

October 16, 2015

USCIS, Office of Policy and Strategy
Regulatory Coordination Division
Attn: Laura Dawkins
Chief, Regulatory Coordination Division
20 Massachusetts Avenue, NW
Washington, DC 20529-2140

Dear Ms. Dawkins:

RE: Agency Information Collection Activities: Immigrant Petition for Alien Worker, Form I-140; Extension, Without Change, of a Currently Approved Collection; OMB Control No.: 1615-0015; Docket ID: USCIS-2007-0018

On behalf of Family Equality Council, please accept these comments on the United States Citizenship and Immigration Service's (USCIS) Agency Information Collection Activities regarding Petition for Alien Worker, Form I-140; Extension, Without Change, of a Currently Approved Collection. Family Equality Council is a national organization working to ensure full social and legal equality for lesbian, gay, bisexual, transgender, and queer (LGBTQ) parents and their children by providing direct support, educating the public, and securing inclusion in legislation, policies, and practices impacting families. On behalf of the more than three million LGBTQ parents and their six million children across the United States,¹ Family Equality Council would like to thank the Director and USCIS for their work to provide inclusive and comprehensive services to the LGBTQ and immigrant communities within the United States.

Husband and Wife Designations

Form I-140 is used to classify aliens under sections 203(b)(1), 203(b)(2) or 203(b)(3) of the Immigration and Nationality Act (Act).² This classification, or adjustment of status, determines whether an immigrant qualifies for permanent resident status, under an employment-based, first-preference (EB-1), second-preference (EB-2), or third-preference (EB-3) visa.³

This form requires migrant workers, as well as employers, on behalf of migrant workers, to provide familial information about all family members related to the petitioner, and whether they are applying for a visa or an adjustment of status as well. Part 7 of the form, while using the non-gendered terms "Spouse" in the title, and "Person 1" through "Person 6" in the designated fields, uses the gendered-terms "husband/wife" in the instructions.⁴

¹ Gary J. Gates, *LGBT Parenting in the United States*, The Williams Institute at UCLA School of Law, (Feb. 2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf>.

² 80 Fed. Reg. 49262.

³ 8 Code Fed. Reg. § 204.5; *see also* USCIS, "Permanent Workers," (July 7, 2015), <http://www.uscis.gov/working-united-states/permanent-workers>.

⁴ Form I-140, Part 7.

The intent of this portion of the form is to identify the family members of the petitioner, so as to facilitate USCIS properly identifying the family members and determining their worker status. Using gendered terms to gather information about the petitioner's family members is not only inconsistent with the non-gendered language of the rest of the form, including the rest of Part 7, but also serves to exclude same-sex spouses as well as those who may not follow traditional gender norms. Using the gendered terms "husband" and "wife" adds nothing to the information gathered by the form that would not be ascertained by using the non-gendered term "spouse," which is already in use in the title.

Recommendations

We recommend that USCIS amend Part 7 of Form I-140 to replace the instructions using the term "husband/wife" with the term "spouse." The term "husband/wife" on Form I-140 can easily be changed to read "spouse" without undermining or compromising the information gained from this form. In fact, amending these fields as recommended would allow applicants to complete the form more fully, and more accurately match any previous records with which Form I-140 is being compared.

The statutes governing permanent resident status for family members do not use gendered terms to describe an individual's spouse, and in fact, use the term "spouse."⁵ The Director of USCIS, through power granted him by the Secretary of Homeland Security, has the authority to change this form as established by 8 U.S.C. § 1103. Thus, the change we recommend as to usage of the term "spouse" is solely one of internal agency policy.

The federal government's thousands of programs, services, and benefits are intended to be accessible to all who qualify, and the language we use to determine eligibility for those benefits carries significant tangible and symbolic consequences for LGBTQ people and their families. Changing Form I-140 to employ gender-neutral terms will be a cost-neutral change that would more accurately reflect the varied composition of today's families. Updating this form to be inclusive of same-sex couples will also increase governmental efficiency by alleviating the needless confusion, delays, and denials caused by current outdated forms. The exclusionary effect of the gendered statutory language struck down by the Supreme Court's ruling in *U.S. v. Windsor*⁶ shows how gendered spousal fields and terms like those seen here exclude millions of people from benefits, services, and programs; updating this form and forms like it to be inclusive of all families will ensure these benefits are available and awarded appropriately to all who are eligible for them.

We respectfully recommend that the United States Citizenship and Immigration Services amend the gendered parental language on Form I-140 to be inclusive of LGBTQ migrants and their families. We commend USCIS and the Department of Homeland Security for its work, and look forward to the final draft of this form.

⁵ See 8 U.S.C § 1186a-1186b; 8 U.S.C. § 1255

⁶ *United States v. Windsor*, 133 S. Ct. 2675 (U.S. 2013).

We are happy to provide your office with any additional information or clarification that you might need. Please contact Austen Brandford (abrandford@familyequality.org, 202-607-2140) in our Washington, D.C. office with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Gabriel Blau", with a stylized flourish at the end.

Gabriel Blau
Executive Director
Family Equality Council