



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

June 15, 2024

Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Policy and Strategy
Regulatory Coordination Division
5900 Capital Gateway Dr.
Camp Springs, MD 20588-0009

Attn: Samantha L. Deshommes,
Chief, Regulatory Coordination Division

Submitted via www.regulations.gov
DHS Docket No. USCIS-2006-0072

**Re: OMB Control Number: 1615–0014
Revision of a Currently Approved Collection: Form I-134, Declaration of Financial
Support**

Dear Ms. Deshommes:

The American Immigration Lawyers Association (AILA) submits the following comment in connection with the proposed revision of a currently approved information collection on Form I-134, Declaration of Financial Support, published in the Federal Register on April 16, 2024.¹

AILA is a voluntary bar association of almost 17,000 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 provide comments to USCIS relating to Form I-134 as we believe that our collective expertise and experience make us particularly well-qualified to offer views that will benefit the public and the government.

Initially, we would like to commend USCIS for its efforts to shorten and simplify Form I-134 as it appears that changes to the form have substantially reduced its length to 10 pages. Overall, many of the non-substantive changes to the form appear designed to improve simplicity and make the form easier to understand.

¹ 89 FR 26900 (April 16, 2024).

Nevertheless, we are concerned by the way USCIS inconsistently defines income, and also by its reliance only on tax returns from the prior year. Page #4 of the instructions to Form I-134 states:

Provide information on your annual income. If you filed a Federal tax return, enter the amount from the line listing your adjusted gross income on Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return. If you have not filed a Federal tax return, take your total household income from all lawful sources for the previous 12-month period and enter that amount as your household's annual income. If you have not filed a federal income tax return but you have an IRS Form W-2, Wage and Tax Statement, that covers the previous 12-month period, take your total income, deduct Federal, state, and local income taxes withheld, and enter that amount as your household's annual income.

The current form and instructions do not clearly define income, referring only to the amount of income contributed to the beneficiary annually. Relying upon adjusted gross income is inconsistent with the manner used for Form I-864, Affidavit of Support, which relies on total income (8 CFR § 213a.1):

Income means an individual's total income (adjusted gross income for those who file IRS Form 1040EZ) for purposes of the individual's U.S. Federal income tax liability, including a joint income tax return (e.g., line 22 on the 2004 IRS Form 1040, line 15 on the 2004 IRS Form 1040A, or line 4 on the 2004 IRS Form 1040EZ or the corresponding line on any future revision of these IRS Forms).²

The regulations pertaining to Form I-864 also state the following:

The sponsor may also include as initial evidence: Letter(s) evidencing his or her current employment and income, paycheck stub(s) (showing earnings for the most recent six months, financial statements, or other evidence of the sponsor's anticipated household income for the year in which the intending immigrant files the application for an immigrant visa or adjustment of status. 8 CFR § 213a.2(C)(2)(i)(A)

AILA believes a more consistent approach, using total income to determine ability of the declarant to support themselves or the beneficiary of a Form I-134, is more appropriate inasmuch as adjustments should not count against income level for Form I-134 purposes, particularly if the form does not provide for evidence of current year income and is only based upon the prior year's tax return as evidence of "current" income. For example, adjustments to income could include: a percentage of self-employment taxes; self-employed health insurance premiums; contributions to certain retirement accounts (such as a traditional IRA); student loan interest paid; educator expenses, etc.

² Note that individuals filing Form 1040 EZ cannot itemize deductions and the reference to adjusted gross income in 8 CFR § 213a.1 is somewhat misleading as line #4 is actually a computation of the filer's total income.

Using adjusted gross income potentially penalizes certain individuals, such as those who are self-employed or who paid student loan interest, unfairly as those adjustments could be the difference in determining whether the individual qualifies based on income.

Conclusion

We urge USCIS to continue to review the content and clarity of its forms to reduce their size and scope and we support efforts by USCIS to redesign and re-engineer important forms like Form I-134 in order to make the information collection document shorter, simpler, and easier for applicants to understand. We believe the proposed changes to Form I-134 by USCIS, along with our recommendations as described herein, will facilitate a more fair and efficient analysis of whether beneficiaries have sufficient financial support to pay for expenses for the duration of their stay in the United States.

We appreciate the opportunity to comment on the proposed revisions to Form I-134 and look forward to a continuing dialogue with USCIS on this important matter.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION