



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

July 18, 2014

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](http://www.regulations.gov)

Docket ID No. USCIS-2008-0037

**Re: USCIS 60-Day Notice and Request for Comments: Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) and Notice of Entry of Appearance as Attorney in Matters outside the Geographical Confines of the United States (Form G-28I)  
OMB Control No.: 1615-0105**

Dear Chief, Regulatory Coordination Division:

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 changes to Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative and Form G-28I, Notice of Entry of Appearance as Attorney in Matters outside the Geographical Confines of the United States.<sup>1</sup>

AILA is a voluntary bar association of more than 13,000 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 provides experience that makes us particularly well-qualified to offer views that will benefit the public and the government.

### **New Language in the Consent to Representation and Release of Information Section**

In addition to incorporating a number of cosmetic changes to the two forms and clarifying the instructions, USCIS is proposing new features to "clarify USCIS notification practices relating to represented parties."<sup>2</sup> Toward that end, the form and instructions provide:

---

<sup>1</sup> 79 Fed. Reg. 28757 (May 19, 2014).

<sup>2</sup> 79 Fed. Reg. at 28757.

**AILA National Office**

1331 G Street NW, Suite 300, Washington, DC 20005

Phone: 202.507.7600 | Fax: 202.783.7853 | [www.aila.org](http://www.aila.org)

AILA InfoNet Doc. No. 14071849. (Posted 7/18/14)

*When you (the applicant, petitioner, or respondent) [are]<sup>3</sup> represented, DHS will send original notices of approval both to you and your authorized attorney or accredited representative either through mail or electronic delivery. If you do not want to receive original notices or documents, select all applicable boxes below:*

- I request that DHS send any notice regarding an application or petition that I have filed with DHS to the business address of my attorney of record or accredited representative as listed in this form. I understand that I may change this election at any future date through written notice to DHS.*
- I request that DHS send any Form I-94, Arrival Departure Record, or any secure identity document, such as a Permanent Resident Card or Employment Authorization Document, that I am approved to receive and authorized to possess, to the business address of my attorney of record or accredited representative as listed in this form. I consent to having my secure identity document sent to my attorney of record or accredited representative and understand that I may request, at any future date and through written notice to DHS, that DHS send any secure identity document to me directly.*

Providing the represented party with the opportunity to have all notices and secure documentation delivered to the business address of his or her attorney of record or accredited representative is a welcome change that we fully support. Individuals and employers who retain the services of a qualified immigration attorney or accredited representative do so in order to navigate the extraordinarily complicated U.S. immigration system and many would prefer that original documents, including secure items such as travel documents, employment authorization documents (EAD), and permanent resident cards, be sent to their attorney or representative. Though USCIS launched the Secure Mail Initiative (SMI) in an effort to ensure the safe delivery of these and other important documents, documents delivered under the SMI do not require a signature. As a result, AILA regularly receives reports from members whose clients have not moved and who have not received an approved EAD card or I-551 permanent residence card. According to USCIS policy, applicants must file for a new EAD or file an I-90 with filing fee, unless USCIS systems show that the card was returned as undeliverable to USCIS. This places a heavy financial and emotional burden on applicants who are at no fault in the delivery failure. Allowing the represented party to elect to have all secure documents delivered to the attorney's business should go a long way in rectifying this problem.

We note, however, that a represented party may elect to change how they want documents delivered "at any future date through written notice to DHS." Without additional information as

---

<sup>3</sup> Note that there is a typographical error in both the G-28 and the G-28I. The language in this section currently states, "When you (the applicant, petitioner, or respondent) **is** represented...." This should be changed to "**are**."

to the process, it is difficult to understand how this will work. We encourage USCIS to reach out to stakeholders with a proposed process and request feedback prior to launching the new form.

In terms of the default approach to document delivery, a point of clarification is required. Though the form states, “*When you (the applicant, petitioner, or respondent) [are] represented, DHS will send original notices of approval both to you and your authorized attorney or accredited representative*” (emphasis added); the summary of the Federal Register notice provides a different explanation. The notice states, “*USCIS is revising the G-28 to provide that, for represented parties DHS will send all original notices and documents regarding any application or petition filed with DHS to the applicants and petitioners directly with a courtesy copy sent to the attorney of record or accredited representative.*”

In September 2011, USCIS abruptly and without the opportunity for notice and comment, changed the procedure for the delivery of I-797 Notice of Action receipt and approval notices and began sending “original” I-797 notices to applicants and petitioners, and “courtesy copies” to the attorney of record. AILA and other stakeholders reached out to USCIS explaining that when critical agency actions and information are diverted away from counsel, the right of a party to the effective assistance of counsel is undermined and the ability of attorneys to zealously represent their clients is impeded. Shortly thereafter, USCIS resumed its prior practice of sending original notices to the attorney or accredited representative.

Assuming the language in the form is correct and that original notices will be sent to both the attorney or accredited representative and the applicant/petitioner, we fully support this change. For the reasons outlined in AILA’s letter to USCIS dated October 3, 2011,<sup>4</sup> we would oppose a default approach whereby the attorney or accredited representative receives only a courtesy copy.

### **G-28: Part 1—Name and Address of Attorney or Accredited Representative**

We note that “Name of Law Firm or Recognized Organization” has been removed from the address portion for the attorney or accredited representative in Part 1 of the G-28, but that “Name of Law Firm” has been retained in Part 1 of the G-28I. Though “Name of Law Firm” now appears in Part 3 of the G-28 following the “State Bar Number” field, it more appropriately belongs in the address section. This field should be restored in Part 1 on the G-28.

### **G-28: Part 2—Notice of Appearance as Attorney or Accredited Representative**

The revised form fails to provide a rational reason for allowing an attorney to enter an appearance for only one party. As previously stated in AILA’s letters to USCIS in September

---

<sup>4</sup> See AILA’s Letter to USCIS, AILA InfoNet Doc. No. 11100430 (posted Oct. 4, 2011), available at <http://www.aila.org/content/default.aspx?docid=37184>.

2008<sup>5</sup> and in February 2009,<sup>6</sup> this narrow approach fails to contemplate matters where an attorney may represent both the petitioner and the beneficiary.

Further, though past G-28 versions permitted the entry of appearance on behalf of a beneficiary, the proposed form continues to exclude “beneficiary” as an option. In support of its position, USCIS relies on 8 CFR §103.2(a)(3), which provides that a beneficiary is not a “party,” however, this interpretation of the right to representation is too narrowly drawn. For example, in nonimmigrant petition proceedings on Form I-129, several of the actions requested, such as change of status and extension of status, involve actions in which the beneficiary is also an “applicant.” Moreover, there are many situations, including permanent portability under INA §204(j), CSPA protection, and priority date retention, where the beneficiary has a vested interest in the outcome of the underlying petition. For these reasons, it is important that the G-28 provide an option for attorneys to enter an appearance on behalf of the beneficiary.

### **G-28: Part 2—Information About Applicant, Petitioner, or Respondent**

New fields have been added to this section for “Mobile Telephone Number” and “E-Mail Address.” These fields should be noted as “optional” or “if applicable” given that employer/petitioners generally do not have a designated mobile phone for their authorized representative and many individual applicants may not have a mobile phone, an e-mail account, or both.

### **G-28 and G-28I Instructions: Part 2—Mailing Address of Applicant, Petitioner, or Respondent**

The current G-28 instructions regarding the use of “safe addresses” state:

*The mailing address of the applicant, petitioner, or respondent, and not the address of the attorney or accredited representative, is required in this part of the form **except when a safe mailing address is permitted on an application or petition filed with this Form G-28.***

The proposed instructions state:

*Provide the mailing address of the applicant, petitioner, or respondent. Do not provide the address of the attorney or accredited representative. **If the applicant, petitioner, or respondent has used a safe mailing address on the application or petition being filed with this Form G-28, provide it in these spaces.***

---

<sup>5</sup> See AILA’s Comment on DHS’s Proposed Revisions to Form G-28 and G-28I, AILA InfoNet Doc. No. 08091065 (posted Sept. 10 2008), available at <http://www.aila.org/content/default.aspx?docid=26456>.

<sup>6</sup> See AILA Comments on Information Collection of Revised G-28, AILA InfoNet Doc. No. 09030639 (posted Mar. 6, 2009), available at <http://www.aila.org/content/default.aspx?docid=28204>.

The current instructions more clearly indicate that the attorney's address can be used as a “safe address” while the new instructions seem to imply that the attorney’s address can never be used. The language in the current instructions should be retained.

### **G-28I – General Comments**

As clearly noted in the instructions, Form G-28I may be used by attorneys admitted to the practice of law in a country other than the United States only in matters before DHS which take place outside the geographical confines of the United States. At present, the USCIS Electronic Immigration System (ELIS) can only be used to file certain Forms I-539, Application to Extend/Change Nonimmigrant Status, and Form I-526, Immigrant Petition by Alien Entrepreneur. The adjudication of both of these petition types takes place completely within the confines of the United States. Moreover, given the nature of ELIS and electronic filing, we question whether a G-28I attorney would ever have the occasion to use ELIS to assist a client in filing an application or petition that was to be adjudicated outside the United States. Perhaps this field is not necessary on the G-28I.

Given the geographical limitations on the ability of non-U.S. licensed attorneys to enter appearances on behalf of individuals, it also does not appear that there would be occasion for a G-28I attorney to receive a Form I-94 Arrival Departure Record, Employment Authorization Document, or other secure documents. For this reason, and to avoid confusion as to the scope of representation, we suggest that DHS revisit the language under the “Consent to Representation and Release of Information” section on the proposed G-28I.

### **CONCLUSION**

AILA appreciates the opportunity to comment on this notice, and we look forward to a continuing dialogue with DHS on these issues.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION