

Agnew, Andrina M

From: Stephen Krueger [kruegerbook@yahoo.com]
Sent: Monday, December 22, 2008 10:24 PM
To: Agnew, Andrina M
Subject: Further comments on Form DS-86 and Form DS-64

Ms. Agnew

I'm glad to explain my views.

I'm in Hong Kong, so I have no access to U.S. law books. Therefore, I can't confirm whether judicial approval of use of a penalty-of-perjury clause is only for the IRS, or whether the holding can be applied to government agencies generally. Counsel for the State Department should research this issue.

It appears to be legal overkill to have a penalty-of-perjury statement above a signature line on a State Department form. The State Department has ample legal protection, including the specific prohibition against a false statement on a passport-application form filed with the State Department and the general prohibition of making a false state of citizenship to a government agency.

It may be desirable to add a penalty-of-perjury clause to induce fear in someone who files a form, but that is different.

My reference to "statement of obligation" intends all language above a signature line. other than a penalty-of-perjury clause. For example, Form DS-64 obligates a signer to aver that he has not given his passport to someone. Likewise, DS-86 obligates a signer to aver that he did not receive a passport book. Even of the State Department may require a penalty-of-perjury declaration, there is no authority for requiring any other declaration or any representation above the signature line,

New items: (1) The question on Form DS-64 about submitting the form in connection with an application for a new passport is superfluous. The answer is, "Yes. Of course," No regulation requires a statement about the unavailability of a valid or potentially-valid passport, other than at the time that a replacement passport is applied for, and then only if the application is made within the 10-year or 5-year period of .validity. A citizen who chooses to apply for a new passport 11 years (for example) after issuance of his lost or stolen passport need not account for it.

(2) Form DS-64 calls for disclosure of a filer's social-security number. The State Department has authority to demand disclosures of SSNs only when a passport is applied for. 26 U.S.C. sec. 6039E. Form DS-64 is not an application for a passport.

Best Christmas wishes.

Stephen Krueger

--- On **Mon, 12/22/08**, **Agnew, Andrina M** <AgnewAM@state.gov> wrote:

From: Agnew, Andrina M <AgnewAM@state.gov>
Subject: RE: Comments on Form DS-86 and Form DS-64
To: kruegerbook@yahoo.com

Date: Monday, December 22, 2008, 9:03 PM

Mr. Krueger,

Thank you for your helpful comments. We are writing you to request clarification on the following item:

“There is case law to the effect that the IRS may demand that a person who files a document with the IRS, e.g., a tax return, do so under penalty of perjury. Let's assume that the case holding extends to the State Department. There is nonetheless no authority under which the State Department may require an applicant to subscribe to any statement of obligation or any statement of intention.”

First, we would like to confirm that, as described in your comments, you do not have concerns regarding the “penalty of perjury” statement. Second, we would like clarification of your concern regarding a “statement of obligation or any statement of intention.” We were unable to locate such a statement on the form. Could you please let us know what specific text you are referring to?

Thank you,

Andrina Agnew

Passport Operations Officer

CA/PPT/FO/FC

202-663-2445

From: Stephen Krueger [mailto:kruegerbook@yahoo.com]

Sent: Monday, December 22, 2008 4:01 AM

To: Agnew, Andrina M

Subject: Comments on Form DS-86 and Form DS-64

Dear Ms. Agnew

I have the following comments:

A. Form DS-86

1. "It has been invalidated. You may not use that passport for travel."

The underlining on the first line is one space off to the left. Use of both bold and underlining is overkill.

What the State Department intends to say, probably in a new paragraph, is, "After you file this form, the passport will be invalidated. The passport may not be used by you,. Instead, the passport must be sent to the State Department." Neither bold nor underlining is needed.

2. Protect yourself against identity theft! Report non-receipt of your passport book or passport card!

The exclamation marks are excessive. The statement is inaccurate. Reporting a lost or stolen passport does not protect anyone against identity theft. The information contained on the ID page of a lost or stolen passport is already available to the finder of the passport or to the thief. Identity theft is possible, because the horse is already out of the barn, no matter that a report about the loss or theft is made.

How is a passport applicant to know when he suffered non-receipt of a passport booklet or passport card, and, so, should make a report? The State Department does put any applicant on notice that he should file a report a specified number of days after submitting an application form to the State Department.

3. There is case law to the effect that the IRS may demand that a person who files a document with the IRS, e.g., a tax return, do so under penalty of perjury. Let's assume that the case holding extends to the State Department. There is nonetheless no authority under which the State Department may require an applicant to subscribe to any statement of obligation or any statement of intention.

4. The "If the original passport ..." message, on the reverse of the form, should be on the front of the form, in the Important Notice box.

5. The variety of fonts and type sizes is unnecessary.

B. Form DS-64

1. "It has been invalidated. You may not use that passport for travel."

See the above comment.

2. "Protect yourself against identity theft! Report non-receipt of your passport book or passport card!"

See the above comment.

3. Penalty of perjury.

See the above comment.

4. Fonts and type sizes.

See the above comment.

Stephen Krueger

Attorney at Law

--- On **Fri, 12/19/08**, **Agnew, Andrina M** <*AgnewAM@state.gov*> wrote:

From: Agnew, Andrina M <AgnewAM@state.gov>
Subject: RE: request for form
To: kruegerbook@yahoo.com
Date: Friday, December 19, 2008, 1:12 PM

Dear Mr. Krueger,

Attached please find the proposed DS-64, Statement Regarding a Lost or Stolen Passport, and the DS-86, Statement of Non-Receipt of a Passport. At this time we have not proposed any content changes to the previously approved form.

Respectfully,

Andrina Agnew

Passport Operations Officer

CA/PPT/FO/FC

202-663-2445

From: Stephen Krueger [mailto:kruegerbook@yahoo.com]
Sent: Friday, December 19, 2008 12:01 AM
To: Agnew, Andrina M
Subject: request for form

Dear Ms. Agnew

Please send to me, via email, a copy of each of the proposed forms, DS-64 and DS-68, so that I can consider commenting on them.

Stephen Krueger

Attorney at Law