

PUBLIC SUBMISSION

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Docket: USCIS-2007-0024

Agency Information Collection Activities: Form I-360, Extension of a Currently Approved Information Collection; Comment Request

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

Document: USCIS-2007-0024-0044

Comment Submitted by Kate Voigt, American Immigration Lawyers Association

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General Comment

See Attached

Attachments

Comment Submitted by Kate Voigt, American Immigration Lawyers Association (Attachment)

From: Kate Voigt [mailto:KVoigt@aila.org]

Sent: Monday, December 22, 2014 4:36 PM

To: USCIS FR Comment

Subject: Docket ID USCIS–2007–0024, OMB Control Number 1615–0020, ASISTA/AILA Comments on Form I-360

Dear Sir or Madam:

ASISTA Immigration Assistance (ASISTA) and the American Immigration Lawyers Association (AILA) submit the following comments in response to the Department of Homeland Security's (DHS) proposed revision of Form I-360, Petition for Amerasian, Widower, or Special Immigrant, published in the Federal Register on October 22, 2014.

Sincerely,
~Kate Voigt

Kate Voigt, Esq.

Senior Liaison Associate

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December 22, 2014

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 email: uscisfrcomment@uscis.dhs.gov
Docket ID: USCIS-2007-0024

Re: Agency Information Collection Activities: Petition for Amerasian, Widower, or Special Immigrant, Form I-360; Revision of a Currently Approved Collection (OMB Control Number 1615-0020) 79 Fed. Reg. 63158 (October 22, 2014)

Dear Sir or Madam:

ASISTA Immigration Assistance (ASISTA) and the American Immigration Lawyers Association (AILA) submit the following comments in response to the Department of Homeland Security's (DHS) proposed revision of Form I-360, Petition for Amerasian, Widower, or Special Immigrant, published in the Federal Register on October 22, 2014.

ASISTA is a national non-profit and co-founding partner of the National Network to End Violence Against Immigrant Women, which worked with Congress to create and expand routes to secure immigration status for survivors of domestic violence, sexual assault, and other crimes. ASISTA serves as liaison for the field with Department of Homeland Security personnel charged with implementing these laws, most notably United States Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE), and the Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties. ASISTA also trains and provides technical support to local law enforcement officials, civil and criminal court judges, domestic violence and sexual assault advocates, and legal services, nonprofit, pro bono, and private attorneys working with immigrant crime survivors.

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. The organization has been in existence since 1946. 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, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on the proposed revisions to the Form I-360 and Instructions for Form I-360.

I. I-360 Instructions

Page 1: Part I, What is the Purpose of this Petition?

USCIS should consider removing self-petitioning parents of an abusive U.S. citizen son or daughter in number 3, Special Immigrant Category under I. “Others.” Its inclusion under the category of other special immigrants is confusing, and we recommend that abused parents of U.S. citizen sons and daughters be included solely under number 4 which enumerates other VAWA-based uses of the I-360.

Under number 4, it may be beneficial to specifically enumerate VAWA self-petitioners as:

- Battered or Abused Spouse of a U.S Citizen or Lawful Permanent Resident
- Battered or Abused Child of a U.S. Citizen or Lawful Permanent Resident
- Battered or Abused Parent of a U.S Citizen Son or Daughter

Page 5, Self-Petitioning Battered or Abused Spouse or Child of a U.S. Citizen or Lawful Permanent Resident or a Self-Petitioning Parent of an Abusive U.S. Citizen Son or Daughter.

We recommend including a separate check box on the I-360 for the abused parent of U.S. citizen son or daughter. If this is not possible, we recommend amending the Note on the bottom of page 5 to read:

*“Since there is not a separate check box for a **battered or abused parent of a U.S citizen son or daughter**, select the “other” category if filing under this classification.”*

Page 6: Mailing Address

Given that in domestic violence settings, the home address is often not the safe address, the first sentence of this section may be confusing for applicants. We recommend deleting the first sentence altogether, so that it reads:

~~Provide your mailing address, if different from your home address.~~ If you do not feel safe in receiving correspondence regarding your home address...

Page 6: Note

In the middle of the page, we recommend amending the Note to read: ¹

NOTE: You may file a self-petition within two years of the date of the abuser’s death, the abuser’s loss of status **if the loss is for reasons related to the domestic violence, or**

¹ We would like to note that the death provision actually pertains to U.S. citizen abused spouses ONLY pursuant to INA §204(a)(1)(A)(iii)(II)(aa)(CC)(aaa). There is no parallel provision for abused LPR spouses unless otherwise protected under INA §204(1).

within two years of the termination of marriage if there is a connection between the termination of the marriage and the battery or extreme cruelty.”...

Page 7: Employment Authorization

Typically, VAWA self-petitioners submit an I-765 Application for Employment Authorization concurrently with the I-360 and indicate on that form the basis on which they are requesting employment authorization. VAWA self-petitioners have several options: to apply on the basis of (c)(14) deferred action or (c)(31) once the VAWA self-petition is approved, or if applying concurrently with an application to adjust status, employment authorization may be based on (c)(9).

We recommend that, instead of providing only “Yes” or “No” answers, the form provide the following boxes: (c)(31) (based on approved self-petition); (c)(9) (based on an application for adjustment of status); and (c)(14) (based on deferred action grant).

Page 11, #5, “Part 11”

This section should acknowledge and cite the special protections for releasing information under 8 USC §1367. Signing the statement at Part 11 of the form must NOT violate those protections. See below for suggested additional language for that section of the form.

Page 13, USCIS Privacy Act Statement

If the Form I-360 is used for Violence Against Women Act relief, it should explicitly be stated that the information contained in this form is protected under 8 USC §1367.

Page 14: Routine Uses

It should be stated that the information contained in the Form I-360 will not be shared with federal, state, local and foreign government agencies unless specifically permitted under 8 USC §1367.

II. Proposed Changes to I-360 Form

Page 1: Part 1, Information About Person or Organization Filing this Petition.

The I-360 form (or the instructions) should clarify what is meant in the context of “Petitioner.” “VAWA self-petitioner” is an established term of art and is defined at INA §101(a)(51). The I-360 form seems to indicate that the VAWA self-petitioner should place his or her information in the “beneficiary” section in part 3. An explanation as to how (or if) a VAWA self-petitioner should use this first section would be beneficial given that VAWA applicants have traditionally been defined as petitioners. For example, it would be useful to know whether it was USCIS’s intention for the VAWA self-petitioner to list his or her information in both Part 1 and Part 3, or if some other format was intended.

Page 1: Part 1, Number 6:

We recommend including an instruction line stating that if the applicant is filing a VAWA self-petition, they are encouraged to also submit a safe address where correspondence can securely be received, and refer them to Part 3.

Page 2: Part 2. Classification Request

As mentioned above, we recommend that “Battered or Abused Parent of a U.S. Citizen Son or Daughter” receive its own box, as it is the only VAWA category not to have its own designation and its absence could cause confusion.

Page 14, Part 10, Question 12: Employment Authorization

We recommend that, instead of providing only “Yes” or “No” answers, the form provide the following boxes: (c)(31) (based on approved self-petition); (c)(9) (based on an application for adjustment of status); and (c)(14) (based on deferred action grant).

Page 15, Part 11 – Acknowledgment of Appointment at USCIS Application Support Center

We recommend eliminating this entire section from the form. First, the phrasing in this section is awkward and may cause confusion, especially for applicants who are not proficient in English. Second, it is unclear how an applicant can “acknowledge” an ASC appointment that will not be scheduled until several weeks after USCIS receives the petition. Third, AILA and ASISTA believe that it is inappropriate and problematic for USCIS to require petitioners to make this acknowledgement ahead of the ASC appointment and to require applicants to sign the new declarations at the ASC appointment. Applicants who appear at an ASC appointment will not have ready access to their petition and supporting documentation, nor will the ASC contractor. In addition, ASC contractors do not have the ability to review the contents of the form with the applicant, nor do they have any authority to correct typographical or other errors in the petition. An applicant should not be made to confirm that information on the petition is true and accurate when details such as addresses and other legitimate information may change between the time the application is submitted to USCIS and the time the applicant is scheduled for a biometrics appointment at the ASC. Finally, applicants who may have been defrauded by notarios or non-lawyers are not likely to know that information contained in the form is false or inaccurate.

Applicants will have difficulty signing the ASC appointment notice in good faith given these issues. Moreover, these ASC acknowledgements are redundant given the attestations already made by the applicant at the time of filing. Given these concerns, we respectfully request removal of this section from the contents of the petition.

Page 15, Part 11 – Petitioner’s Certification

This section allowing USCIS to access “*all records that USCIS may need*” is overbroad and may violate privacy laws. We agree that USCIS has the authority to obtain records related to the petitioner that are maintained by other agencies within the Department of Homeland Security and the State Department, for example. However, we do not believe that the petitioner should be compelled to allow USCIS to retrieve non-public information or release the petitioner’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 petitioners.

Page 15: Release of Information Clarification

Requiring self-petitioners to sign a general release of information, without acknowledging the congressionally mandated constraints on such information-sharing, violates 8 USC §1367. We suggest adding the following language:

I furthermore authorize release of information contained in this petition, in supporting documents, and in my USCIS records, to other entities and persons where necessary for the administration of the U.S. immigration laws. **I am not, however, waiving the special protections under 8 USC §1367.**

Thank you for the opportunity to provide this feedback on Form I-360 and the accompanying instructions. Please contact Cecelia Friedman Levin at Cecelia@asistahelp.org or Audrey Carr, Chair of the AILA VAWA, Us, and Ts Committee at acarr@ls-nyc.org with any questions.

Sincerely,
ASISTA Immigration Assistance
American Immigration Lawyers Association