



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

September 21, 2015

Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Policy and Strategy
Chief, Regulatory Coordination Division
20 Massachusetts Avenue, NW
Washington, DC 20529-2140

Submitted via: www.regulations.gov
Docket ID No. USCIS-2006-0028

**Re: OMB Control Number 1615-0001
Agency Information Collection Activities: Petition for Alien Fiancé(e), Form I-129F; Revision of a Currently Approved Collection**

To Whom It May Concern:

The American Immigration Lawyers Association (AILA) submits the following comments in response to the above-referenced 60-Day Notice and request for comments on the proposed revisions to the Petition for Alien Fiancé(e), Form I-129F.¹

AILA is a voluntary bar association of more than 14,000 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, lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on this 60-Day Notice and believe that our members' collective expertise and experience makes us particularly well-qualified to offer views that will benefit the public and the government.

Comments

Page 6, Part 3, Questions 4a and 4b—Criminal Information

These additional questions are overly broad in scope and should be removed. While it may be necessary to disclose certain violent or sexual offenses or convictions that could prohibit the individual from petitioning for a fiancée under the Adam Walsh Act, Questions 1 – 3.c. adequately cover these issues. Asking the petitioner to disclose whether he or she has “*ever* been arrested, cited, charged, indicted, convicted, fined, or imprisoned for breaking or violating *any*

¹ 80 Fed. Reg. 43106 (July 21, 2015).

law or ordinance in any country...” (emphasis added) goes well beyond the relevant provisions and is irrelevant as to whether a U.S. citizen is eligible to petition for his or her fiancé(e).

Page 9, Part 7, Preparer’s Certification

AILA is concerned with the expanded language of the preparer’s certification. The proposed language reads:

By my signature, I certify, swear, or affirm, under penalty of perjury, that I prepared this petition on behalf of, at the request of, and with the express consent of the petitioner. I completed this petition based only on responses the petitioner provided to me. After completing the application, I reviewed it and all of the petitioner’s responses with the petitioner, who agreed with every answer on the petition. If the petitioner supplied additional information concerning a question on the petition, I recorded it on the petition. I have also read the Acknowledgment of Appointment at the USCIS Application Support Center to the petitioner and the petitioner has informed me that he or she understands the ASC Acknowledgment.

As currently worded, this certification imposes a burdensome and unnecessary process for preparing and reviewing Form I-129F on the attorney/preparer and petitioner. Preparers are already required, under applicable regulations, to attest to the veracity and truth of what is submitted. Under 8 CFR §103.2(a)(2), “[b]y signing the benefit request, the ... petitioner ... certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct.” Moreover, under 8 CFR §1003.102(j)(1), “[t]he signature of a practitioner on any filing [or] application ... constitutes certification by the signer that the signer has read the filing [or] application ... and that, to the best of the signer’s knowledge, information, and belief, formed after inquiry reasonable under the circumstances, the document is well-grounded in fact” An attorney who engages in frivolous behavior or who knowingly or with reckless disregard makes a false statement of material fact or law is subject to disciplinary sanctions including disbarment or suspension. *See generally* 8 CFR §1003.101–108. Therefore, any concerns about fraud detection and prevention are more than adequately covered in the existing regulations.

Moreover, it is beyond the authority of USCIS to stipulate a specific review procedure for attorneys and their clients and require that it be followed. Therefore, the Preparer’s Certification as proposed, unnecessarily impinges on the rights of petitioners and their legal representatives to determine their own legitimate procedures in the preparation of the form.

On August 17, 2015, USCIS published a new Form I-129, Petition for a Nonimmigrant Worker, with an edition date of August 13, 2015. Though the prior two versions of Form I-129 (3/26/15 and 10/23/14) employed Preparer’s Declaration language similar to that which is proposed for the I-129F, USCIS revised that language in the August 17, 2015 edition so that the Preparer’s Declaration currently reads:

By my signature, I certify, swear, or affirm, under penalty of perjury, that I prepared this petition on behalf of, at the request of, and with the express consent of the petitioner or

authorized signatory. The petitioner has reviewed this completed petition as prepared by me and informed me that all of the information in the form and in the supporting documents is complete, true, and correct.

We applaud USCIS for taking steps to amend the Preparer's Declaration on Form I-129 and urge the Service to apply similar language across all forms moving forward. The above-referenced language is reasonable and narrowly tailored to serve the goals of detecting and preventing fraud, while allowing the attorney and client to define the scope of their relationship and develop legitimate review procedures without undue interference. Therefore, we ask USCIS to adopt the language in the August 17, 2015 edition of Form I-129 and amend the I-129F Preparer's Certification on Page 9 to read:

By my signature, I certify, swear, or affirm, under penalty of perjury, that I prepared this petition on behalf of, at the request of, and with the express consent of the petitioner. The petitioner has reviewed this completed petition as prepared by me and informed me that all of the information in the form and in the supporting documents is complete, true, and correct.

Page 7, Part 5, Acknowledgement of Appointment at USCIS Application Support Center (ASC)

The proposed revisions on page 7 of the proposed Form I-129F requires petitioners to confirm that they "understand[] that the purpose of a USCIS ASC appointment is for me to provide my fingerprints, photograph, and/or signature and to *re-affirm that all of the information in my petition is complete, true, and correct and was provided by me.*" (Emphasis added).

The proposed form also requires the petitioner to confirm that, in signing the ASC appointment notice at the time of the biometrics appointment, the individual declares that he or she reviewed and understood the application submitted, filed it willingly, that all submitted supporting documents are "complete, true, and correct" and that anyone assisting the applicant in preparing the application form "reviewed this Acknowledgment of Appointment at USCIS Application Support Center with [the applicant]."

First, though we note that under 8 CFR §103.2(b)(9), an applicant, petitioner, sponsor, beneficiary, "or other individual residing in the United States at the time of filing an benefit request may be required to appear for fingerprinting or for an interview," requiring a U.S. citizen to appear for biometrics capture should be (and generally is) the exception, rather than the rule. Therefore, we ask that USCIS amend this part of the proposed form to make it clear that the U.S. citizen petitioner may, but will not necessarily be required to appear at an Application Support Center for biometrics capture.

Second, there is generally a lapse of at least several weeks between the time of filing the application and the time of the ASC appointment. During this time, the information which was true at the time of filing the form can legitimately change. If USCIS's intention is to require a petitioner to re-affirm that the information in the application *is* true when, in fact, information

might have *been* true at the time the application was filed but has since changed (e.g. an address change) the petitioner will have difficulty signing the ASC acknowledgement in good faith. Please consider a few of the possible scenarios that could happen, after an applicant files Form I-129F with USCIS, thus calling into question the efficacy of this language:

- The petitioner or attorney discovered errors on the form after filing and sent in a correction to USCIS.
- The petitioner or petitioner's fiancé(e) moved since filing the form and filed an AR-11.

In light of these concerns, we respectfully request that the Department of Homeland Security (DHS) remove this requirement that petitioners "re-affirm" the contents of the application, which is redundant to the attestation made at the time of filing.

Conclusion

AILA appreciates the opportunity comment on the proposed changes, and looks forward to a continuing dialogue with USCIS on these issues.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION