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November 24, 2009

Department of Homeland Security
USCIS, Chief Regulatory Products Division,
Clearance Officer
111 Massachusetts Ave. NW
Washington, DC 20529

***Re: Agency Information Collection Activities: Form I-290B; OMB
Control No. 1615-0095***

To whom it may concern:

The American Immigration Lawyers Association (AILA) respectfully submits the following comments with regard to the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) Information Collection Request for Comment on Form I-290B. 74 Fed. Reg. 49886-49887 (Sept. 29, 2009).

AILA is a voluntary bar association of nearly 11,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. The organization has been in existence since 1946 and is affiliated with the American Bar Association. 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, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on the proposed rule and believe that our members' collective expertise provides experience that makes us particularly well-qualified to offer views that we believe will benefit the public and the government.

Proposed Revisions to Instructions to Form I-290B:

1. Under the heading "***When Should I Use Form I-290B?***" AILA recommends that the instructions be amended to clearly indicate all types of petitions and applications that are permitted to be appealed.

Note: In FAQs from the October 27, 2009, meeting in D.C. between the USCIS and AILA's USCIS Benefits Committee, the USCIS indicated that the AAO will publish an updated summary of its appellate jurisdiction on the new USCIS website.¹ Further, that the AAO will continue to exercise appellate jurisdiction over those matters previously listed at 8 CFR § 103(f)(3)(iii), as in effect on February 28, 2003, with one exception: U.S. Immigration and Customs Enforcement now maintains authority to review petitions for the approval of schools to accept foreign students under 8 CFR § 214.3 and to withdraw school approvals under 8 CFR § 214.4. Additionally, the AAO administers several immigration programs that have been newly delegated to the AAO or created by regulation since 2003. The AAO has drafted a proposed rule that will update and re-insert the AAO's appellate jurisdiction in the regulations.

2. Under the heading "**General Instructions**" AILA recommends the following amendments:

(a) Under the heading, "**A-Number**" on page 2, the language: "This is your client's USCIS (INS) file number" **be amended to** "This is the USCIS (INS) file number, in the event the appeal is filed pro se and an A-Number has been assigned."

(b) Under the heading "**Appeals**" on page 2, the language: "Or you may send these materials to the AAO within 30 days of the date you sign this form" **be amended to** "Or you may send these materials to the AAO within 30 days of filing the appeal."

3. Under the heading "**What Is the Filing Fee?**" AILA recommends that the USCIS include language describing how an appellant may request a fee waiver based on inability to pay or a fee refund for clear service error. In addition, we recommend that the instructions provide the link to USCIS general fee waiver guidance for additional information on determining what constitutes clear service error at:

<http://www.uscis.gov/feewaiver>.

Some clarifications and questions related to requesting and processing fee waivers and fee refunds (if the USCIS determines there was clear Service error) include:

(a) If the appellant is seeking a fee waiver due to an inability to pay, *the request is made at the time the Appeal and/or Motion is submitted*. If the USCIS does not agree that a fee waiver is justified, please provide instructions on the manner and timeline within which the appellant may pay the fee to preserve timely filing of the Appeal and/or Motion to Reopen.

(ii) If the appellant prevails on the appeal and/or motion and believes that the prior result was due to clear Service error, *the request is made after the*

¹ USCIS Questions and Answers, AILA Meeting October 27, 2009, Available at: <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=786105a25c4c4210VgnVCM100000082ca60aRCRD&vgnnextchannel=e9a67b3fcaa85110VgnVCM1000004718190aRCRD>

decision is made. Please provide instructions regarding the USCIS's fee refund procedures, including the timeline within which to request the refund.

(b) How is a fee refund obtained if the USCIS, sua sponte, either on the motion or the appeal, determines there was clear service error?

(c) Currently, the instructions state that "The fee will not be refunded." This should be amended to alert appellants that the fees will be refunded in the event of Service error, e.g., "The fee will not be refunded unless there is clear Service error."

4. Under the heading "**Where to File?**" AILA recommends that the instructions be amended to direct the appellant to the USCIS website for current information on where to file.

Proposed Revisions to Form I-290B

1. Under the heading **Part 1. Information About You**, AILA recommends the instructions following the parenthetical "*(Individual/Business/Organization filing appeal or motion)*" **be amended to** "*(Individual/Business/Organization/Attorney/Representative filing appeal or motion)*."

2. Under the heading **Part 2. Information About the Appeal or Motion**, AILA recommends the boxes be restructured as follows:

A. ☐ I am filing an appeal, and

(i) ☐ My brief and/or additional evidence is attached;

(ii) ☐ My brief and/or additional evidence will be submitted to the AAO within 30 days; **OR**

(iii) ☐ No supplemental brief and/or additional evidence will be submitted.

B. ☐ I am filing a motion to reopen and/or reconsider a decision, and

(i) ☐ My brief and/or additional evidence is attached; **OR**

(ii) ☐ No supplemental brief and/or additional evidence will be submitted.

Additionally, it would be helpful to note under **Part 2**, that if Form I-290B is filed as an appeal, the appeal will first be considered by the USCIS office that made the unfavorable decision as a motion to reopen/reconsider, but if Form I-290B is filed as a motion to

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reopen/reconsider the motion will *not* be sent to the Administrative Appeals Office following a decision not to reopen/reconsider a matter. A clarification of the difference between a motion to reopen and motion to reconsider would also be helpful.

Sincerely,

AMERICAN IMMIGRATION LAWYERS ASSOCIATION