



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

April 30, 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 email: USCISFRComment@uscis.dhs.gov
Docket ID No. USCIS-2007-0029

Re: OMB Control Number 1615-0075

USCIS 60-Day Notice and Request for Comments: Affidavit of Support, Forms I-864; I-864A; I-864EZ; I-864W

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 changes to Form I-864, Affidavit of Support and related forms, published in the Federal Register on January 27, 2015, and extended for an additional 30 days on March 31, 2015.¹

AILA is a voluntary bar association of more than 13,500 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.

Page 11, Part 10—Preparer's Certification

AILA continues to be 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 affidavit on behalf of, at the request of, and with the express consent of the sponsor. I

¹ 80 Fed. Reg. 4297 (Jan. 27, 2015); 80 Fed. Reg. 17061 (Mar. 31, 2015).

completed this affidavit based only on responses the sponsor provided to me. After completing the affidavit, I reviewed it and all of the responses with the sponsor, who agreed with every answer on the affidavit. If the sponsor supplied additional information concerning a question on the affidavit, I recorded it on the affidavit.

This language is repetitive, confusing, and imposes a burdensome and unnecessary process for preparing and reviewing the Form I-864. 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.

Any concerns about fraud detection and prevention are more than adequately covered in the existing regulations cited above. 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. The Preparer’s Certification, therefore, unnecessarily impinges on the rights of sponsor and their legal representatives to determine their own legitimate procedures in the preparation of the form. As such, AILA urges USCIS to revise the “Preparer’s Certification” to read as follows:

By my signature, I certify, swear, or affirm, under penalty of perjury, that I prepared this form on behalf of the sponsor, or another individual authorized to sign this form pursuant to form instructions. I prepared this form at his or her request, and with his or her express consent, and I understand that the preparation of this form does not grant the petitioner or beneficiary any immigration status or benefit.

Page 9, Part 8 – Sponsor’s Certification

This section allowing USCIS to access “*any and all of my records that USCIS may need*” is overbroad, and may violate privacy laws. While we agree that USCIS has the authority to obtain records related to the sponsor 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 sponsor should be compelled to allow USCIS to retrieve non-public information or release the sponsor’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 sponsors. Please note

that this section also says “*determine my eligibility for the benefit that I seek.*” A Form I-864 sponsor is not necessarily seeking a benefit, so this statement should be revised.

Miscellaneous

The proposed form instructions impose additional requirements on sponsors who are under legal guardianship: “*The guardian must present proof of the appointment as guardian of your estate and a copy of an order from the appointing court or agency specifically permitting the guardian to make your income and assets available for the support of the sponsored immigrant. “Guardian” includes any person who is appointed and authorized by law to protect your estate as a result of your incapacity.*” Requiring a guardian to obtain a court order or agency order specific to the Form I-864 is overly burdensome and appears to undermine the very purpose and veracity of the court or agency’s initial guardianship determination. Moreover, to require a court or agency order specifically permitting the guardian to make the sponsor’s income and assets available for the purpose of supporting the immigrant will significantly delay the permanent residence process. The initial court or agency order granting guardianship should be sufficient for this purpose.

Additionally, there are two typos that we identified:

- **p. 6, part 13** — “The persons listed in...does not need....” should read either “The persons listed in...do not need....” or “The person listed in...does not need....”
- **p. 8, part 8** — in the "continued" box at the top left, there's a comma after the first word ["Sponsor's",] that should be deleted.

Conclusion

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

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION