



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

February 18, 2019

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

Submitted via www.regulations.gov
Docket ID No. USCIS-2015-0004

Re: OMB Control Number: 1615-0135

USCIS 60-Day Notice and Request for Comments on Proposed Revisions to Form I-131A, Application for Travel Document (Carrier Documentation)

Dear Ms. Deshommes:

The American Immigration Lawyers Association (AILA) respectfully submits the following comments in response to the above-referenced 60-day notice and request for comments on proposed revisions to Form I-131A, Application for Travel Document (Carrier Documentation) and its accompanying instructions, published in the Federal Register on December 18, 2019.¹

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 the proposed revisions to Form I-131A 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.

Revised Form I-131A and Its Instructions May Help Standardize the Process for Individuals Whose Advance Parole Document, or Employment Authorization Document (with Travel Endorsement) is Lost, Stolen, Destroyed or Damaged While Traveling Abroad

As an initial matter, AILA is hopeful that the proposed revisions to Form I-131A will help standardize the process for obtaining re-entry to the United States for those persons who have an unexpired Form I-512/I-512L, Advance Parole Document, or a Form I-766, Employment

¹ 84 FR 69387 (December 18, 2019).

Authorization Document (EAD) with travel endorsement, which has been lost, stolen, destroyed or damaged while the individual is traveling overseas temporarily. In particular, AILA is hopeful that the proposed revisions to Form I-131A will make it easier for individuals who find themselves in such a situation to more easily apply for a carrier documentation to board a carrier (airline, ship, etc.) to facilitate travel back to the United States. Previously, this process was not as standardized and the procedure for approaching a U.S. Department of State (DOS) consular post or overseas U.S. Department of Homeland Security (DHS) office to facilitate re-entry to the U.S. with a carrier document was not well published. In many cases, this situation be a frightening and stressful one for foreign nationals whose advance parole or employment authorization documentation (with travel endorsement) has been lost, stolen, destroyed, or damaged while traveling overseas, many times due to no fault of their own. Standardization of this process should help to minimize these concerns and provide much needed clarity and transparency regarding the process.

The DOS had previously issued guidance to consular officers regarding their role in the I-131A process. This guidance is provided in the Foreign Affairs Manual (FAM) at 9 FAM 202.2-5. The FAM provisions advise consular officers of their role in the Form I-131A process, including considerations for approving or denying Form I-131A applications. We hope that USCIS will work with DOS to continue to update guidance in the FAM related to the role of consular officers in the I-131A process, in particular relating to individuals whose advance parole or employment authorization documentation (with travel endorsement) has been lost, stolen, destroyed, or damaged while traveling overseas.

Main Issues of Concern Regarding Proposed Revisions to Form I-131A and Its Accompanying Instructions

Concerns Regarding Instructions on How to File an I-131A Application at U.S. Consular Posts

The revised Form I-131A instructions indicate that the Form I-131A application should be filed at the DOS consular post in the country in which the individual is located. This is a change from the current form instructions which allow for filing the application at a USCIS international field office or a DOS consular post. Specifically, the revised Form I-131A instructions state on page 6, “Contact the nearest U.S. Embassy or U.S. Consulate, or visit its website for instructions on how to file.” Thus, USCIS has now delegated the authority to issue carrier documentation to DOS, which AILA notes is similar to the recent change to I-130 petitions filed abroad under exceptional circumstances.²

AILA is concerned that some DOS consular posts may not maintain up-to-date public website instructions regarding the process for filing I-131A applications with the consular post. Furthermore, depending on the consular post, customer service communication options may be very limited, making it difficult for I-131A applicants to obtain clarifying information regarding the process for submitting Form I-131A at a particular consulate, especially on short notice. AILA

² USCIS Policy Manual, Volume 6 – Immigrants, Part B – Family-Based Immigrants, Chapter 3 – Filing, <https://www.uscis.gov/policy-manual/volume-6-part-b-chapter-3#footnote-5>.

has continued to report customer service communication issues with consular posts, including the lack of a publicly facing email addresses or other helpful contact information, to the DOS.³

AILA recommends that USCIS continue to work with DOS to standardize and publish instructions related to Form I-131A filing procedures on consular post websites. AILA also urges USCIS to continue to work with DOS to publish consular post contact information in order to facilitate the I-131A process, as many times timely communication with the consular post is needed on very short notice due to impending return travel back to the United States. As USCIS is delegating authority to DOS to process these I-131A applications, it is important that USCIS continue to monitor how DOS is accepting and adjudicating these applications, including ensuring that sufficient information is provided to the public regarding how the Form I-131A will be processed at each consular post.

Concerns Regarding the Online Payment Process for Paying the I-131A Filing Fee

USCIS requires that the I-131A filing fee be paid online through an online payment system provided on the USCIS website: <https://my.uscis.gov/travel-document/>. The Form I-131A filing fee must be paid using a credit card, debit card, or U.S. bank account. In previous engagements with USCIS, AILA has noted concerns related to the online payment process for the I-131A filing fee.⁴ AILA remains concerned and continues to monitor issues with the payment of the I-131A filing fee. In particular, AILA is concerned that the current online process for paying the I-131A filing fee requires the applicant to provide an Alien Number (A-Number) in order to pay the required filing fee online. In some situations, however, a foreign national who is a lawful permanent resident (LPR) or who has an advanced parole document (if an A-Number has been assigned) may not recall their A-number or may not have their A-Number readily available in order to complete the filing fee payment, especially in situations of a lost, stolen, destroyed, or damaged document. AILA recommends that USCIS allow applicants to pay the I-131A filing fee without requiring an A-Number, such as allowing applicants to leave that field blank.

In addition, in some cases, AILA members or their clients have experienced issues paying the I-131A filing fee electronically when they do not have a U.S. billing address, or access to such at the time of payment. AILA recommends that USCIS consider additional payment options, including payment with a foreign billing address.

AILA also remains concerned about the prospect of technical issues arising through the online payment system, such as user time out issues during the completion of the payment process and issues with proof of payment being provided through the online payment system, especially given that evidence of payment is required in order to file the I-131A application at a DOS consular post.

To address these and related concerns, AILA urges USCIS to permit the I-131A filing fee to be paid directly at the DOS consular post that accepts and adjudicates the I-131A application. The

³ See e.g., *AILA DOS Liaison Q&As (10/3/19)*, AM. IMMIGRATION LAWYERS ASS'N. (Oct. 3, 2019), published on AILA InfoNet at Doc. No. 19100900.

⁴ See *USCIS International Operations Liaison Meeting Q&As (4/5/17)*, AM. IMMIGRATION LAWYERS ASS'N. (April 5, 2017), published on AILA InfoNet at Doc. No. 17092140.

payment process could be similar to the way a DOS consular post intakes fees for the filing of an I-130 petition overseas, generally at the consular post's cashier.

Other Areas of Concern Regarding USCIS's Processing and Issuance of Travel Documents

In addition to the specific issues noted above regarding the revised Form I-131A and its instructions, the proposed revisions to Form I-131A present USCIS with an opportunity to reconsider and revise policies relating to other travel documents, in particular advance parole documents. For example, USCIS should strongly reconsider the value of the agency's recently implemented policy of denying advance parole applications where the applicant departs the U.S. while the first advance parole application is pending or limiting the time when a renewal can be filed to only 6 months before the existing advance parole expires (despite USCIS processing times *in excess* of 6 months). Further, USCIS should examine the difficulties caused by USCIS's recent policy of eliminating stakeholder access to USCIS field offices for "walk-in" emergency advance parole requests. All of these policy issues could be rectified through simple policy modifications that USCIS should consider as it finalizes its proposed revisions to Form I-131A.

USCIS should stop denying advance parole applications in situations where the applicant travels abroad while the initial advance parole application is pending with USCIS

Up until 2017, USCIS had a long-standing policy of approving advance parole applications, even if the applicant departed the U.S. while the advance parole application was pending with USCIS. In summer 2017, AILA began receiving reports from AILA members of denials of advance parole applications for abandonment in instances where the applicant traveled abroad during the pendency of the application. The pending advance parole applications were being denied by USCIS even if the applicants had a separate valid advance parole document or a valid H, K, L, or V visa to return to the U.S.

