AMERICAN IMMIGRATION LAWYERS ASSOCIATION

May 18, 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 www.regulations.gov
Docket ID USCIS–2010–0008

Re: OMB Control Number 1615–0116,
USCIS 60-Day Notice and Request for Comments: Application for Fee Waivers and Exemption, Form I–912; 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 revisions to Application for Fee Waiver and Exemption, Form I-912 and the accompanying instructions, published in the Federal Register on March 17, 2015.[1]

AILA is a voluntary bar association of more than 14,000 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 and experience makes us particularly well-qualified to offer views that will benefit the public and the government.

Applicants Receiving Means-Tested Benefits

USCIS has deleted the language that appears in the current instructions which says that applicants who have provided sufficient evidence that they are receiving a means-tested benefit will normally be approved "and no further information will be required." Moreover, the proposed Form I-912 and accompanying instructions appear to require applicants to fill out all applicable portions of the form, even if the applicant receives a means-tested benefit.

[1] 80 Fed. Reg. 13880 (Mar. 17, 2015).

USCIS should not require applicants who receive means-tested benefits to complete Part 6 (*Income Below 150 Percent of the Federal Poverty Guidelines*) or Part 7 (*Financial Hardship*) of the proposed form. Requiring poor applicants – who are more likely to be unrepresented or represented by non-profits with limited resources – to submit voluminous additional paperwork poses an undue burden. A person who receives a means-tested benefit is almost always below 150 percent of the poverty level and is likely to have some kind of financial hardship, rendering that information redundant. Moreover, requiring this additional evidence will inevitably lead to longer adjudication times and processing delays, with no clear added benefit. AILA strongly urges USCIS to keep the language on the current Form I-912, and to continue its longstanding policy to consider proof that the applicant receives a means-tested benefit sufficient to establish eligibility for a fee waiver. In addition, USCIS should amend the parenthetical that currently reads "Select all applicable boxes" to "Select one or more of the following boxes."

Proposed Form I-912, Part 2, Information About You

Under Part 2 of the I-912 form, USCIS should add a question to elicit whether the requestor's spouse resides within or outside the United States and, as a follow up, a yes/no question as to whether the requestor receives any financial support from the spouse. AILA members report receiving Requests for Evidence (RFEs) seeking evidence of spousal income when they note that the requestor is married. However, it is quite common, particularly in asylum cases, for spouses to reside overseas and it is rare that a spouse residing overseas is able to provide financial support to the applicant. Moreover, applicants who are fleeing an abusive or forced marriage do not typically receive any financial support from that spouse. Adding these questions would save the agency time and the requestor undue delays.

Proposed Form I-912, Page 2, Part 3. Information About Your Status

AILA recommends deleting this section, because the applicant's immigration status is not relevant when determining eligibility for a fee waiver and is already provided in the underlying benefit application. It is intimidating for an undocumented applicant to have to disclose their status in the fee waiver application, and will deter needy applicants, especially when read with the new language in Requestor's Certification section about releasing information for enforcement purposes.

Proposed Form I-912, Part 6. Income Below 150 Percent of the Federal Poverty Guidelines and Proposed Form I-912 Instructions, Part 6. Income Below 150 Percent of the Federal Poverty Guidelines, Page 5, Household Income

Under "Household Income" on the form and in the instructions, the household should be more clearly defined. Under "Additional Income or Financial Support," the form makes it clear that any income received from another person, including dependents and others residing in the household, should be disclosed. However, it is unclear how a roommate who is not contributing income and who is in fact dependent on the fee waiver requestor – who may be a family member or friend who is not a child, spouse, or parent and thus not a "dependent" for tax purposes – should be treated.

Proposed Form I-912 Instructions, Part 5. Means-Tested Benefits, Page 4, Item Number 2, Family Members' Means Tested Benefits

The instructions say that a child's receipt of a means-tested benefit cannot be used to establish fee waiver eligibility. We believe this is an error, and that USCIS should consider whether the requestor's child is receiving a means-tested benefit when adjudicating a fee waiver request. For a child to qualify for a means-tested benefit, the household must meet federal, state, or local standards for eligibility for such benefits. Thus, a state, federal, or local agency has already adjudicated the family's income and concluded that the child in that family is in need of a means-tested benefit. It wastes USCIS agency time not to recognize this family as one in need and eligible for a fee waiver. This generally arises in cases where an undocumented parent is applying for an immigration benefit, and his or her U.S. citizen child is eligible to receive means-tested benefits from state, local, or the federal government. Providing documentation that the child is receiving a means-tested benefit is an efficient and easy way to establish that the family is in need of a fee waiver, and USCIS should, for efficiency's sake, accept this documentation as evidence of eligibility for a fee waiver.

Proposed Form I-912 Instructions, Page 11, Paperwork Reduction Act

USCIS lists the estimated burden for completing the form at 2 hours. AILA estimates that completing the revised and expanded form would take between 2.5 and 3 hours total, including the time for reviewing instructions, gathering the required documentation and information, completing the request, preparing statements, attaching necessary documentation, and submitting the request.

Certifications and Acknowledgements

USCIS continues to expand the number and length of the various certifications and acknowledgements on its forms without adequately explaining their purpose. These certifications and acknowledgements are lengthy and repetitive and contribute to the ballooning size of the forms. In addition, the attestations are confusing to applicants and petitioners, and appear to be overreaching and unnecessary. We ask USCIS to halt the current practice of adding these lengthy certifications and acknowledgements to all new proposed forms and reevaluate their utility. In particular, USCIS should examine whether the intended goals of the certifications can be met with existing regulations or more concise attestations that are less burdensome, easier to understand, and within the scope of USCIS's authority. At a minimum, AILA recommends the following edits.

Page 9, Part 11—Preparer's Certification
AILA remains 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 request on behalf of, at the request of, and with the express consent of the requestor. I completed this request based only on responses the requestor provided to me. After completing the request, I reviewed it and all of the requestor's responses with the*

> *requestor, who agreed with every answer on the request. If the requestor supplied additional information concerning a question on the request, I recorded it on the request.*

This language is repetitive, confusing, and imposes a burdensome and unnecessary process for preparing and reviewing this form. 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 applicant 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 applicant, 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 requestor any immigration status or benefit.*

Page 6, Part 8 – Requestor's Certification

This section, allowing USCIS to access "*any and all of my records that USCIS may need,*" is overly broad, and may violate privacy laws. While we agree that USCIS has the authority to obtain records related to the requestor 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 applicant should be compelled to allow USCIS to retrieve non-public information or release the applicant'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 the applicant.

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