



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

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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-2007-0037

Re: OMB Control Number 1615-0012

USCIS 60-Day Notice and Request for Comments: Petition for Alien Relative, Form I-130, and Form I-130A

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 Relative, Form I-130, proposed supplementary Form I-130A, and the accompanying instructions, published in the Federal Register on October 14, 2015.¹

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.

While we appreciate the opportunity to comment on this 60-Day Notice, we note that this [notice](#) of proposed revisions to Form I-130 and proposed new Form I-130A were posted to www.regulations.gov on October 14, 2015. The supporting documents including the proposed revisions to Form I-130, proposed new Form I-130A, table of changes for proposed revisions to Form I-130, proposed revisions to instructions for Form I-130, and table of changes for proposed to instructions for Forms I-130 and I-130A, were only posted to www.regulations.gov on November 5, 2015 and remain unavailable on www.reginfo.gov. The below comments are based

¹ 80 Fed. Reg. 61837 (Oct. 14, 2015).

off of the supporting documents that were posted 39 days ago, rather than 60 days as suggested by the Paperwork Reduction Act (PRA). *See* [5 C.F.R. § 1320.8\(d\)\(2\)\(ii\)](#).

Shorten the Proposed Forms to Reduce the Burden on Petitioners

We recommend that USCIS shorten the proposed forms to reduce the burden on petitioners and their attorneys. The proposed changes to the Form I-130 would expand the length of the current form- from 2 pages to 13 pages. Additionally, USCIS introduced a new supplementary Form I-130A for the Spouse Beneficiary which is 6 pages. The ever-increasing length and complexity of USCIS forms places an undue burden on petitioners and completing the forms, as proposed, will be far more time consuming for petitioners without a clear added benefit. The form's added length also will inevitably lead to longer adjudication times and processing delays.

It appears that USCIS is incorporating the contents of Form G-325A, Biographic Information into the proposed Form I-130 and proposed Form I-130A, along with additional detailed questions. USCIS should clarify whether it intends to use the Form G-325A moving forward. Additionally, by incorporating Form G-325A into proposed Forms I-130 and I-130A, USCIS appears to be requiring *all* I-130 petitioners and beneficiaries to submit detailed biographical information, even though only petitioners filing Form I-130 for a spouse are required to submit Form G-325A. The inclusion of these detailed biographic questions makes the application process far more time consuming for non-spousal petitioners and runs contrary to the purpose of the PRA. USCIS should work to shorten and simplify the forms and the accompanying instructions to reduce the overall burden on the public.

Certifications and Acknowledgements

USCIS continues to expand the number and length of the various certifications and acknowledgements on its forms without adequately explaining their purpose. These certifications and acknowledgements are lengthy and repetitive and contribute to the ballooning size of the forms. In addition, the attestations are confusing to applicants and petitioners, and appear to be overreaching and unnecessary. For example, the proposed Form I-130 includes three additional pages of certifications and acknowledgements, including the Petitioner's Statement Regarding the Interpreter, the Petitioner's Acknowledgement of Appointment at USCIS Application Support Center, the Interpreter's Certification, Preparer's Statement, and Preparer's Certification. The new proposed Form I-130A includes three pages of certifications and acknowledgements, including the Spouse Beneficiary's Certification, Interpreter's Certification, Preparer's Statement, and Preparer's Certification.

We ask USCIS to halt the current practice of adding these lengthy certifications and acknowledgements to all new proposed forms and reevaluate their utility. In particular, USCIS should examine whether the intended goals of the certifications can be met with existing regulations or more concise attestations that are less burdensome, easier to understand, and within the scope of USCIS's authority. At a minimum, AILA recommends the following edits.

Preparer's Certification on Proposed Forms I-130 and I-130A

On August 17, 2015, USCIS released a revised Form I-129 with a new Preparer's Declaration that 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.

USCIS has also taken steps to implement this language on Form I-129S, Nonimmigrant Petition Based on Blanket L Petition. We applaud USCIS for amending the Preparer's Declaration on Form I-129 and I-129S and urge the Service to implement similar, simplified language across all forms, including the Form I-130 and Form I-130A moving forward.

As AILA has noted in previous discussions and form comments, it is almost never the case that an attorney preparer completes an application or petition based solely on responses from the applicant or petitioner. Counsel consults a variety of sources, including the beneficiary, family members of the applicant, public records, and other sources to ensure that the information contained on the forms is accurate and complete. Moreover, any concerns about fraud detection and prevention are more than adequately covered in the existing regulations. Preparers are already required to attest to the veracity and truth of what is submitted under 8 CFR §103.2(a)(2) which states: “[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.” 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” Finally, 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.

