



U.S. Citizenship
and Immigration
Services

Memorandum

TO: Boris Bershteyn
Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

THROUGH: Mark Schwartz *MS*
U.S. Citizenship and Immigration Services, Chief Information Officer

FROM: Richard A. Spires *RS*
Department of Homeland Security, Chief Information Officer

SUBJECT: Request for Emergency Office of Management and Budget Paperwork Reduction Act Clearance – Form I-821D, Consideration of Deferred Action for Childhood Arrivals, OMB Control Number 1615-NEW; Form I-765, Application for Employment Authorization, OMB Control Number 1615-0040

USCIS is requesting emergency approval of this collection of information under 5 CFR 1320.13.

As part of the administration of its programs and processes, U.S. Citizenship and Immigration Services (USCIS) exercises its prosecutorial discretion in part by, on a case by case basis, deferring removal action against certain individuals. Currently, requests for deferred action are received in the form of unsolicited correspondence from individuals to USCIS field offices across the country asking the agency to exercise its prosecutorial discretion favorably. The agency does not currently have a form for requesting deferred action.

On June 15, 2012, Secretary of Homeland Security Janet Napolitano issued a memorandum that should be used when considering whether to exercise prosecutorial discretion with respect to low priority cases involving individuals who meet the guidelines outlined below in order to ensure that immigration enforcement resources are not expended on these low priority cases but are instead appropriately focused on individuals who meet the Department's enforcement priorities. The guidelines set forth in the Secretary's memorandum cover individuals who:

- came to the United States under the age of sixteen;

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- have continuously resided in the United States for at least five years preceding the date of the Secretary's memorandum and are present in the United States on the date of the Secretary's memorandum;
- are currently in school, have graduated from high school, have obtained a general education development certificate, or are honorably discharged veterans of the Coast Guard or Armed Forces of the United States;
- have not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise pose a threat to national security or public safety; and
- are not above the age of thirty.

Recently published studies by outside groups estimated that 800,000 to 1.4 million individuals may meet the above guidelines and request consideration of deferred action from USCIS. This volume far exceeds the number of requests received in the past for deferred action: in fiscal year 2011, USCIS received 6,057 requests for deferred action, and in fiscal year 2012 (through May), USCIS has received approximately 2,593 requests for deferred action.

As a result, USCIS believes that the implementation of the USCIS process to consider requests for deferred action under the June 15, 2012 memorandum requires the creation of a new form, Consideration of Deferred Action for Childhood Arrivals (Form I-821D), and a revision to the existing Application for Employment Authorization (Form I-765). USCIS is requesting emergency processing of the information collection request contained in the revised forms. Emergency processing is justified here because significant public harm is reasonably likely to result if USCIS were to seek public comment before the process is implemented.

The population of individuals who may be eligible to receive deferred action under the new USCIS process is very vulnerable to fraud, particularly to schemes by unauthorized practitioners of immigration law or unethical attorneys. Based on USCIS and legacy INS's past experiences, there is significant concern that such practitioners will seek to take advantage of individuals who may be eligible for deferred action under the new process in the period between the announcement and the implementation of the procedures for accepting requests for deferred action. They are likely to do so by convincing potentially eligible individuals that these practitioners can secure them deferred action under the June 15th announcement and will charge them a fee for doing so before any procedures are implemented. The longer the period before the process is implemented – and thus the longer period before USCIS can give concrete details on how the process will work and provide a mechanism for accepting legitimate requests – the greater the risk that this fraud will occur and that it will be on a large scale. In order to prevent against a significant outbreak of fraud, the process needs to be implemented quickly. USCIS believes that it is in the public's best interest to forgo public notice and comment before implementation of these forms.

If OMB approves this emergency request, USCIS will seek public comment and publish 60 and 30 day notices in the Federal Register as required under 5 CFR 1320. USCIS will respond fully to all public comments in its subsequent information collection request.

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USCIS certifies that the requirements of 5 CFR 1320.13(a)(1) are met and that:

- The subject collection of information is needed immediately and is essential to the mission of the agency; and
- The agency cannot reasonably comply with the normal collection procedures because public harm is reasonably likely to result if normal clearance procedures are followed.

USCIS greatly appreciates the timely consideration of this request.