

June 8, 2006

SENT VIA EMAIL AND FAX

Richard A. Sloan
Director, Regulatory Management Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Avenue, 3rd Floor
Washington, DC 20529

Re: OMB Control No. 1615-0001

Dear Mr. Sloan:

We have just learned that a new draft I-129F (Petition for Alien Fiancé(e)) has been issued, revised to reflect the requirements of the International Marriage Broker Regulation Act of 2005 (IMBRA), and that public comments have been requested.

The Tahirih Justice Center has worked closely with IMBRA's Congressional co-sponsors from its conception to its passage and continues to work with them on implementation questions such as this form presents, and so we respectfully offer the following comments for USCIS' consideration as the revised form is finalized. Given the seriousness of some of our concerns, we urge that USCIS not put the revised form into circulation until the problems identified below have been resolved.

Major comments:

- **Definition of an International Marriage Broker (IMB) (Item #3, Draft Instructions; and Part B, Question 19, Draft Form I-129F):** The Draft Instructions **omit mention of the two significant exceptions to the definition of an IMB**, summarized as follows:
 - Traditional matchmaking organizations of a religious or cultural nature that operate on a non-profit basis; or
 - Entities whose principal business is not to provide international dating services between US citizens or US residents and foreign nationals, and that charge comparable rates and offer comparable services to all individuals they serve regardless of gender or citizenship.

Without these qualifications, the definition of an IMB is expanded beyond those "for-profit enterprises, where the balance of power between the two individuals is skewed to empower the male client who may be seen as 'purchasing' a bride...."¹ which IMBRA regulates. Without these qualifications, too, the

¹ Commissioner of the Immigration and Naturalization Service and the Director of the Violence Against Women Office at the Department of Justice, *International Matchmaking Organizations: A Report to Congress* (1999), at 8 (available at http://www.uscis.gov/graphics/aboutus/repstudies/Mobrept_full.pdf).

information gathered (either from the US petitioner on this form or from the foreign beneficiary during the consular interview as required under IMBRA section 833(b)(1)(C)) will not advance the purposes of the GAO study required by IMBRA at section 833(f), which also focuses on “IMBs” and their clients as statutorily defined. **Thus, it is essential that Item #3 of the Draft Instructions be revised to include these statutory exceptions to the definition of an IMB.**

- **Requirement of documentation of specified crimes** (Item #9A, Draft Instructions; and Part C, Question 2, Draft Form I-129F)²: IMBRA sections 832(a)(1)(B) and 832(a)(2)(A) do not explicitly require supporting documentation, or the revelation of sealed or “cleared” records, as the new Draft Form I-129F requires. IMBRA states only that petitioners for K1 and K3 visas must disclose “information on any criminal convictions of the petitioner for any specified crime”. Nonetheless, we assume that USCIS has the authority to interpret what information specifically must be produced, and we appreciate and support the requirements that documentation must be produced and that sealed or “cleared” records must be revealed.

In line with those new stipulations, we further suggest that petitioners be required to disclose any instance in which they have been “convicted of, pled ‘guilty’ or ‘no contest’ to, or ordered by a court to complete batterer intervention, substance abuse treatment, or anger management programs as a result of, any of the following crimes...” and change referrals to “conviction(s)” to read “conviction(s), plea bargain(s), or court-ordered programs”.

- **Domestic violence as a “specified crime”** (Item #9A, Draft Instructions; and Part C, Question 2, Draft Form I-129F): **We urge at a minimum that the parenthetical “(including felony or misdemeanor crimes of violence committed against an adult or youth victim who is protected from the perpetrator’s acts under the domestic or family violence laws of the relevant jurisdiction)” be inserted after “domestic violence” in the enumerated list of “specified crimes” in the Draft Instructions.** This important clarification fulfills IMBRA’s intent and is also consistent with the manner in which “domestic violence” is defined under section 3 of the Department of Justice and Violence Against Women Reauthorization Act of 2005 (“VAWA 2005”) in which IMBRA is incorporated.

Without at least this qualification, we have serious concerns that a petitioner with an assault and battery conviction (for example) arising out of a domestic violence incident – but which was not labeled a “domestic violence” crime as such because of the limitations of his state’s criminal code or a plea bargain he may have struck – would feel entitled to omit such a conviction. To address these serious concerns and to avoid any confusion on the part of the petitioner, a still more express directive may be required. **We further urge that the parenthetical be expanded to read: “(including assault and battery and any other felony or misdemeanor crimes of violence committed against an adult or youth victim who is protected from the perpetrator’s acts under the domestic or family violence laws of the relevant jurisdiction, whether or not charged or convicted as “domestic violence”)”**

- **Advising US petitioner that criminal background information will be shared with foreign beneficiary** (Item #9A, Draft Instructions; “YOUR CERTIFICATION” at Part D, Draft Form I-129F): The Draft Instructions incompletely/incorrectly advise the petitioner that “the information you submit regarding your criminal convictions will be provided to the beneficiary of your petition pursuant to

² The question as phrased is missing the word “convicted” before “by a court of law”. Also, we suggest rephrasing the question as follows: “Have you ever been convicted of, pled ‘guilty’ or ‘no contest’ to, or ordered to complete batterer intervention, substance abuse treatment, or anger management programs as a result of, any of the following crimes by any court (civil, criminal, or military court-martial)?”

section 833(a)(5)(A)(iii)” of IMBRA. IMBRA clearly requires (at sections 833(a)(5)(A)(ii) and 833(a)(5)(A)(iii)) that the entire petition be provided to the beneficiary, as well as “any criminal background information that the Secretary of Homeland Security possesses with respect to a petitioner” – that is, not solely related to convictions, nor solely related to the “specified crimes” that the petitioner must self-disclose. The advisory should therefore be revised as follows: “...a copy of your petition, including the information you submit regarding your criminal convictions, will be provided to the beneficiary of your petition pursuant to section 833(a)(5)(A)(ii) of the International Marriage Broker Regulation Act. In addition, pursuant to section 833(a)(5)(A)(iii) of that Act, any criminal background information pertaining to you that USCIS may discover independently in adjudicating this petition will also be provided to the beneficiary of your petition.”

Similar revisions should also be made to the certification required at Part D of the Draft Form, so as to replace the current paragraph beginning “Moreover,...” with the following: “Moreover, I understand that this petition, including any criminal conviction information that I am required to provide with this petition, as well as any criminal background information pertaining to me that U.S. Citizenship and Immigration Services may discover independently in adjudicating this petition, will be disclosed to the beneficiary of this petition.”

- **Waiver of filing limitations (for petitioner with no history of violent offenses)** (Item #9B, Draft Instructions): The Draft Instructions imply that the only permissible grounds for a waiver would be the “death of an alien approved for a prior K visa.” However, one of VAWA 2005’s principal co-sponsors, Rep. John Conyers, made clear in a statement for the Congressional Record that there may be a number of reasonable bases upon which such a waiver might be granted, “for example, for non-abusive U.S. citizens who live abroad or were raised abroad and may be more likely to marry foreign spouses,” or in cases of “unusual circumstances”. Based on his reasoning, naturalized citizens, second-generation immigrants, and others with strong ties to a particular ethnic, cultural or religious heritage may also be more likely to seek foreign spouses, as may other petitioners who can demonstrate “unusual circumstances”. **Thus, the Draft Instructions should be revised to suggest other possible bases for a waiver in the case of a petitioner who has not committed a violent offense than solely “the death of an alien approved for a prior K visa.”**
- **Waiver of filing limitations (for petitioner with history of violent offenses)** (Item #9B, Draft Instructions; and Part C, Question 3, Draft Form I-129F): **The Draft Instructions and Form correctly indicate that a waiver is mandatory for a petitioner who can prove that she or he was battered or subjected to extreme cruelty at the time of the violent offense, that she or he was not the primary perpetrator of the violence, and that she or he was either acting in self-defense; violated a protection order intended for her or his protection; or committed an offense that did not result in serious bodily injury and that was connected to the battery or extreme cruelty she or he suffered (see IMBRA section 832(a)(2)(C)(i)-(ii)). However, the Draft Instructions and Form should also indicate that any such petitioner is entitled to present “any credible evidence that is relevant to the application” for such a waiver (see IMBRA section 832(a)(2)(C)(iii)).**

Moreover, the Draft Instructions and Form incorrectly imply that a waiver is only available to such a petitioner. This apparent limitation misconstrues IMBRA’s terms. Taken together, IMBRA sections 832(a)(2)(B)-(C) clearly leave open the possibility that other situations may qualify as “extraordinary circumstances” justifying a waiver. The bar to a waiver was indeed intended to be steep – but not entirely insurmountable – for anyone other than a victim of battery or extreme cruelty. For example, it may be appropriate to grant a waiver to a petitioner whose sole violent offense was a misdemeanor charge in his distant youth resulting from a fraternity fracas, if he has since been a model citizen. **Thus, the Draft Instructions and Form should be revised to suggest other possible bases for a waiver in the case of a petitioner who has committed a**

violent offense than solely “that you were being battered or subjected to extreme cruelty ... at the time you committed your violent offense(s).”

