AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

January 8, 2016

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 No. USCIS- 2009–0002

Re: OMB Control Number 1615–0082
USCIS 60-Day Notice and Request for Comments: Application To Replace Permanent Resident Card, Form I–90; 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 the Application to Replace Permanent Resident Card, Form I–90 and the accompanying instructions, published in the Federal Register on November 9, 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 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.

Form I-90 Instructions, Page 2, NOTE

On page 2 of the proposed Form I-90 Instructions, USCIS has added language indicating that original documents not required or requested by USCIS will be "immediately destroyed upon receipt." Applicants, especially pro se applicants, may not realize that original documents should not be submitted, and may accidentally include them in the Form I-90 application package. It seems drastic to immediately destroy documents that the applicant may need later for another purpose. AILA suggests that USCIS consider other alternatives, such as mailing the documents

[1] 80 Fed. Reg. 69243 (Nov. 9, 2015).

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back to the applicant, sending the applicant an RFE for a Form G-884 Return of Original Documents, or sending the documents to the National Records Center to combine with the A file so that the applicant can later file a Form G-884.

Form I-90, Page 4, Part 5, Applicant's Statement

On page 4 of both the proposed and current Form I-90, the Applicant's Statement includes an introductory statement with a note that says: "You must file Form I-90 while in the United States." There are many reasons why an applicant may file Form I-90 while temporarily outside the United States. In fact, the form instructions contemplate that commuters who file Form I-90 may not actually reside in the United States. This language adds a substantive requirement that is not supported by the statute or regulations, and should be removed.

Form I-90, Page 7, Part 7, Preparer's Certification

On August 17, 2015, USCIS released a revised Form I-129 with a new Preparer's Declaration that reads:

> *By my signature, I certify, swear, or affirm, under penalty of perjury, that I prepared this petition on behalf of, at the request of, and with the express consent of the petitioner or authorized signatory. The petitioner has reviewed this completed petition as prepared by me and informed me that all of the information in the form and in the supporting documents, is complete, true, and correct.*

USCIS has also taken steps to implement this language on Form I-129S, Nonimmigrant Petition Based on Blanket L Petition. We applaud USCIS for amending the Preparer's Declaration on Form I-129 and I-129S and urge the Service to implement similar, simplified language across all forms, including the Form I-90 moving forward.

As AILA has noted in previous discussions and form comments, it is almost never the case that an attorney preparer completes an application or petition based solely on responses from the applicant or petitioner. Counsel consults a variety of sources, including the beneficiary, family members of the applicant, public records, and other sources to ensure that the information contained on the forms is accurate and complete. Moreover, any concerns about fraud detection and prevention are more than adequately covered in the existing regulations. Preparers are already required to attest to the veracity and truth of what is submitted under 8 CFR §103.2(a)(2) which states: "[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." 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 …." Finally, 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.

USCIS should remove the preparer's certification on proposed Form I-90 and replace it with the simple, direct, and effective language found on Form I-129.

Conclusion

AILA appreciates the opportunity comment on the proposed changes and we look forward to a continuing dialogue with USCIS on these issues.

Sincerely,
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