AMERICAN IMMIGRATION LAWYERS ASSOCIATION

Senior Regulatory Coordinator
Visa Services
Department of State
600 19th St. NW
Washington, DC 20006

Submitted via http://www.regulations.gov

Re: Comment on:

60-Day Notice of Proposed Information Collection: Medical Examination for Visa or Immigration Benefit (DOS-2025-0002)

To Whom it May Concern:

Established in 1946, the American Immigration Lawyers Association (AILA) is a voluntary bar association of more than 17,000 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 naturalization, 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. The collective expertise and experience of our members makes us especially well-qualified to offer comments on the proposed changes to several immigration forms that will benefit both the public and the agency.

AILA submits this comment in response to the Department of State's 60-day notice of proposed information collection for "Medical Examination for Visa or Immigration Benefit" (Forms DS-2054, DS-3025, DS-3026, DS-3030). We write to express concern about the Department's reclassification of the "respondent" for these forms from the visa applicant to the panel physician. This change, as reflected in the Federal Register notice, shifts the identified respondents from "Visa and Refugee Applicants" in prior approvals to "Panel Physicians on behalf of Visa Applicants" in the current request. While we understand this reclassification may be intended for Paperwork Reduction Act accounting, we note the significant implications to visa applicants' privacy and access to their own medical records. We urge the Department to recognize that, despite the panel physician's role in form completion, the medical information recorded pertains to the individual visa applicant and implicates their personal data rights.

Under the reclassified framework, the panel physician – not the applicant – is deemed the information provider for the medical examination forms. We are concerned that this technical shift could be interpreted to mean that the data is legally attributed to or "owned" by the physician rather than the applicant. Such an interpretation may undermine visa applicants' ability to obtain copies of their own medical examination results. DOS policy treats visa records as

highly confidential and generally not disclosable under FOIA or the Privacy Act "unless the document was submitted by or sent to the requesting party." A panel physician's medical report, which is submitted directly to the consular officer and not given to the applicant, squarely falls outside the category of records "submitted by or sent to" the applicant. The Foreign Affairs Manual confirms that "visa records and information contained in a visa applicant's file are statutorily exempt from release" under these disclosure laws (pursuant to INA § 222(f), 8 U.S.C. §1202(f)). In other words, by treating the panel physician as the respondent and direct submitter of the DS-2054, DS-3025, DS-3026, and DS-3030 forms, the Department could effectively deny visa applicants access to their own medical information on the grounds of statutory confidentiality.

This outcome would be fundamentally at odds with prevailing principles of individual privacy and data access. The information collected in the visa medical exam forms – results of diagnostic tests, vaccination records, diagnoses of communicable diseases or other health conditions – is highly sensitive personal health data. Although the forms are completed by a panel physician, the underlying data concerns the visa applicant's body, health, and medical history. The Department's methodology acknowledges that after the physician completes the exam and forms, the information is retained by the Department's Bureau of Consular Affairs and shared with other U.S. agencies as needed. In substance, these records become part of the government's files on the individual applicant. It would be a concerning result if a visa applicant could be prevented from ever seeing or obtaining information about their own health that the U.S. government uses to evaluate their visa eligibility. Moreover, if a panel physician discovers a health issue about the applicant, the applicant should be aware so that they can get necessary treatment.

Both law and policy in the United States have long recognized that individuals have a right to access their personal medical records, even when those records are held by a third party such as a physician. The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, for example, grants patients the right to obtain copies of their medical records from healthcare providers and plans (with limited exceptions). As Department of Health and Human Services guidance explains, individuals are entitled to a broad array of health information about themselves maintained by or for providers, including medical exam reports, test results, and X-rays. Importantly, the HIPAA right is not contingent on who created or provided the record; even if a test or exam was performed by a third party on a provider's behalf, the patient still has the right to access the results. In the same vein, most U.S. states impose obligations on healthcare providers to furnish patients with copies of their medical records within a reasonable time (often 30 to 60 days) upon request, underscoring a widespread consensus that patients should not be denied information about their own health. Denying an applicant access to the exam report not only undermines their autonomy and dignity but can also have real adverse consequences – for instance, an applicant might be unable to correct erroneous information that could wrongly affect their immigration case. The panel physician's involvement does not transform an applicant's health information into the physician's proprietary data, nor extinguish the applicant's interest in it. The forms are completed for the U.S. government's use in adjudicating a benefit for the individual; accordingly, the data should be viewed as the applicant's personal information, subject to privacy protections and accessible to the applicant to the fullest extent possible.

Moreover, INA § 222(f)'s confidentiality of visa records was intended to protect sensitive information from public disclosure and exploitation by third parties, not to withhold information from the very person to whom it pertains. Nothing in the statutory language suggests Congress intended to deny visa applicants knowledge of their own records. In fact, Department practice recognizes that certain visa-related documents provided to or by the applicant (such as the applicant's own submissions) are releasable to that person. It would be inconsistent with both the spirit of the law and basic fairness to interpret § 222(f) as a limit on applicants' medical information. We urge the Department to avoid any such result in implementing this information collection change.

In conclusion, AILA strongly urges the Department of State to consider the privacy and access rights of visa applicants as it proceeds with this information collection change. Reclassifying the respondent as the panel physician must not inadvertently curtail an individual's ability to obtain and review his or her own medical examination records. The forms may be completed by panel physicians, but the personal data recorded belongs to the visa applicant in every meaningful sense. We respectfully request that the Department affirm, through its handling of this collection, that visa applicants retain the right to access their medical exam information, and that appropriate measures are in place to facilitate applicants' obtaining copies of their medical records even when those records are held by panel physicians under contract with the U.S. government.

Sincerely,

The American Immigration Lawyers Association