



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

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Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of the Director  
20 Massachusetts Avenue, NW  
Washington, DC 20529-2140

Submitted via e-mail: [publicengagementfeedback@uscis.dhs.gov](mailto:publicengagementfeedback@uscis.dhs.gov)

**Re: USCIS Policy Manual, Volume 9: Waivers, Part A, Waiver Policies and Procedures [9 USCIS-PM A]**

To Whom It May Concern:

The American Immigration Lawyers Association (AILA) submits the following comments in response to the new section of the USCIS Policy Manual (“Policy Manual”) on waivers, found at Volume 9, Part A.<sup>1</sup>

Founded in 1946, AILA is a voluntary bar association of more than 15,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. AILA’s 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. We appreciate the opportunity to comment on the Policy Manual and believe that our collective expertise and experience makes us particularly well-qualified to offer views that will benefit the public and the government.

As an initial matter, we greatly appreciate the opportunity to provide comments to USCIS on its Policy Manual. In the highly complex area of waiver adjudications, stakeholder feedback is essential to developing policies that are both consistent with the applicable legal authorities and sensible to practicalities. Accordingly, we applaud your efforts to solicit stakeholder feedback.

### **Comments to USCIS Policy Manual**

We offer comments on two key areas of the Policy Manual: Chapters 3 and 5 of Volume 9, Part A. What follows are some specific suggestions for further clarification within these sections of the Policy Manual.

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<sup>1</sup> Available at <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume9-PartA.html>.

***Chapter 3: USCIS should bolster language related to reviewing determinations by other agencies of erroneous inadmissibility findings.***

Chapter 3 states that officers must verify the ground(s) of inadmissibility including grounds both included explicitly in the waiver application and additional grounds not covered in the application. AILA recommends strengthening the language in this Chapter by inserting a note that there can be an error in a finding that has been made by an agency (such as CBP or DOS) prior to the waiver adjudication and specifying the method for review of such an error.

Specifically, in the current version of Chapter 3, USCIS has indicated narrow, defined situations in which another government agency's determinations can be reviewed. These situations are limited to where the finding of the other agency was "clearly erroneous," or if the applicant made a showing that they are "clearly not inadmissible." However, the guidance provides no further details as to the method for such review with other agencies in the text or by footnote.

For example, USCIS has provided prior guidance to officers as follows: "If the adjudicator determines that the Consular Officer erred and that the applicant is in fact admissible to the United States, the application should be returned to the DOS and the applicant notified. The database should be updated to reflect that the application has been closed and returned to DOS because the applicant is admissible."<sup>2</sup> This type of language would be a valuable addition to Chapter 3 of the Policy Manual.

***Chapter 5: USCIS should insert a caveat stating that discretionary factors listed in the chart are simply examples.***

AILA notes that the chart entitled, "Non-Exhaustive List of Factors that May Be Relevant in the Discretionary Analysis," at the beginning of Chapter 5 is helpful and easy to read. Although labeled as "non-exhaustive," we recommend clarifying that the chart simply represents examples of factors that can be relevant. It would be a natural human impulse for adjudicators to view the chart and look for (or RFE for) only those examples. As such, the subsequent "review of the favorable and unfavorable factors" should not just be based on the factors outlined in the chart, and the addition of a caveat after the chart would clarify that point.

**Conclusion**

In closing, we thank you for providing this opportunity to comment on the newly published section of the USCIS Policy Manual. We look forward to a continuing dialogue on this and related matters.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

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<sup>2</sup> USCIS, "Immigrant Waivers: Procedures for Adjudication of Form I-601 For Overseas Adjudication Officers," AILA InfoNet Doc. No. 09061772 (April 28, 2009), p. 12.