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BEFORE THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY
U.S. CITIZENSHIP AND IMMIGRATION SERVICES

Agency Information Collection Activities: Application) OMB Control Number
for Temporary Protected Status, Form I-821;) 1615-0043
Revision of a Currently Approved Collection)

COMMENTS OF WHITMAN-WALKER HEALTH ON THE PROPOSED REVISIONS TO
FORM I-821, APPLICATION FOR TEMPORARY PROTECTED STATUS

Pursuant to USCIS's May 23, 2016 Notice, 81 Fed. Reg. 32341, Whitman-Walker Health submits these comments on the proposed revisions to Form I-821. Based on our lawyers' extensive experience working with TPS-eligible individuals, particularly from Central America, we are concerned that certain questions in the revised I-821 are unclear and confusing, and quite difficult for many TPS-eligible individuals to answer accurately, and also unlikely to capture information relevant for USCIS to determine TPS eligibility. Specifically, we submit that the following questions should be deleted or substantially re-written: 10a through 10f in Part 2 (marital status and the immigration status of the applicant's spouse); 28a through 28d in Part 2 (information on other legal immigration proceedings); and 2b through 2d in Part 7 (dates and locations of countries traveled to while in route to the U.S.).

INTEREST AND EXPERTISE OF WHITMAN-WALKER HEALTH

Whitman-Walker Health is a nonprofit, community-based health center serving the Washington, D.C. metropolitan area, offering medical, mental health, dental, legal, and community health services, with specialties in HIV care and the health of the lesbian, gay, bisexual, and transgender (LGBT) community. Established in 1986, WWH's Legal Services Program provides pro

bono legal services to WWH patients, and to others in the greater Washington, DC community who identify as LGBT or who are living with HIV. A substantial number of WWH health care patients, and legal clients, are foreign nationals and noncitizens, and a substantial portion of our legal practice is devoted to immigration law. We assist many clients with applying or re-certifying for TPS. In several decades of advising and representing clients on TPS matters, we have developed considerable insight into the process.

SEVERAL OF THE QUESTIONS IN THE PROPOSED REVISED I-821 SHOULD BE ELIMINATED OR SUBSTANTIALLY REVISED

I. Questions in the Revised I-821 Should Be Clear and Straightforward and Capable of Being Answered Fully and Accurately By Most Applicants for TPS

While we appreciate the Department's efforts to constantly improve and update the forms and applications process, we are concerned that the proposed changes disproportionately burden applicants, particularly Central American applicants who are the most likely to use the new I-821 form.

According to a 2014 report by the Migration Policy Institute drawing on USCIS statistics, an estimated 279,000 of the total 340,310 TPS holders in the United States are from the Central America countries of El Salvador, Honduras, and Nicaragua.¹ Because nationals of these three countries constitute nearly 82 percent of all TPS holders in 2014, any proposed changes to the I-821 must be examined in relation to the relative challenges and needs of these applicants.

Almost 70 percent of Central American immigrants are Limited English Proficient (LEP), compared to 50 percent of the total foreign born population.² Central American immigrants are

¹ Madeline Messick & Claire Bergeron, *Temporary Protected Status in the United States: A Grant of Humanitarian Relief That Is Less Than Permanent*, Migration Info. Source (July 2, 2014), <http://www.migrationpolicy.org/article/temporary-protected-status-united-states-grant-humanitarian-relief-less-permanent>.

² Jie Zong & Jeanne Batalova, *Central American Immigrants in the United States*, Migration Info. Source (Sept. 2, 2015), <http://www.migrationpolicy.org/article/central-american-immigrants-united-states#Income and Poverty>.

also generally lower income and more affected by poverty.³ In 2013, 22 percent of Central American families in the United States lived in poverty compared to 18 percent of other immigrant groups and 10 percent of the native-born population.⁴

These vulnerabilities create barriers to meaningful legal access to qualified representation and many Central American immigrants may find themselves victims of fraud perpetrated by unlicensed providers.⁵ Concerns of access to justice for Central American immigrants, and TPS holders in particular, are compounded by the recent surge of migration over the Southwest Border that has overwhelmed immigration legal resources.⁶ As a result, many TPS applicants may not be in a position to receive legal assistance when completing the new I-821, and the form should be tailored to lessen the burden on pro se filers.

Time of residence within the United States is another relevant factor in the experience of Central American immigrants. Despite the recent influx of unaccompanied child migrants and families, Central American immigrants in 2015 were most likely to have come to the United States before the year 2000⁷, a consideration that is particularly relevant to TPS applicants from the DHS-designated countries of El Salvador, Honduras, and Nicaragua. In the case of TPS designation for El Salvador, applicants must have continuously resided in the United States since February 13, 2001 and been continuously physically present since March 9, 2001.⁸ The requirement for Honduran and Nicaraguan nationals extends nearly twenty years, with eligibility for TPS tied to continuous residence since December 30, 1998 and continual physical presence

³ *Id.*

⁴ *Id.*

⁵ Rebecca Keonig, *Differences Between Notarios, 'Notary' Is Immigration Scam*, Scripps Howard Foundation Wire (June 10, 2011), <http://www.shfwire.com/difference-between-notarios-notary-immigration-scam> (noting that many Central Americans are misled about the legal qualifications of notaries in the U.S. offering legal assistance).

⁶ Lorelei Laird, *Lawyers and Judges Face Hurdles in Struggle to Cope with Influx of Young Immigrants*, ABA Journal (Dec. 1, 2014), http://www.abajournal.com/magazine/article/lawyers_and_judges_face_hurdles_in_struggle_to_cope_immigrants.

⁷ *Supra* note 2.

⁸ U.S. Citizenship and Immigration Services, Department of Homeland Security, Extension for the Designation of El Salvador for Temporary Protected Status 81 Fed. Reg. 44645 (July 8, 2016).

since January 5, 1999.⁹ Given the unique demographics of the individuals most likely to use the new I-821 form, the Department must make a greater effort to ensure that proposed changes to the form lessen the burden on applicants.

II. Questions Related to Marital Status and Information on the Applicant’s Spouse (Part 2, Questions 10a Through 10f) Should Be Eliminated

The proposed new additions requesting detailed information on former and current spouses creates an excessive barrier on TPS applicants and their representatives under Part 2 of the form. In particular, proposed questions 10a, 10b, 10c, 10d, 10e, and 10f (regarding the term and duration of the applicant’s spouse’s TPS registration) seem unlikely to render meaningful responses and are likely to contribute to confusion. As practitioners with several years of experience representing immigration matters, our attorneys report that many of our clients do not know these precise dates for their own applications, much less the corresponding information for their current or former spouses.

Moreover, the questions related to the TPS status of a spouse, are irrelevant to TPS eligibility, except in the case of applicants seeking late initial registration under the provisions of 8 CFR § 224.2(f)(iv) through marriage to a person eligible for TPS or through a relationship to a parent eligible for TPS.¹⁰ Yet, even under the section of the CFR where family relationship may be pertinent, the proposed form does not fully capture the relevant information. Questions related to a parent’s TPS status are nowhere to be found in the proposed I-821 form. Moreover, the vast majority of applicants using the form are unlikely to be eligible for late initial registration, and far more commonly use the form to re-register for TPS benefits. For these

⁹ U.S. Citizenship and Immigration Services, Department of Homeland Security, Extension for the Designation of Honduras for Temporary Protected Status 81 Fed. Reg. 30331 (May 16, 2016); U.S. Citizenship and Immigration Services, Department of Homeland Security, Extension for the Designation of Honduras for Temporary Protected Status 81 Fed. Reg. 30325 (May 16, 2016).

¹⁰ See generally 8 CFR § 244.2.

individuals, marital status and spousal information is entirely irrelevant to their continued eligibility. Given the high probability of confusion, lack of meaningful information likely to be captured, and irrelevance to continued TPS eligibility, we encourage USCIS to eliminate proposed questions 10a through 10f from Part 2 of the I-821 form.

