AILA National Office
Suite 300
1331 G Street, NW
Washington, DC 20005

Tel: 202.507.7600
Fax: 202.783.7853

www.aila.org

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Sunday Aigbe
Chief, Regulatory Products Division
Office of the Executive Secretariat
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Ave. NW, Suite 5012
Washington, DC 20529-2020

Via Federal Rulemaking Portal : www.regulations.gov

Re: AILA Comments on USCIS Interim Final Rule, "Requiring Residents Who Live Outside the United States to File Petitions According to Form Instructions."

DHS Docket No. USCIS–2011–0002

The American Immigration Lawyers Association (AILA) submits the following comments on the USCIS interim final rule on the process changes to Form I-130, Petition for Alien Relative, for petitioners residing overseas. We thank USCIS for holding the June 6, 2011, stakeholders call outlining these changes and for the opportunity to ask questions and provide comments.

AILA is a voluntary bar association of more than 11,000 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, U.S. permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on this interim final rule and believe that our members' collective expertise provides experience that makes us qualified to offer views that will benefit the public and the government.

Concerns Relating to the Interim Final Rule

Effective August 15, 2011, petitioners residing outside the United States in countries without a USCIS office will no longer be permitted to file Form I-130 at the U.S. consulate and will instead be required to file with the USCIS Chicago Lockbox. Petitioners residing in countries with a USCIS

office continue to have the option to file either with that office or domestically with the lockbox. Processing times for I-130s filed overseas are generally much shorter than when filed through the lockbox. In most locations, an immediate relative may be issued an immigrant visa within two to three months of the initial filing. However, where the I-130 is filed domestically, an immediate relative can expect to wait nine to twelve months to complete the process.

AILA is concerned about the impact of this rule on U.S. expatriate petitioners on assignment abroad who are reassigned to return to the United States. It is not uncommon for an expatriate employee to be given just a few months notice, or even less, of the decision to transfer the employee back to the United States. With such short notice, and without the option of processing an I-130 petition abroad, a foreign spouse would be unable to return to the U.S. at the same time as the U.S. citizen spouse. The U.S. citizen would then be forced to either endure a lengthy separation from his or her spouse (and potentially minor children as well), or terminate employment with the multinational employer if the citizen petitioner is unable to significantly delay the reassignment date. This is an undue hardship to expatriate U.S. citizens who have little control over the schedule of international work assignments.

We are also concerned over fairness of access to a beneficial procedure available in only certain countries under this rule. As it stands, the rule significantly benefits U.S. petitioners who reside in one of the 24 (out of 196) countries where an overseas USCIS office is located. Therefore U.S. petitioners who happen to be assigned to one of the 24 countries benefit over the vast majority of U.S. petitioners who reside in other countries. For example, a U.S. petitioner residing in Greece would have access to the expedited overseas adjudication of a petition for his or her spouse, but those who reside in the same region, but in the countries of Bahrain, Cyprus, Egypt, Iran, Iraq, Israel, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Syria, Turkey, United Arab Emirates, and Yemen would not. The randomness of access to this significant benefit is not in keeping with notions of fairness and equal access to similarly qualified individuals.

Possible Alternate Policy to Alleviate Concerns

Short of withdrawing the final rule, an alternative policy could alleviate the above concerns. Given that a significant reason for the rule is to reduce the costs associated with delegating USCIS work to the Department of State, it is clear that the task of overseas I-130 adjudication should remain with the USCIS overseas offices in existence today. However, U.S. petitioners who reside in a country without a USCIS office should be permitted to file petitions either domestically with the lockbox, or with the USCIS sub-office having jurisdiction over their country of residence. Therefore a U.S. petitioner residing in Dubai (UAE) could file an immigrant petition with the USCIS Athens sub-office. Upon approval, the petition would immediately be forwarded to the appropriate consular post for adjudication of the immigrant visa. This alternate procedure has the potential to shorten the time to complete the immigrant visa process while giving equal access to the streamlined process to U.S. citizens in all overseas jurisdictions.

Conclusion

AILA appreciates the opportunity to comment on this interim final rule, and we look forward to a continuing dialogue with USCIS on issues concerning this important matter.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION