



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

October 15, 2018

Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Policy and Strategy
Regulatory Coordination Division
20 Massachusetts Avenue, NW
Washington, DC 20529-2140

Submitted via email to OMB USCIS Desk Officer: dhsdeskofficer@omb.eop.gov
Docket ID No. USCIS-2007-0045

Re: OMB Control Number 1615-0013
USCIS 30-Day Extension of Comment Period:
Extension, Without Change, of a Currently Approved Collection:
Application for Travel Document; Form I-131

To Whom It May Concern:

The American Immigration Lawyers Association (AILA) respectfully submits the following comments in response to the above-referenced 30-day notice to extend, without change, Form I-131, Application for Travel Document and its instructions, published in the Federal Register on September 13, 2018.¹

Established in 1946, 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, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on Form I-131, Application for Travel Document and its instructions, and believe that our members' collective expertise and experience makes us particularly well-qualified to offer views that will benefit the public and the government. Our comments are limited to the Form I-131 instructions.

The instructions for Form I-131, Application for Travel Document, provide on page 6, Part 3.d.:

If you depart from the United States before the Advance Parole Document is issued, your application for an Advance Parole Document will be considered abandoned.

¹ 83 Fed. Reg. 46512 (Sept. 13, 2018).

For the reasons described below, USCIS should remove this language from the Form I-131 instructions. The practice of deeming an advance parole application abandoned upon the applicant's departure from the United States is not supported by either the statute or the implementing regulations, and is contrary to policies allowing advance parole to be granted to individuals who are outside the United States. Moreover, as applied to adjustment of status applicants who are already authorized to travel on a valid nonimmigrant visa or previously issued an advance parole document, this policy wastes USCIS resources by creating inefficiencies in the adjudications process, and harms U.S. businesses and individuals by unnecessarily restricting international travel. By amending the Form I-131 instructions and terminating the policy of denying advance parole upon the applicant's departure from the U.S., USCIS will reverse these harmful effects, improve agency operations, and better serve U.S. economic interests.

The Advance Parole Abandonment Policy is Not Supported by the Statute or Regulations and is Contrary to Policy Allowing Advance Parole to be Granted to Persons Outside the United States

USCIS's authority to grant advance parole is derived from the general discretionary parole power conferred upon DHS by § 212(d)(5) of the Immigration and Nationality Act (INA). Regulations regarding the granting of parole to authorize overseas travel are found at 8 CFR Parts 212 and 223 in general, and throughout Title 8 in connection with specific immigration benefits applications. The advance parole rules as applied to applications for adjustment of status are located at 8 CFR Part 245.

Neither Part 212 nor Part 223 of 8 CFR make any mention of the effect of departure from the United States on a pending application for advance parole.² Under 8 CFR § 212.5(f), "[w]hen parole is authorized for an alien who will travel to the United States without a visa, the alien shall be issued an appropriate document authorizing travel." Although Part 223 applies to "Reentry Permits, Refugee Travel Documents, and Advance Parole Documents," most of the regulatory provisions contained therein apply only to either (or both) re-entry permits and refugee travel documents, with only a brief mention of advance parole as an alternative to be filed on "the form designated by USCIS ... and in accordance with the form instructions."³ With regard to adjustment of status, 8 CFR § 245.2(a)(4) details the "effect of departure" from the United States on an application for adjustment of status, but also fails to describe the impact of travel on an advance parole application that is pending in connection with an adjustment of status application. Therefore, there is no statutory or regulatory authority to support the policy of denying advance parole applications as abandoned upon the departure of the applicant from the United States.

² *But see* 8 CFR § 223.2(d), which states, "Departure from the United States before a decision is made on an application for a reentry permit or refugee travel document will not affect the application."

³ 8 CFR § 223.2(a).

Moreover, the current abandonment policy is contrary to long-standing parole policy in general, which allows the granting of advance parole to individuals who are outside the United States. Page 6, Part 4 of the Form I-131 instructions detail the conditions under which advance parole may be granted to a person who is physically outside the United States for urgent humanitarian reasons, significant public benefit, or in connection with a family reunification program. Because advance parole can be granted to a person who is physically outside the United States, there is no logical reason to automatically deem an advance parole application abandoned, simply because the applicant departs the United States prior to its adjudication.

USCIS Should Restore its Prior Policy of Exempting Individuals Who Travel on a Valid Nonimmigrant Visa or Advance Parole Document from the Abandonment Policy

At a minimum, USCIS should allow advance parole applications to proceed where the adjustment applicant departed and returned to the U.S. on a valid nonimmigrant visa or previously issued advance parole document.

On June 1, 1999, Legacy Immigration and Naturalization Service (INS) issued a new rule, effective July 1, 1999, eliminating the advance parole requirement for adjustment of status applicants who maintain valid H or L nonimmigrant status, thus allowing them to travel more freely outside the United States without abandoning their adjustment applications.⁴ This was later expanded to include individuals who travel on a valid K-3, K-4, or V visa.⁵ Therefore, for close to 20 years, many nonimmigrants with pending adjustment applications have not even needed advance parole to travel. This flexibility has proven critically important to thousands of U.S. companies, who rely on the ability of their employees to travel freely to facilitate business operations and drive profitability. As a result, many U.S. employers prefer to have their adjustment applicant employees maintain both a valid H or L nonimmigrant visa, and an advance parole document, either of which can be used as a vehicle for returning to the United States. The length of travel involved, the expiration dates of the relevant documents, and other factors will combine to determine which document is presented at the port of entry upon completion of overseas travel.

Given this reality, along with the lengthy processing times and visa backlogs associated with employment-based adjustment applications and ancillary benefits, it is extremely common for adjustment applicants to find themselves in a position where they need to travel for legitimate business or personal reasons while an advance parole application is pending. Fortunately, many of these individuals either have a valid nonimmigrant visa, can apply for a new visa at a U.S. consulate, or have a previously issued (and still valid) advance parole document which will allow them to return without abandoning their adjustment application. Unfortunately, under current

⁴ 64 Fed. Reg. 29208 (June 1, 1999).

⁵ 8 CFR § 245.2(a)(4)(ii)(C).

USCIS policy, that departure alone is sufficient cause to deny the application for advance parole, which can create major obstacles to future overseas travel.

Although the language on Page 6, Part 3.d has been included in the Form I-131 form instructions for many years, USCIS recognized an exception to the abandonment policy for more than a decade. On a March 29, 2004 teleconference with AILA, USCIS confirmed that an advance parole application associated with a pending adjustment of status application will not be deemed abandoned if:

- The foreign national returns on a previously issued advance parole document, prior to the advance parole's expiration; or
- The foreign national returns on a valid H-1, H-4, L-1, L-2, K-3, K-4, V-1, V-2, or V-3 nonimmigrant visa.⁶

It wasn't until June 2016 that AILA began receiving a wave of reports of advance parole denials from immigration attorneys around the country, thus signaling the end of this exemption from the abandonment policy. However, restoring the exemption of individuals who travel on a valid nonimmigrant visa or advance parole document will improve operational efficiencies at USCIS and better serve U.S. economic and humanitarian interests by facilitating, rather than restricting travel.

Changing this Policy Will Promote Greater Efficiencies in the Adjudication of I-131 Applications and Other Immigration Benefits by USCIS

The advance parole abandonment policy is harmful to USCIS as it creates inefficiencies in the adjudication of Form I-131 applications and other immigration benefits by increasing USCIS's workload and associated processing times. In order to promote greater efficiencies, a cornerstone of USCIS's mission statement,⁷ this policy should be terminated and the language on Page 6, Part 3.d should be removed from the form instructions.

The current average processing time for an advance parole application is four months, though it can often take USCIS six months or more.⁸ For many individuals and employers, a four to six-

⁶ See AILA SCOPS Liaison Q&A (3/29/04), available at <https://www.aila.org/infonet/scops-liaison-minutes-03-29-04>.

⁷ See *About Us*, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://www.uscis.gov/aboutus> (last visited Oct. 12, 2018). See also *Mission Statement*, ADJUDICATORS FIELD MANUAL, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-728/0-0-0-755.html> (last visited Oct. 14, 2018).

⁸ See *Check Processing Times*, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://egov.uscis.gov/processing-times/> (last visited Oct. 12, 2018) (indicating an "estimated time range" of 3 to 5 months for the Vermont Service Center; 2.5 to 5 months for the Texas Service Center; 2 to 5 months for the California Service Center; and 4 months to 6 months for both the Nebraska Service Center and the National Benefits).

month delay in the ability to travel is simply not an option, particularly if urgent business demands or serious personal issues are involved. As a result, many individuals will travel using a previously issued advance parole document or a valid nonimmigrant visa. Others may apply for a new nonimmigrant visa stamp at a U.S. consulate abroad before returning to the United States.

As a result of the abandonment policy, adjustment applicants whose advance parole applications are denied will generally file a new Form I-131 immediately in an effort to prepare for future travel. Because these applications are often exempt from the otherwise required filing fee, the influx of new advance parole applications adds an additional burden on USCIS without any corresponding revenue increase to offset the human cost of adjudication.⁹ This additional workload impacts I-131 processing times and trickles down to all product lines, ultimately hindering USCIS's mission to efficiently adjudicate immigration benefits requests. Conversely, permitting applicants to depart the United States without deeming a pending advance parole application abandoned will decrease the overall number of applications that are filed with USCIS, balance the workload of USCIS adjudicators, and lower processing times. Eliminating the abandonment policy on advance parole applications will also improve efficiencies at USCIS Field Offices, which should consequentially experience a reduction in the number of emergency advance parole requests they receive.¹⁰

Eliminating the Abandonment Policy on Advance Parole Applications Will Facilitate Travel for Critical Business and Personal Reasons and Better Serve U.S. Economic Interests

The abandonment policy on advance parole applications also harms U.S. economic interests by restricting the ability of high-skilled workers, including business professionals, professors, researchers, and scientists, to travel overseas. By requiring adjustment applicants to remain in the United States while the advance parole application is pending (up to six months or more) solely to avoid abandonment, USCIS is needlessly tying the hands of U.S. companies and other institutions, hindering their ability to meet market demands and remain flexible in today's global economy.¹¹ The postponement or cancellation of even one critical international business convening, or preventing even one research scholar, professor, or scientist to miss a scholarly meeting or thought-provoking conference as a result of this unnecessary policy is a loss of an economic opportunity for the United States. Changing this policy to allow advance parole

⁹ See *I-131, Application for Travel Document*, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://www.uscis.gov/i-131> (last updated Sept. 10, 2018) (providing that “[y]ou do not need to pay an additional fee for Form I-131 if: [y]ou are filing Form I-131 Application Type B or D; [y]ou filed a Form I-485 with a fee on/after July 30, 2007; and [y]our Form I-485 is still pending.”).

¹⁰ See *Emergency Travel*, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://www.uscis.gov/green-card/green-card-processes-and-procedures/travel-documents/emergency-travel> (last updated March 8, 2018).

¹¹ See *Check Processing Times*, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://egov.uscis.gov/processing-times/> (last visited Oct. 12, 2018) (indicating an “estimated time range” of 3 to 5 months for the Vermont Service Center; 2.5 to 5 months for the Texas Service Center; 2 to 5 months for the California Service Center; and 4 months to 6 months for both the Nebraska Service Center and the National Benefits Center).

applications to proceed will better promote U.S. economic interests and ensure that U.S. businesses and universities remain competitive in a fierce globalized marketplace by facilitating mobility, fostering business transactions, and expanding academic exchange. Doing so will also facilitate travel for humanitarian or compelling personal reasons, such as to visit a sick relative or attend the funeral of a loved one.

Conclusion

We appreciate the opportunity to comment on Form I-131 and its instructions, and we look forward to a continuing dialogue with USCIS on these issues.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION