



December 31, 2012

Office of Management and Budget  
USCIS Desk Officer  
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**Re: Agency Information Collection Activities: Application for Travel Document, Form I-131; Revision of a Currently Approved Collection  
Department of Homeland Security, USCIS  
OMB Control Number 1615-0013**

Dear USCIS Desk Officer,

The American Immigration Council (AIC), the American Immigration Lawyers Association (AILA) and the Catholic Legal Immigration Network, Inc. (CLINIC), submit the following comments in response to the notice of revisions to Form I-131, Application for Travel Document and accompanying instructions published in the Federal Register on Friday, November 30, 2012.

AIC is a 501(c)(3) tax-exempt, not-for-profit educational and charitable organization whose mission is to educate the American public about the contributions of immigrants to American society, to promote sensible and humane immigration policy, and to advocate for the just and fair administration of our immigration laws. Founded in 1987, the AIC carries out its mission through its four components: the Legal Action Center, the Immigration Policy Center, the International Exchange Center, and the Community Education Center.

Founded in 1946, AILA is a voluntary bar association of more than 12,000 attorneys and law professors practicing, researching and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws.

CLINIC supports a national network of community-based legal immigration services programs. Its network includes over 210 affiliated immigration programs, operating out of 350 offices in 47 states. CLINIC's network employs roughly 1,200 staff, including attorneys and accredited representatives who, in turn, serve over 700,000 low income immigrants each year. CLINIC and its member agencies provide free and low-cost representation to family-based immigration applicants, applicants for Deferred Action for Childhood Arrivals (DACA), victims of trafficking and criminal predation, refugees, asylum-seekers, domestic violence survivors, Special Immigrant Juveniles, persons in removal proceedings, and applicants seeking Temporary Protected Status.

## INTRODUCTION

In its November 30, 2012 notice, U.S. Citizenship and Immigration Services (USCIS) seeks public input on proposed changes to Form I-131 and the accompanying instructions. In particular, USCIS has proposed revisions to the form instructions that provide guidance to DACA recipients on their eligibility for advance parole. Having identified no issues with the draft form, our comments are limited to the proposed revisions to the form instructions.

We commend USCIS for several changes to the instructions that clarify the eligibility criteria and required documentation for the various travel documents served by Form I-131. Notably, the new instructions provide a clear distinction between the purpose of, and eligibility criteria for, a "standard" advance parole document, which allows an inadmissible person to physically re-enter the United States for a specific purpose, as distinguished from humanitarian parole, a form of advance parole that permits individuals outside the United States to enter the country temporarily for urgent humanitarian reasons or significant public benefit. This is a welcome change, as the current instructions do not clearly distinguish between the two types of parole and create confusion among advance parole and humanitarian parole applicants.

In addition, we applaud USCIS for incorporating into the advance parole "Travel Warning," the Board of Immigration Appeals (BIA) holding in *Matter of Arrabelly and Yerrabelly*,<sup>1</sup> to clarify that leaving the United States with an advance parole document is not a "departure" for purposes of inadmissibility under INA §212(a)(9)(B) (for prior unlawful presence), if a person is paroled into the United States on the basis of that document.

## ADVANCE PAROLE FOR DACA RECIPIENTS

*Page 4, Section 3.a.(3); Page 7, Section 1.c.(5)*

We encourage USCIS to amend the I-131 instructions to better reflect the guidelines for advance parole and travel as outlined in the DACA FAQs.<sup>2</sup> The third FAQ under "Travel" states:

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<sup>1</sup> 25 I&N Dec. 771 (BIA 2012).

<sup>2</sup>

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=3a4dbc4b04499310VgnVCM100000082ca60aRCRD&vgnnextchannel=3a4dbc4b04499310VgnVCM100000082ca60aRCRD>

**Q3: If my case is deferred pursuant to the consideration of deferred action for childhood arrivals process, will I be able to travel outside of the United States?**

A3: Not automatically. If USCIS has decided to defer action in your case and you want to travel outside the United States, you must apply for advance parole by filing a Form I-131, Application for Travel Document and paying the applicable fee (\$360). ***USCIS will determine whether your purpose for international travel is justifiable based on the circumstances you describe in your request. Generally, USCIS will only grant advance parole if you are traveling for humanitarian purposes, educational purposes, or employment purposes.*** (Emphasis added).

While the instructions include the “humanitarian, educational, and employment purposes” language, they do not reflect the more flexible and generous tone of the FAQs, which allow USCIS to determine whether travel is “justifiable based on the circumstances” described, and include the word “generally” to leave the door open for the issuance of advance parole for other legitimate travel purposes. The instructions should be amended to clearly explain that advance parole for DACA recipients is not strictly limited to the enumerated circumstances, and include other legitimate reasons.

Moreover, the examples of “humanitarian” travel provided in the instructions are limited to travel to obtain medical treatment, attend funeral services for a family member, or visit an ailing relative. To receive DACA, an individual must have entered the United States before reaching the age of 16 and must have continuously resided in the United States since June 15, 2007. In many cases, DACA applicants have not departed the United States at all since they entered and have been unable to visit their loved ones due to the fear and inevitable uncertainty that is associated with their undocumented status. The DACA initiative was implemented to encourage undocumented youth who came to this country through no fault of their own to come out of the shadows and claim a semblance of a normal life. To further enhance this goal, DACA recipients should have the opportunity to connect with family members outside the United States to travel to a family wedding, to visit a family member who recently had a child, or for other compelling purposes. We recommend that the instructions on Page 4, Section 3.a.(3) be amended to read (new language indicated in ***bold italics***):

(3) Your Form I-821D, Consideration of Deferred Action for Childhood Arrivals, was approved, or U.S. Immigration and Customs Enforcement (ICE) deferred action in your case as a childhood arrival. ***Generally, USCIS will grant advance parole if you are traveling for educational, purposes, employment purposes, or humanitarian purposes.***

- (a) “Educational purposes” ***include (but are not limited to)*** semester abroad programs and academic research.
- (b) “Employment purposes” ***include (but are not limited to)*** overseas assignments, interviews, conferences, training, meetings with clients.
- (c) “Humanitarian purposes” ***include (but are not limited to)*** travel to obtain medical treatment, attend funeral services for a family member, or visit an ailing relative.

***Advance parole for DACA recipients is not limited to the above-referenced circumstances and may include other legitimate purposes such as traveling to attend a family wedding, or to visit a relative who recently had a baby. USCIS will consider each advance parole request on a case-by-case basis and will determine whether travel is justifiable based on the circumstances***

***described. While travel for vacation alone is generally not justifiable, travel for vacation combined with another legitimate reason may be a basis for granting advance parole.***

In addition, the instructions on Page 7, Section 1.c.(5) should be amended to read (starting with the second paragraph, new language indicated in ***bold italics***):

***You must complete Part 4 of the form, "Information About Your Proposed Travel." USCIS will consider each advance parole request on a case-by-case basis and will determine whether travel is justifiable based on the circumstances described.*** You must also provide evidence of your reason for travel outside of the United States including the date(s) of travel and the expected duration outside the United States. If your Advance Parole application is approved, the validity date(s) of your Advance Parole Document will be for the duration of the documented need for travel. Below are examples of acceptable evidence:

#### **Educational Purposes**

- (a) A letter from a school employee acting in an official capacity describing the purpose of the travel and explaining why travel is required or beneficial; or
- (b) A document showing enrollment in an educational program requiring travel; ***or***
- (c) ***Any other evidence demonstrating the need to travel for educational purposes.***

#### **Employment Purposes**

- (a) A letter from your employer or a conference host describing the need for travel; ***or***
- (b) ***Any other evidence demonstrating the need to travel for employment purposes.***

#### **Humanitarian Purposes**

- (a) A letter from your physician explaining the nature of your medical condition, the specific medical treatment to be sought outside of the United States, and a brief explanation why travel outside the U.S. is medically necessary; or
- (b) Documentation of a family member's serious illness or death; ***or***
- (c) ***Any other evidence demonstrating the need to travel for humanitarian purposes.***

#### **Other Purposes**

- (a) ***Any other evidence or documentation supporting a legitimate and compelling need for travel.***

#### **ADVANCE PAROLE TRAVEL WARNING**

*Page 4, Section 3.b.*

An individual seeking to weigh the risks he or she may be undertaking when traveling on advance parole may find it difficult to understand this section as it is currently written. A few changes to reorganize and streamline this section will offer much needed clarity to an extremely important portion of the

instructions. We propose that the first six subsections of the Travel Warning be consolidated into four subsections and amended to read:

- (1) Issuance of an Advance Parole Document does *not* guarantee that DHS will parole you into the United States upon your return. DHS will make a separate decision about whether to parole you each time you use an Advance Parole Document to return to the United States.
- (2) If you use an Advance Parole Document to leave and return to the United States, you will, upon your return, be an “applicant for admission.” If you are paroled into the United States, you will remain an “applicant for admission.”
- (3) As an applicant for admission, you will be subject to inspection at a port-of-entry. Subject to the exception outlined below in subsection (4), you may be denied admission if you are found to be inadmissible under any provision of INA section 212(a).
- (4) Leaving the United States with an Advance Parole Document is a “departure” from the United States for all purposes under the U.S. immigration laws except that it is not a “departure” solely for purposes of inadmissibility under INA section 212(a)(9)(B) (inadmissibility due to prior unlawful presence), if you are paroled into the United States on the basis of such Advance Parole Document. Any other departures without first obtaining Advance Parole may subject you to the inadmissibility provisions of INA 212(a)(9)(B).

In addition, Section 3.b.(8)(c) instructs individuals who have obtained advance parole, and who have been granted DACA after having been ordered deported or removed, to seek reopening and administrative closure or termination of proceedings before departing the United States. This instruction should be amended to encourage these individuals to seek reopening and administrative closure or termination *prior to* applying for advance parole. It is highly unlikely, given the extremely crowded nature of immigration court dockets across the country, that an individual would be able to reopen and obtain administrative closure or termination of his or her proceedings prior to the expiration of an advance parole document, particularly one issued for a limited time period in accordance with the instructions for DACA recipients. USCIS should encourage these individuals to obtain administrative closure or termination prior to applying for advance parole, so that they may avoid having to pay the \$360 I-131 filing fee twice.

#### **CONTACTING ICE FOR PAROLE REQUEST**

*Page 5, Section 3.c.(2)*

This section of the instructions provides information as to when an advance parole document may not be issued to an applicant in the United States. However, the instructions are confusing and may cause readers to conflate different types of parole—parole from immigration detention, under INA §236(a), and parole into the United States under INA §212(d)(5). USCIS can clarify this section simply by combining the note with the main text and making a few small changes. Specifically, section c. on page 5 should be amended to read:

If you are in the United States and seek Advance Parole, USCIS may not issue an Advance Parole Document to you if:

- (1) ...
- (2) You are in exclusion, deportation, removal, or rescission proceedings, unless you have received Deferred Action for Childhood Arrivals (DACA). You may, however, request Advance Parole from Immigration and Customs Enforcement (ICE). Please do not use this form if you are seeking release from immigration custody and you want to remain in the United States as a parolee. **A request for parole from immigration detention is different from a request for parole into the United States.** You may request parole from immigration detention from ICE.

## PHOTOGRAPHS

*Page 8, Section 2.a-b.*

The photograph specifications are the same regardless of the type of travel document the applicant is seeking. In order to provide clarity, we recommend that **section b.** be combined with **section a.** and the first paragraph of text be amended to read:

**If you are outside the United States and filing for a Refugee Travel Document, or if you are inside the United States and filing for an Advance Parole Document, or if you are applying for Humanitarian Parole (either on your own behalf or on behalf of another person):**

You **must** submit 2 identical color photographs of yourself (or the person on whose behalf you are applying for Humanitarian Parole) taken within 30 days of the filing of the application. The photos must have a white to off-white background, be printed on thin paper with glossy finish, and be unmounted and unretouched.

## BIOMETRICS SERVICES REQUIREMENTS

*Page 8, Section 3.*

Each time biometrics is mentioned in the instructions this section should be cross-referenced for additional details. Biometrics are required for all applicants for re-entry permits and all applicants for refugee travel documents. Biometrics may be required for individuals outside the United States who are applying for humanitarian parole. This section lays out the biometrics requirements clearly and succinctly.

## MISCELLANEOUS CHANGES

**Page 1: “What Is the Purpose of This Form?”** Under “Advance Parole Document,” the second “NOTE” should be amended as follows to clarify the visa requirement:

Upon returning to the United States, you must present your valid H, L, K, or V nonimmigrant visa and you must continue to remain eligible for that status. If you obtained H, L, K, or V nonimmigrant status while you were in the United States, then you need to obtain an H, L, K, or

V nonimmigrant visa at a U.S. Department of State (DOS) visa issuing post, ***before you may return to the United States.***

**Page 2: “Who May File Form I-131?”** Under “Re-entry Permit,” the last sentence in the first paragraph (a) should be amended to reflect the regulatory requirements under 8 CFR §223.2(b)(1),<sup>3</sup> the language in the “General Requirements” section, and the reality that many applicants for re-entry permits do in fact depart the United States after filing the application but before the biometrics appointment has been scheduled in order to begin a work assignment abroad or commence other necessary activities. These applicants then return to the U.S. to complete biometrics processing. The last sentence should read:

Failure to appear to be fingerprinted or for other biometrics services may result in a denial of your application. (See **General Requirements, Item Number 3., “Biometrics Services Requirement.”**)

In addition, the NOTE immediately following the preceding paragraph is confusing and should be amended to read:

***Your Re-Entry Permit*** may be sent to a U.S. Embassy or consulate or Department of Homeland Security (DHS) office abroad for you to pick up, if you request it when you file your application.

**Page 6: “General Instructions,” “How to Fill Out Form I-131.”** Item 3. states, “Answer all questions fully and accurately. If an item is not applicable or the answer is none, leave the answer blank.” We note that this is a change to the current instructions, which provide, “State that an item is not applicable with “N/A.” If the answer is none, write “None.” We strongly urge USCIS to retain the language of the current instructions regarding the use of “N/A” or “None.” Requiring or encouraging applicants to complete the form in this manner will ensure that the applicant has read and answered each and every question on the form and help avoid unnecessary Requests for Evidence.

**Page 9: “General Requirements,” “Expedite Request Instructions.”** This section should be amended to include expedited processing of non-humanitarian applications for advance parole. There are many reasons why an applicant for advance parole, including DACA-based applicants, might need to obtain expedited advance parole in order to depart the U.S. quickly. Moreover, the USCIS expedite criteria, which include “severe financial loss to company or individual,” and “extreme emergent situation,” do not distinguish between types of applications eligible for expedited processing and do not exclude advance parole.<sup>4</sup>

**Page 10: “What Is the Filing Fee?” “How to Check if the Fees Are Correct.”** This section should be moved to the top of the “What is the Filing Fee?” section so that applicants are immediately notified of

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<sup>3</sup> 8 CFR §223.2(b)(1) provides, “An applicant for a reentry permit must file such application while in the United States and in status as a lawful permanent resident or conditional permanent resident.” There is no regulatory requirement that the reentry permit applicant must complete biometrics processing before departing the United States.

<sup>4</sup>

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=16a6b1be1ce85210VgnVCM100000082ca60aRCRD>

the need to verify the current fees by checking the USCIS website or calling the USCIS National Customer Service Center.

#### **CORRESPONDING CHANGES TO THE AFM AND OTHER USCIS GUIDANCE**

Prior to implementing the proposed changes to the Form I-131 and instructions, USCIS should amend the Adjudicator's Field Manual (AFM) to mirror the changes and should also ensure that all guidance referenced by Immigration Service Officers in the course of adjudicating travel document applications is consistent with the new instructions. For example, AFM Chapter 54.3 should be revised to note that USCIS will issue an advance parole document if the applicant's removal proceedings have been administratively closed following a grant of deferred action. Such changes are necessary to ensure that all applications for travel documents, including those filed under the new criteria for DACA recipients are adjudicated fairly and consistently.

#### **CONCLUSION**

We appreciate this opportunity to comment on Form I-131, Application for Travel Document, and the accompanying instructions.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION  
THE AMERICAN IMMIGRATION COUNCIL  
THE CATHOLIC LEGAL IMMIGRATION NETWORK, INC.