

PUBLIC SUBMISSION

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Comment On: USCIS-2007-0024-0035

Agency Information Collection Activities: Petition for Amerasian, Widower, or Special Immigrant, Form I-360; Revision of a Currently Approved Collection

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General Comment

See attached file(s)

Attachments

Comment Submitted by Elizabeta Markuci, Volunteers of Legal Service (Attachment)



VIA ELECTRONIC SUBMISSION

December 22, 2014

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

**RE: DHS Docket ID USCIS-2007-0024
OMB Control Number 1615-0020**

Public Comment on Revision of a Currently Approved Collection: Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360

Dear Chief Dawkins:

On behalf of our coalition of New York State advocates for Special Immigrant Juveniles, we are writing to express our concerns with DHS Docket ID USCIS-2007-0024, the Revision of Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. We represent a wide spectrum of legal and social service agencies representing vulnerable immigrant children and youth, including those who are in the public child welfare system, those who are in federal immigration custody, and those living in our community recovering from often years of familial violence and maltreatment. Given our active involvement working with many seeking Special Immigrant Juvenile status, we are concerned about the significant amount of proposed changes to Form I-360. We believe that the proposed changes to Form I-360 add undue burden on youth self-petitioning for Special Immigrant Juvenile status, exceed the scope of Federal law and confuse the requirements for Special Immigrant Juvenile status.

- (1) The proposed change splitting one question on Current Form I-360 Section A, Item "a." in Part 6 into two questions on the Proposed Form I-360 Question 2 Items A and B in Part 8 is confusing and requires a petitioner to make a complex and unnecessary legal distinction.**

The current I-360 asks in Part 6, Section A, Item a:

Have you been declared dependent upon a juvenile court in the United States, or have you been legally committed to, or placed under the custody of, an agency of department of a State, or an individual or entity appointed by a State or juvenile court?

This language draws directly from Federal law, which defines a Special Immigrant Juvenile as:

an immigrant present in the United States... who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States....

8 U.S.C. § 1101(a)(27)(J). The proposed changes to this question unnecessarily separate these clauses into two questions in Part 8, Question 2, Items A and B, as follows:

- A. Are you a dependent of a juvenile court in the U.S.?
- B. Are you in the custody of a state agency, department, or a court-appointed organization or individual?

It is unclear why these separate questions are being proposed, and we strongly believe this proposed change will confuse attorneys, social service providers and pro se petitioners completing Form I-360. The difference between dependency and custody is a complex legal distinction that is practically conflated by state juvenile courts, as well as by social service providers and youth themselves. To require a parsing of these legal concepts is simply unnecessary, burdensome and will lead to confusion regarding continued eligibility for Special Immigrant Juvenile status.

In New York, state juvenile courts traditionally utilize a standardized court form, General Form 42 (GF-42), to summarize the findings necessary for a child to pursue Special Immigrant Juvenile status. This GF-42 predicate order was created to mirror the requirements per INA § 101(a)(27)(j), and only includes the consolidated finding that:

The above-named child is dependent upon the Family Court, or has been committed to or placed in the custody of a state agency or department, or an individual or entity appointed by the state or Family Court.

Given that a child may be dependent on a state juvenile court without being in the custody of a state agency, department, a court-appointed organization or an individual, it will be confusing for those completing Form I-360 to understand that they will continue to qualify for Special Immigrant Juvenile status even if they only answer in the affirmative to one of the proposed questions in Part 8, Question 2. In New York, a young person may be dependent on the court arising from Persons in Need of Supervision proceedings, juvenile delinquency proceedings, and other similar court interventions. These young people may not necessarily have been additionally committed to the custody of an entity or individual. Although a petitioner who answers “yes” to

Item A and “no” to Item B would still qualify for a grant of Special Immigrant Juvenile Status, neither the plain language of the form nor the corresponding instructions clarify this point.

We encourage USCIS to retain the current language, or, failing that, provide clear guidance in the new I-360 Instructions in how to answer this question.

(2) The addition of Part 8’s Question 4, Item B in the proposed Form I-360 impermissibly oversteps the requirements of Federal law and is inapplicable to many New York State Family Court determinations.

The proposed Form I-360’s Part 8, Question 4, Item B adds the following question:

Are you currently residing in your court-ordered placement? [Yes/No]

NOTE: If you answered “No”...provide an explanation on a separate sheet of paper or use the space provided in Part 14. Additional Information

The federal Special Immigrant Juvenile status statute does not require that a state juvenile court assign a court-ordered placement. Further, under New York law, there is no requirement that a child physically reside with her court-appointed legal guardian or custodian. This additional proposed change adds only confusion regarding eligibility for Special Immigrant Juvenile status and, as such, we respectfully request that USCIS eliminate this new additional question.

(3) The additional requests for information in the proposed new Form I-360’s Part 8 Question 2 Item C and Part 8 Question 3 Item B exceed the scope of what is required for USCIS to make a determination of eligibility for Special Immigrant Juveniles.

The new proposed version of Form I-360 Part 8 asks for significant additional detail regarding the confidential state juvenile court proceedings, including the name of the state agency, department, or court-appointed organization or individual to whom custody was ordered as well as, in one-parent Special Immigrant Juvenile cases, the name of the parent with whom reunification is not viable. (Part 8 Question 2 Item C and Part 8 Question 3 Item B, respectively) As USCIS is aware, state juvenile court proceedings are confidential matters generally and this level of requested additional detail may not be permitted to be disclosed to outside third parties. For example, a child who is a product of rape, may be spared the exact details of their conception during the course of her state juvenile court proceedings, and it may be the decision of the state juvenile court, in consideration of the best interest of the child, to not divulge information regarding that rape and the offending parent to outside third parties.

It may also not be practicable to list specific information of a state or subcontracted agency to whom custody was ordered, as this vulnerable child population unfortunately may not

continuously reside in the same location throughout the pendency of the adjudication of Form I-360. For a child in the public child welfare system, it is not uncommon to have multiple placements during the course of their care. Furthermore, a requirement to list one's court-ordered placement may be further complicated and unduly confusing for children who are aging out of a custodial placement or guardianship situation, and may be transitioning to an independent living situation soon after submission of Form I-360.

Finally, as the individual completing Form I-360- whether it is an immigration attorney, case worker, advocate or the youth him or herself- may not have been present or even privy to the details of the confidential state juvenile court proceedings, it may be extremely burdensome or impossible to comply with a request for the significant additional detail being proposed in this section. We respectfully remind USCIS that this additional detail being requested is not required by federal law and is not necessary for USCIS to adjudicate these petitions. We encourage USCIS to eliminate these proposed additional questions.

(4) The proposed new Form I-360 Part 11's Acknowledgement of Appointment at USCIS Application Support Center is confusing as petitioners solely submitting an I-360 are not scheduled for an Application Support Center appointment.

The proposed addition of the "Acknowledgement of Appointment at USCIS Application Support Center" section in Part 11 is confusing in that a petitioner solely submitting Form I-360 is not generally scheduled for an ASC appointment. While ASC appointments may be scheduled when a petitioner is also submitting Form I-485, in order to apply for adjustment of status, the proposed additional language here misleads petitioners and those assisting them into understanding that they will be additionally be required to submit to an ASC appointment as part of the adjudication process for Form I-360.

(5) The proposed new version of Form I-360 adds an additional six pages in an apparent contradiction of the Paperwork Reduction Act.

The proposed new version of Form I-360 covers more than twelve categories of petitions and spans eighteen pages. Due to the wide variation of information requested by each category, a young person petitioning for Special Immigrant Juvenile Status, for example, will leave blank at least eight pages on the new Form I-360. Leaving blank so many pages is confusing for pro se petitioners and unnecessary printing puts a strain on the resources of non-profits and threatens the environment. We encourage USCIS to consolidate information that is required for all categories of petitions and create an addendum for each classification, perhaps in the form of a generally applicable I-360, with instructions for Amerasian petitioners to additionally file I-360-A, Widow(er)s of U.S. citizens to file an I-360-B, Special Immigrant Juveniles to file I-360-C, and so forth.

Thank you for your attention to this comment. We are hopeful that USCIS will seriously consider our recommendations for DHS Docket ID USCIS-2007-0024.

Sincerely,

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