III. Questions Related to Immigration Removal Proceedings (Part 2, 28a Through 28d) Should be Eliminated

Applicants for TPS remain eligible for protection despite being subject to a final order of removal or being currently subject to removal proceedings.¹¹ Despite this, the current form I-821 and proposal for changes to a future I-821 continue to request nuanced legal questions relating to the procedural posture of any immigration proceedings in Part 2, questions 28a through 28d. Whether an immigration court proceeding constituted an “exclusion, removal/deportation, or rescission” is a complex question of law that even a sophisticated attorney would need to review by requesting the client’s record of proceeding and researching the relevant standard in place at the time. For a pro se LEP applicant previously or currently before an immigration judge, the likelihood of successfully navigating these questions is even slimmer. In our attorneys’ experiences, many clients view any meeting with an immigration official or agency to be a hearing before a judge, with the varying jurisdictional authorities of those entities blurred and collapsed into one daunting system.

Indeed, even for an applicant with a greater command of the English language (or a duly licensed attorney), question 28d struggles for plain meaning: “I am no longer in immigration proceedings, but I was in Federal court proceedings regarding immigration issues.” While our principal suggestion is to eliminate question 28d altogether, we recommend that the Department at least consider reforming this question. If the question’s imprecise language is designed to be a

¹¹ *Id.*

catchall for the otherwise very legally-specific terms enumerated directly before, then some prompt should precede this section of the form to clarify its purpose. We recommend including the prompt:

If you are not sure what kind of immigration proceedings, but were made to appear before an immigration judge in immigration court, you may select question 28d.

Without such clarification “immigration issues” in a “Federal court” proceeding could mean any number of proceedings to both a learned attorney as well as to a lay person. In the absence of some clarifying prompt, questions 28a through 28d should be eliminated from the form completely.

IV. Questions Seeking Dates of Stay in Third Countries While Coming to the U.S. (Part 7, Questions 2b Through 2c) are Very Difficult For Many TPS Applicants to Answer Accurately and Completely and Should Also Be Eliminated

Currently eligible applicants for TPS from El Salvador, Honduras, and Nicaragua have been here since at least the late 1990s/early 2000s. Many of them arrived to this country through irregular migration routes, crossing through Central America and vast expanse of Mexico before arriving to the United States more than fifteen years ago. Often they rely on smugglers with knowledge of the terrain to lead them from point to point and retain little, if any, knowledge of the borders and geography of the countries through which they travel.

For many, the initial date of entry to the U.S., while foggy in hindsight, has been reinforced in their recollection by the presence of that question on the initial I-821 form and all subsequent editions. Now, for the first time, the proposed I-821 form requests that applicants provide names of countries to which they traveled in route to the U.S. and dates of those travels in Part 7, Questions 2b, 2c, and 2d.

For many applicants, providing this information would be a challenge to remember more closely in time to the relevant travel. For applicants required to recall this information fifteen to

twenty years after the fact, it is exceedingly unlikely that they will be able to produce reliable information. The anticipated lack of any documentary evidence that may have existed so long after the travel also makes the accuracy of any information collected deeply questionable.

In addition, assuming the benefit of retaining the question outweighs the unreliability of the information it is designed to capture, the very layout of the question is problematic. In its current form the prompt provides one box at Question 2b to list all of the countries traveled to and one set of values to complete the dates of presence in the relevant country or countries. Because many Salvadoran, Nicaraguan, and Honduran migrants who traveled by land would have crossed at least two countries, Mexico and Guatemala, the proposed changes require those applicants to complete an addendum of information at the end of the form in order to provide a complete date set for both countries. This is yet another burden placed on applicants in exchange for USCIS collection of information likely to be of dubious accuracy.

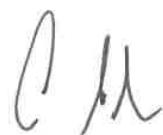
CONCLUSION

Thank you for this opportunity to comment. Should you have questions or if we can be of any further assistance, please contact Cori Alonso-Yoder, Supervising Attorney, at (202) 939-7664 or calonso-yoder@whitman-walker.org.

Respectfully submitted,



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