- **Mandatory tracking of multiple petitions** (Item #11, Draft Instructions): **The Draft Instructions misstate the notifications process under IMBRA section 832(a)(2)(B).**

Revisions should be made as follows:

Change

When a second petition for a K-1 or K-3 visa petition has been filed less than ten years after the date the first petition was filed, USCIS will notify both the petitioner and the beneficiary of the number of previously approved petitions listed in the database.

to

Once a petitioner has had two or more petitions for a K-1 or K-3 visa approved and thus USCIS creates a file for that petitioner in the database, if the petitioner files a subsequent (third or greater) petition less than ten years after the date the first petition was filed, USCIS will notify both the petitioner and the beneficiary of the number of previously approved petitions listed in the database.

- **Disclosure of prior petitions** (Part A, Question 11, Draft Form I-129F): The Draft Form does not provide sufficient space to supply the information requested for one prior beneficiary of a K visa application, let alone for multiple filings. **More space should be provided**, and/or the petitioner should be directed to “Attach additional page if necessary.” Also, to facilitate data collection for IMBRA’s new multiple visa tracking database as well as the adjudication of filing limitations/waivers, **each type of information requested** (i.e., name of alien; place of filing; date of filing; A#; and result) **should be assigned its own distinct field (box) so that these answers can be clearly logged and evaluated.**

Minor comments³:

- **Disclosure that IMB’s services were used to meet fiancé(e)/spouse:** (Item #3, Draft Instructions; and Part B, Question 19, Draft Form I-129F): We suggest the following edits:
 - At Part B, Question 18, after “explain how the relationship was established”, insert “(if you met your fiancé(e) or spouse through an international marriage broker, please explain those circumstances in Question 19, below)”;
 - At Part B, Question 19, after “provide the name”, insert “and any contact information you may have (including Internet or street address)”;
 - At Part B, Question 19, delete direction to “Attach additional sheets of paper if necessary” – it is unclear why this would ever be necessary.
- **Advising US petitioner that criminal convictions information will be shared with foreign beneficiary** (“NOTE:” at Item #9A, Draft Instructions): We suggest further informing petitioners that under IMBRA (section 833(c)), the name and contact information of any person who was granted a protection or restraining order against the petitioner, or of any victim of a crime of violence perpetrated by the petitioner, will remain confidential, but that the relationship of the petitioner to such person or victim (i.e., spouse, child, etc.) will be disclosed.

³ For the most part, we have not noted typographical errors we found in the draft, in the expectation that they will be caught and corrected through other channels. Please let us know, however, if it would be helpful for us to provide a line-item list.

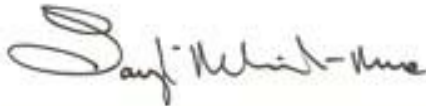
- **Dissemination of information pamphlet** (Item #11, Draft Instructions): The Draft Instructions suggest that the foreign beneficiary will receive an information pamphlet on the rights and resources of domestic violence victims only where multiple petitions are involved. We recommend inserting “For all K-1 and K-3 visa petitions, whether or not the petitioner has previously filed for a foreign fiancé(e) or spouse,” before the last sentence, currently beginning “USCIS will also send the beneficiary a pamphlet...”
- **Time to complete** (Item #21, Draft Instructions): It is estimated to take 1 hour longer than the previous iteration to complete and file this petition (for a new total of 1 hour, 30 minutes). It may be worth noting that for those with no record of “specified crimes” or who are not requesting waivers of the filing limitations, the form is estimated to take only 30 minutes to complete.

Thank you very much for your attention to these concerns. Please do not hesitate to contact us if we can clarify any comment or be of further assistance.

Sincerely,



Jeanne Smoot
Public Policy Counsel



Layli Miller-Muro
Executive Director

Cc: Senator Joseph R. Biden, Jr.
Senator Sam Brownback
Senator Maria Cantwell
Congressman John Conyers, Jr.
Congressman Rick Larsen
Congressman James F. Sensenbrenner
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