USCIS should remove the preparer's certification on proposed Forms I-130 and I-130A and replace it with the simple, direct, and effective language found on Form I-129.

Petitioner's Certification on Proposed Form I-130 (Page 10, Part 6) and Spouse Beneficiary's Certification on Proposed Form I-130A (Page 3, Part 4)

This section, allowing USCIS to access “*any and all of my records that USCIS may need,*” is overly broad, and may violate privacy laws. While we agree that USCIS has the authority to obtain records related to the applicant that are maintained by other agencies within the

Department of Homeland Security and the State Department, this statement seems to go beyond the acceptable parameters. We do not believe that the petitioner or spouse beneficiary should be compelled to allow USCIS to retrieve non-public information or release the applicant's information to any branch of the U.S. government, private companies, or the governments of foreign countries. We strongly object to this provision, and ask that it be revised to protect the privacy interests of the applicant.

Acknowledgement of Appointment at USCIS Application Support Center (ASC) on Proposed Form I-130 (Page 10, Part 6)

The proposed revision on page 10 of the proposed Form I-130 requires the petitioner to confirm that he or she “understands that the purpose of a USCIS ASC appointment is for me to provide my fingerprints, photograph, and/or signature and to *re-verify 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 petitioners to confirm that, in signing the ASC appointment notice at the time of the biometrics appointment, the petitioner declares that he or she reviewed and understood the petition submitted, filed it willingly, that all submitted supporting documents are “complete, true, and correct” and that anyone assisting the applicant in preparing the petition form “reviewed this Acknowledgment of Appointment at USCIS Application Support Center with [the petitioner].”

Petitioners who appear at an ASC appointment will not have the Form I-130 with them, nor do we presume the ASC contractor will review the contents of the form with the petitioner. Moreover, neither the applicant nor the ASC contractor has the ability or the authority to correct typographical errors on the Form I-130.

There is also generally a lapse of at least several weeks between the time of filing the petition 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 an petitioner to re-affirm that the information in the petition *is* true when, in fact, information might have *been* true at the time the petition 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-130 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 moved since filing the form and filed an AR-11.

In light of these concerns, we respectfully request that DHS remove this requirement that petitioners “re-verify” the contents of the petition, which is redundant to the attestation made at the time of filing.

Comments on Proposed Form I-130

Page 1, Part 1- Question 2. Relationship

We recommend that USCIS remove this question from the proposed form because it will be confusing to pro se applicants. The word “legitimated” is a complex term that requires precise legal analysis.

Pages 2-3. Part 2- Questions 16-18. Your Marital Information

Question 17 should be the first question in this section. If the answer is single, never married, the petitioner should be instructed to skip the rest of the questions in this section and resume on the subsection labeled “Parents”- question 24. If the answer is anything else except “Married”, the petitioner should be instructed to answer what is now question 16 and then skip to the section on Spouse 1. If the answer is “Married,” the petitioner should be instructed to proceed to what is now question 16 and then go on from there. Questions 18 and 19, relating to current marriage date and place, should be combined with the information about Spouse 1 and that subsection should be entitled “Current Spouse.” Starting with what is now Spouse 2, that should be called Prior Spouse 1, and then on from there.

Page 3, Part 2, Question 21. Name of All Your Spouses

This section requests the petitioner to “[p]rovide information on your current spouse (if currently married) first and then list all your prior spouses (if any). . .” Question 21 requests the petitioner provide the "Date Marriage Ended." USCIS should add language to the form to instruct petitioners that are currently married to respond to this question by writing “Present.”

Page 3, Part 2, Questions 27, 28, 32 & 33. Information About Your Parents

USCIS should instruct petitioners whose mother or father is deceased to write deceased in response to questions 27, 28, 32, and 33.

Page 4, Part 2, Questions 38.a-38.b. Information About You (Petitioner)

USCIS should amend questions 38.a. and 38.b. to read the following:

38.a. Class of Last Admission. (*Category code is listed on permanent resident card.*)

38.b. Date of Admission (mm/dd/yyyy). (*Date of Admission is the “Resident Since” date listed on the permanent resident card.*)

Page 5, Part 4, Questions 16. Beneficiary's Marital Information

See comments above for Pages 2-3. Part 2- Questions 16-18, Your Marital Information.

Page 5, Part 4, Question 17. Name of Beneficiary's Spouses.

See comments above for Page 3, Part 2, Question 21, Names of All Your Spouses.

Page 6, Part 4, Questions 22-25. Beneficiary's Entry Information

These questions should be removed from the proposed form. It was not previously requested as part of the I-130 process and is irrelevant to the determination on the petition.

Page 7, Part 4, Information About Beneficiary's Family

USCIS should edit the form so that it reads, "Provide information about the beneficiary's spouse (if the beneficiary's spouse is not the petitioner) and provide information about the beneficiary's children.

Page 8, Part 4, Question 57-59. Information About Beneficiary.

Questions 57 and 58 request the last address where the couple lived together; however, the couple may have never lived together. As such, AILA requests that USCIS add a "not-applicable" or "never lived together" option. Questions 59.a. and 59.b. are duplicative of questions 57.c. and 57.d and should be removed from the proposed form.

Page 9, Part 5, Other Information (title)

USCIS should amend the title to read "Part 5. Other Information About the Petitioner." In order to limit confusion, we recommend moving this section so that it is before "Part 4. Information About Beneficiary."

Comments on Proposed Form I-130A

Page 2, Part 1, Questions 14, 15, 20 & 21. Information About Your Mother/Father

USCIS should instruct petitioners whose mother or father is deceased to write "deceased" in response to questions 14, 15, 20, and 21.

The following questions on proposed Form I-130A are overly burdensome and/or duplicative of questions contained in proposed Form I-130 and should be removed.

Last Physical Address Outside the United States, 8.a.-8.f.,

These questions appear to be duplicative of those in proposed Form I-130, page 8, questions 51.a.-51.f.

Pages 2-3, Parts 2-3. Information About Your Employment Inside and Outside the United States

The beneficiary's current employment information is included on page 6, questions 26.a – 27 of the proposed Form I-130. This question should not be included again on the proposed Form I-130A.

Comments on Proposed Instructions for Form I-130 and Form I-130A

Page 1, Note 1.

AILA commends USCIS for stating that the beneficiary residing overseas does not have to sign the Form I-130A.

Page 1, Note 2.

USCIS should edit Note 2 to clarify that it will deny or revoke the petition filed for the son/daughter if the son/daughter marries *before the parent becomes a U.S. citizen* or before your son or daughter immigrates to the U.S. or adjusts status to lawful permanent resident.

Page 2, Who May Not File Form I-130?, #1

This section is an oversimplification of the adoptive parent or adopted child category. A child adopted between 16 and 18 can qualify as an adopted child if the adoptive parents also adopt the child's younger sibling (who is under 16 years of age). Also, actual physical custody is not always necessary if there is constructive physical custody, such as where the child is away at boarding school. The instructions should direct prospective petitioners to visit the USCIS webpage, <http://www.uscis.gov/adoption>, and the State Department webpage, <http://travel.state.gov/content/adoptionsabroad/en/adoption-process.html>, for further instructions concerning cases involving adoptions.

Page 2, Who May Not File Form I-130?, #4

We recommend that this category be revised to read "A spouse, if you and your spouse were not both physically present at the marriage ceremony, unless the marriage was consummated." The current statement appears to require both physical presence at the marriage ceremony and consummation before a marriage will be recognized but consummation is not required if the parties were both at the ceremony.

Page 2, Who May Not File Form I-130?, #5

USCIS should include clarify that a naturalized U.S. citizen who obtained permanent residence through marriage to a permanent resident or U.S. citizen is also not precluded from petitioning for a spouse.

Page 2, General Instructions, Biometric Services Fee

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 or lawful permanent resident spouse or step-parent to appear for biometrics capture should be (and generally is) the exception, rather than the rule.

Page 4, Question 6, Form I-94 Arrival-Departure Record.

Noncitizens that are unable to obtain a copy of their I-94 should not have to pay a fee and file Form I-102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Record, with USCIS. Instructions should be provided on how to contact CBP either by telephone or by visiting the CBP Deferred Inspection Office, explaining that the Form I-94 is not available online, and asking for a copy of the Form I-94. Contact information for the Deferred Inspection Offices can be found on CBP's website: <http://www.cbp.gov/contact/deferred-inspection/overview-deferred-inspection>.

Conclusion

AILA appreciates the opportunity comment on the proposed changes to Form I-130, Form I-130A, and instructions, and we look forward to a continuing dialogue with USCIS on these issues.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION