AMERICAN IMMIGRATION LAWYERS ASSOCIATION

November 10, 2014

Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Policy and Strategy
Chief, Regulatory Coordination Division
20 Massachusetts Avenue NW.,
Washington, DC 20529-2140

Submitted via: www.regulations.gov
Docket ID No. USCIS-2008-0012

Re: OMB Control Number 1615–0030
USCIS 60-Day Notice and Request for Comments: Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act, Form I-612; Revision of a Currently Approved Collection.

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-612, Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act, published in the Federal Register on September 10, 2014.[1]

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.

We commend the Service for seeking to improve Form I-612 to effectuate greater efficiencies in data collection. However, there are several aspects of the proposed revisions to Form I-612 that are either irrelevant to the I-612 process or which detrimentally impact J-1 exchange visitors in their efforts to obtain a J-1 waiver.

[1] 79 Fed. Reg. 53720 (Sept. 10, 2014).

J-2 Dependents Are Not Statutorily Subject to the Two-Year Home Residence Requirement

We disagree with the following assertion on page 1 of the proposed Form I-612 instructions: "If you are subject to the 2-year foreign residence requirement and your spouse and children were admitted as J-2 exchange visitors or acquired such status after admission, they are also subject to this requirement." We submit that J-2 dependents are not exchange visitors, and are therefore, not subject to INA §212(e).

The plain language of INA §212(e) provides that the two-year home residency requirement applies to a person who was admitted under INA §101(a)(15)(J) or acquired such status after admission if (1) the person's "participation" in the J-1 program was financed by either the U.S. or home country government; (2) the person was subject to the Skills List of his/her home country based upon the field of specialized knowledge or skill "in which the alien was engaged"; or (3) the person came to the U.S. or acquired J status "in order to receive graduate medical education or training."[2] The three criteria described in the statute relate solely to the J-1 exchange visitor, not his or her J-2 dependents. This clearly signals Congress' intention to subject only the J-1 exchange visitor to INA §212(e).

Department of State (DOS) regulations at 22 CFR §62.2 support this interpretation, by expressly defining the term "exchange visitor" to exclude the visitor's immediate family. The regulation also defines the term "home-country physical presence requirement" as applying to the exchange visitor. In other words, J-2 dependents are not exchange visitors and INA §212(e) therefore does not apply to them.

We recognize that 8 CFR §212.7(c)(4) expressly states that the J-2 spouse or child of a J-1 exchange visitor who is subject to the two-year home residency requirement is also subject to the requirement and is in tension with 22 CFR §62.2. Nevertheless, we agree with the Department of State's interpretation, which is in accord with the statute and object to USCIS's unfounded position that a J-2 dependent is subject to INA §212(e). Therefore, we respectfully suggest that the solicitation of data found on page 2 of Form I-612 about J-2 dependents is unnecessary because they are not subject to INA §212(e).

Acknowledgement of Appointment at USCIS Application Support Center (ASC)

The proposed revision on page 5 of proposed Form I-612 requires each applicant for a J-1 waiver 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*

[2] *See* INA §212(e).

information in my application is complete, true, and correct and was provided by me." (Emphasis added).

The proposed form also requires applicants to confirm that, in signing the ASC appointment notice at the time of the biometrics appointment, the applicant declares that he or she reviewed and understood the application submitted, filed it willingly, that all submitted supporting documents are "complete, true, and correct" and that anyone assisting the applicant in preparing the application form "reviewed this Acknowledgment of Appointment at USCIS Application Support Center with [the applicant]."

This entire section should be removed from the form because applicants applying for a J-1 waiver, regardless of the asserted ground of eligibility, do not undergo biometric appointments at a USCIS ASC. If USCIS determines that it is nevertheless appropriate to include this section on Form I-612 despite its inapplicability to the J-1 waiver process, we urge DHS to consider the following concerns.

First, applicants who appear at an ASC appointment will not have the Form I-612 with them, nor do we presume the ASC contractor will review the contents of the form with the applicant. Moreover, neither the applicant nor the ASC contractor has the ability or the authority to correct typographical errors on the Form I-612.

Second, there is generally a lapse of at least several weeks between the time of filing the application and the time of the ASC appointment. During this time, the information which was true at the time of filing the form could have legitimately changed. If USCIS's intention is to require an applicant to re-affirm that the information in the application *is* true when, in fact, information might have *been* true at the time the application was filed but has since changed (e.g. an address change) the applicant will have difficulty signing the ASC Appointment Notice in good faith. Please consider a few of the possible scenarios that could happen, after an applicant files Form I-612 with USCIS, thus calling into question the efficacy of this language:

- The applicant or attorney discovered errors on the form after filing and sent in a correction to USCIS.
- The applicant moved since filing the form and filed an AR-11.
- The applicant has traveled internationally since filing Form I-612, rendering the entry/exit dates inaccurate.

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

Preparers Certification

The proposed revision on page 7 of Form I-612 requires preparers to certify, under penalty of perjury, that they have read the Acknowledgement of Appointment at USCIS ASC to the applicant and the applicant has informed the preparer that he or she understands the ASC Acknowledgement.

As detailed above, applicants for a J-1 waiver do not submit to biometric capture thereby rendering this acknowledgment irrelevant. We recommend that USCIS remove this statement from the Preparers Certification.

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