U nonimmigrant status, particularly unrepresented petitioners. 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. Reduce the expanded questions and space devoted to questions around culpability of the victim.

Proposed Form I-918B expands the questions about potential culpability of the victim. This expansion in and of itself gives undue attention to the rare situations where a victim is culpable for the crime committed against them. Moreover, Questions 5 and 6 in Part 4 around potential culpability in the qualifying criminal activity solicits information, without guidelines, from certifiers to make a determination of culpability even where a record does not exist. Specifically, Question 5 allows for the certifying agency to explain "why [they] feel the victim may be or is culpable." The breadth of this question, without qualification, may cause issues for applicants because it allows for an agency official who might not have the proper training to assign culpability where there may be none or not to recognize situations that arise from being the victim of a crime. We appreciate the instructions note that oftentimes a perpetrator will accuse the victim of a crime, as part of the power and control asserted by the abuser in domestic violence cases, for example; nevertheless, the addition of this question on Form I-918B may unnecessarily solicit subjective and unfounded allegations of culpability or backstories about the crime. The response to this question will depend on the certifying agencies' training in domestic violence dynamics in addition to how well the applicant can communicate with the certifying agency to whom the crime was reported. There are oftentimes language barriers between the certifying agency who created the report and the U petitioner. The agency should thus reduce the expanded questions about culpability.

- b. Streamline the questions related to “helpfulness of victim” and remove duplicate questions around helpfulness.

The agency should revise Form I-918B so that certifying agencies do not have to answer similar questions around the applicant’s helpfulness. Question 2 and Question 3 of Part 6 of Form I-918B should be streamlined and consolidated into one question. If the purpose of Part 6 is to identify and determine the “helpfulness of the victim,” the agency can obtain this information by streamlining and leaving Question 1, “does the victim possess information concerning the qualifying criminal activity listed in Part 4” and a consolidated Question 2 and Question 3 to identify the helpfulness of the victim. A consolidated Question 2/3 could still allow the certifying agency to inform USCIS on how the victim was helpful and avoid redundancy.

- c. 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 the 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 proposed Form I-918B help serve this purpose and instead unnecessarily lengthen the form and burden certifiers.

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 and remove repetitive and unnecessary questions. For example, in Part 4 regarding the qualifying criminal activity and where it occurred, USCIS should eliminate the space for where the crime occurred. Where the activity occurred can be collected with the certifying agency information and with a simple answer to Question 7, “did the qualifying criminal activity occur in the United States.”

USCIS should also eliminate the space given in the new Question 2 in Part 6 to explain how the petitioner was helpful. If the certifier checks that the petitioner was helpful, that should be sufficient. USCIS should not second-guess the certifier’s assessment by asking for a detailed description that will burden the certifier.

In addition, the agency can eliminate the new Part 5, “Known or Documented Injury to the Victim.” The additional questions regarding medical attention and injuries are likely to be only partially known, at best, by the certifier. The certifier is told to answer the question based on the interaction with the applicant, which may have been limited in scope and duration. Details on the medical attention and injuries suffered should be left to the applicant who can submit their medical records, evidence of treatment, etc.

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