



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

April 16, 2018

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-2007-0038

Re: OMB Control Number 1615-0003

USCIS 60-Day Notice and Request for Comments: Form I-539, Application to
Extend/Change Nonimmigrant Status

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 proposed revisions to Form I-539, Application to Extend/Change Nonimmigrant Status, published in the Federal Register on February 15, 2018.¹

AILA is a voluntary bar association of more than 15,000 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 the proposed revisions to Form I-539, the Supplement A associated with Form I-539, and the instructions for these forms.

Proposed Instructions for Form I-539

Validity of Signatures

On page 11, the proposed instructions state, “USCIS will consider a photocopied, faxed, or scanned copy of the original, handwritten signature valid for filing purposes. The photocopy, fax, or scan must be of the original document containing the handwritten, ink signature.” We applaud USCIS for allowing submission of Form I-539 with a photocopied, faxed, or scanned copy of an

¹ 83 Fed. Reg. 6874 (Feb. 15, 2018).

original handwritten signature. Such a change is long-awaited, in line with modern practices, and will streamline filing procedures for applicants, attorneys, accredited representatives, translators, and other parties.

USCIS Resources to Conduct Interviews

The proposed instructions indicate that USCIS may require an I-539 applicant to appear for an interview or provide biometrics. We note that the possibility of an interview is the latest in a trend of USCIS imposing new and unnecessary burdens on beneficiaries of immigration benefits.

Form I-539 applications are processed by USCIS Service Centers. These are regional, remote locations that are not accessible to the public. Almost three decades ago, legacy Immigration and Naturalization Service consolidated jurisdiction for adjudication of nonimmigrant petitions and applications with the regional service centers to create a cadre of officers with subject-matter expertise and to enhance the consistency of adjudications. USCIS Field Offices do not adjudicate nonimmigrant petitions or applications of any kind. Referral of I-539 applicants to such offices for an interview would mean either review by officers without expertise in the nuances of the benefit sought or the need to train a new set of officers on all of the various nonimmigrant classifications covered by Form I-539, including F, M, J, H-4, O-3, T, and U. In addition, requiring field office interviews for I-539 applications would add significant costs and administrative burdens to both USCIS and the individual applicants, all of whom are already subject to background and security checks. Therefore, interviews should be limited to those instances where there is a true need to speak to the applicant in-person, and should not be instituted across the board.

Translations

The General Instructions on page 12 state, “DHS recommends the certification contain the translator’s printed name, the signature date, and the translator’s contact information.” We note that a recommendation can be ignored with no detriment while ignoring a requirement would result in a potential request for evidence or denial of the benefit sought. If the requested information from the translator is in fact a requirement, it should be clearly stated as such in the instructions.

Biometrics Fee

The proposed instructions at page 14 include a requirement that all applicants (except for certain A and G nonimmigrants) pay an additional biometrics service fee of \$85. It is not clear from the form instructions, however, whether I-539 applicants *may* be required, or *will be* required to provide biometrics. The proposed instructions indicate on Page 11 that USCIS “may” require the applicant to appear for an interview or provide biometrics, whereas the proposed revisions to

Form I-539 mandate on Page 4 that the applicant acknowledge that “I understand that USCIS will require me to appear for an appointment to take my biometrics (fingerprints, photograph, and/or signature)...” The biometric fee should not be required for all I-539 applicants. Instead, the fee should only be required for those applicants who are required to provide biometrics, and both the form and the instructions need to be clear in this regard.

Fee Waiver

USCIS is proposing to eliminate information about fee waivers from page 14 of the instructions. The current text regarding the ability to apply for a fee waiver should remain in the instructions so that T and U visa applicants are aware of their ability to seek a fee waiver in accordance with 8 CFR §103.7(c)(3)(xviii).

Passport and Travel Document Numbers

On page 12, the proposed instructions indicate that if an applicant “used a passport or travel document to travel to the United States,” the applicant should “enter either the passport or travel document information in the appropriate space on the form, even if the passport or travel document is currently expired.” If USCIS is asking applicants to provide the number of the passport or travel document that they utilized at the time they *last* entered the United States, this should be made more explicit, by modifying the instructions as follows (suggested language underlined):

Passport and Travel Document Numbers. If you used a passport or travel document to travel to the United States, enter the number of either the passport or travel document you utilized for your last entry to the United States in Part 1. Question 12 or 13, even if the passport or travel document is currently expired.

If more than one person is included in this application, have each person enter the number of either the passport or travel document they utilized for their last entry to the United States in Question 9 and/or 10 of Supplement A, even if the passport or travel document is currently expired.

Failure to clarify the instructions could result in applicants providing the number of their most recent passport or travel document, which may be different from the number of the passport or travel document they utilized to last enter the United States.

Proposed Form I-539

Current Passport Information

As the passport information provided by the applicant in Part 1 of Form I-539 may be different than the applicant's current passport information (i.e., passport has been renewed since applicant last entered the United States), Part 4 of Form I-539 should provide an opportunity for the applicant to list the number of their current passport.

Applicant's Declaration and Certification

We are concerned with the addition of language that would authorize the release of "information contained in this application, in supporting documents, and in my USCIS records, to other entities and persons where necessary for the administration and enforcement of U.S. immigration law." From a privacy perspective, it is concerning that the proposed authorization extends to "other entities and persons" without specifically enumerating which entities or persons might have access to this information. We are also concerned that this could make it easier for the general public to access confidential information as well as compromise applicants' personally identifiable information, through a Freedom of Information Act (FOIA) request or similar means.

Preparer's Certification

We are concerned with the addition of the following language in the preparer's certification: "I completed this application based only on information that the applicant provided to me or authorized me to obtain or use." This language is too narrow and fails to take into consideration the many resources and tools that attorneys may consult and utilize in order to effectively represent a client, including but not limited to the Immigration and Nationality Act, federal regulations, case law, the applicant's immigration history, individualized research, etc.

Conclusion

We appreciate the opportunity to comment on the proposed changes to Form I-539, the Supplement A associated with Form I-539 and their instructions, and we look forward to a continuing dialogue with USCIS on these issues.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION