

October 7, 2019

**VIA ONLINE SUBMISSION**

**RE: Comment for Agency Information Collection Activities; Revision of a Currently Approved Collection: Notice of Appeal or Motion.**  
**[OMB Control Number 1615-0095]**  
**Docket ID USCIS-2008-0027.**

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DEPARTMENT OF HOMELAND SECURITY  
U.S. Citizenship and Immigration Services  
[OMB Control Number 1615-0095]  
Docket ID USCIS-2008-0027.  
Agency Information Collection  
Activities; Revision of a Currently  
Approved Collection: Notice of Appeal  
or Motion  
AGENCY: U.S. Citizenship and  
Immigration Services, Department of  
Homeland Security.  
ACTION: 60-Day notice.

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The Esperanza Center, Catholic Charities of Baltimore, is a comprehensive immigrant resource center that offers hope and essential services to people who are new to the United States. Immigrants from all over the world have received important resources and compassionate guidance at the Esperanza Center since 1963.

Immigration Legal Services was founded in 1994 to provide low-cost legal counseling and representation in humanitarian- and family-based immigration matters. As one of the largest non-profit immigration legal services providers in Maryland, we serve individuals from over 150 different countries who reside in Maryland or have immigration cases in Maryland. We assist clients and their family members seeking to obtain, extend, or retain lawful immigration status or citizenship in the United States.

We are respectfully submitting our comment in opposition of the proposed regulation in the Federal Registry for **Agency Information Collection Activities; Revision of a Currently Approved Collection: Notice of Appeal or Motion**, for the reasons expressed herein.

**Proposed Changes to I-290B:**

USCIS has proposed several changes to the form and instructions for I-290B, Notice of Appeal or Motion, OMB Number 1615-0095.

These changes include giving USCIS broadened use of information provided with a filed I-290B.

### **The fundamental right to due process:**

The right to appeal is a cornerstone of our due process, and it is a well-known legal remedy for injustices and unfair decisions, as well as to provide guidance and instructions to the legal community. If this right is foreclosed or curtailed, in any way or form, our entire legal system will suffer from the deprivation of due process.

Form I-290B is a vehicle to remedy instances of the erroneous conclusion of law, or incorrect application of law or service policy, or instances requiring a reconsideration of evidence in the record.

### **Potential misuse of information:**

The proposed regulation of Revision of a Currently Approved Collection would result in overly broad discretion to the Agency to collect information about an applicant or petitioner for purposes beyond the scope of adjudication of a pending appellate matter which has been brought before it for reconsideration or reopening. Further, it would be inconsistent with the Fair Information Practice Principles (FIPP) that serve as the foundational principles for privacy policy at implementation of DHS regardless of petitioner, beneficiary or applicant immigration status.<sup>1</sup>

Revising this level of discretion for USCIS might create the illusion that the information of the Petitioner, Beneficiary, Sponsor, Legal Representative, or any other person or organization involved in the matter might be used for purposes that are not related to the appellate process, including peripheral legal claims in regards to the persons involved or mentioned in the Form I-290B.

### **Defined purpose of I-290B:**

Form I-290B standardizes requests for appeals and motions and ensures that the basic information required **to adjudicate appeals and motions** is provided by applicants and petitioners, or their attorneys or representatives. USCIS uses the data collected on Form I-290B to determine whether an applicant or petitioner is eligible to file an appeal or motion, whether the requirements of an appeal or motion have been met, and whether the applicant or petitioner is eligible for the requested immigration benefit. Form I-290B can also be filed with ICE by schools appealing decisions on Form I-17 filings for certification to ICE's Student and Exchange Visitor Program (SEVP). (Federal Register, Vol. 84, No. 154, 39359, *Emphasis added*).

The main purpose of the Applicant or Petitioner filing a Form I-290B is to petition for USCIS to reconsider or reopen adjudication of their petitioned immigration benefit. As of today, the person signing the form is within the understanding that all the information will be used solely for the purpose of adjudicating the matter before the Agency. If that changes, the Applicant or Petitioner will be subject to a broad discretion from the Agency or a Third Party, which can use the information for unknown and unauthorized purposes. Many applicants and petitioners who are

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<sup>1</sup> The FIPP are a set of eight principles that are rooted in the tenets of the Privacy Act of 1974. The Principles are: (1) transparency, (2) individual participation, (3) purpose specification, (4) data minimization, (5) use limitation, (6) data quality and integrity, (7) security and, (8) accountability and auditing. See DHS Privacy Policy Guidance Memorandum, April 25, 2017, available at: [https://www.dhs.gov/sites/default/files/publications/PPGM%202017-01%20Signed\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/PPGM%202017-01%20Signed_0.pdf) (last visited September 16, 2019).

filing this form are undocumented, or in need of an immigration benefit for themselves, a loved one, or a prospective student or employee, and the fear of the unknown of who might have their information can preclude them from even considering the option of an appeal of an adverse decision. Besides, if an employer or a school is sponsoring a person, the private information of the Petitioner should not be subject to further discovery within the rules of civil and criminal procedure, and the potential of this happening might deter the Petitioner of filing an appeal when an adverse decision by a lower adjudicating body is made.

Furthermore, the Notice mentioned that an estimate of the total public burden (in cost) associated with the collection is \$8,652,000. This represents a huge and exorbitant amount of money that could instead be directed to increasing the adjudicators in the Agency and expediting the current processing times.

**The chilling effect of proposed changes:**

Therefore, expanding the collection of information for matter outside the scope of the adjudication of the pending matter before the Agency runs contrary to the regulations defining the purpose of Form I-290B. The proposed revisions could result in an applicant or petitioner who received an adverse decision from the Agency being dissuaded from seeking further remedy and due process through the Agency appellate system if they have a fear of potential misuse of their private information for unknown purposes. This would have a chilling effect on the desire to file an appeal, through Form I-290B.

The proposed rule should not be enacted and the current regulation and purpose of the information collected in the Form I-290B should remain as is.