This policy change was made without public announcement or opportunity for comment, 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, this policy wastes USCIS resources by creating inefficiencies in the adjudications process, and harms U.S. businesses and individuals by unnecessarily restricting international travel.

In early 2019, the CIS Ombudsman announced that USCIS had revised its policy and confirmed that USCIS would not deny a pending advance parole application for abandonment where the applicant had an unexpired advance parole document at the time of departing the United States provided that the advance parole document remains valid for the entire time abroad.⁵ However, this policy revision only partially solves the problem, as USCIS continues to deny initial advance parole applications even where the applicant has valid underlying H or L status and is thus permitted to travel abroad without abandoning his or her adjustment of status application.

⁵ See *CIS Ombudsman's Office Issues Message on Advance Parole Processing*, AM. IMMIGRATION LAWYERS ASS'N. (Feb. 8, 2019), published on AILA InfoNet at Doc. No. 19020831.

The policy of denying these applications 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 initial advance parole application is pending (in some cases up to seven months or more), 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. 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 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 applications to be adjudicated despite an applicant's departure from the United States 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 to attend the funeral of a loved one.

As it reviews comments to its proposed revisions to Form I-131A and implements its proposed changes to the Form I-131A process, USCIS should simultaneously update its policy on adjudication of advance parole applications and restore its decades long approach of not denying an advance parole application when the applicant travels abroad during the time the application is pending, whether it is for the initial advance parole document or a renewal application. By taking this opportunity to terminate its current policy of denying advance parole applications if the applicant departs the U.S. while the advance parole application is pending, USCIS will reverse the harmful impact of this policy, improve agency operations, and better serve U.S. economic interests.

USCIS should permit advance parole renewal applications to be filed up to 12 months prior to the expiration of the existing advance parole document to account for extended USCIS processing times

Under current USCIS policy, an application to renew an advance parole document cannot be filed more than 6 months prior to the expiration of the advance parole document. Yet the current USCIS processing times indicate that the processing of advance parole applications at the Nebraska Service Center are taking up to 7 months, and currently do not permit an inquiry to be placed on an advance parole application filed after July 22, 2019.⁶ This processing time frame is similar at the National Benefits Center.⁷ Because renewal applications cannot be filed more than 6 months before expiration, and USCIS is taking up to 7 months or more in many cases to process such applications, in many cases applicants experience a period of time where they are unable to travel abroad. This often causes interruptions to important business travel, and can cause tremendous complications for someone who needs to travel abroad due to a family emergency or for other urgent reasons.

⁶ *Check Case Processing Times*, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://egov.uscis.gov/processing-times/> (last accessed Feb. 18, 2020).

⁷ *Id.*

A simple solution to this problem could be implemented by USCIS by allowing applicants to file for a renewal within 12 months of the expiration of an advance parole document. This would allow applicants to file far enough in advance to ensure there is no gap in their ability to travel abroad, and would further reduce the need for the USCIS Contact Center and local USCIS field offices to accommodate emergency advance parole appointments. This would be a simple change that makes practical sense and would be a significant process improvement.

USCIS should allow emergency “walk in” appointments at USCIS field offices without the need to obtain an appointment in advance through the Information Services Modernization Program (InfoMod)

There are situations where there is a true emergency and an advance parole document needs to be issued immediately in order to permit international travel. Historically, a USCIS field office would accommodate such requests by allowing the applicant to self-schedule an InfoPass appointment online, or in extreme emergencies by allowing the applicant to simply walk-in to a USCIS field office with evidence of the emergency.

In 2018, USCIS changed this policy and instead began mandating that applicants call the USCIS Contact Center to explain the need for an appointment, a process known as the Information Services Modernization Program (InfoMod).⁸ When calling the USCIS Contact Center, callers generally have to navigate through the Interactive Voice Response (IVR) system, and then Tier 1, before being told that they will need to speak to a Tier 2 officer and that they should await a call-back from USCIS. They are often told to be ready to receive a call generally within 24-48 hours. AILA has received many reports of instances where no call-back was ever received, or was received well beyond normal business hours. If the applicant fails to answer the phone after several attempts to reach the applicant, the request for an appointment is closed and the applicant has to call the USCIS Contact Center again to start the process anew.

This is an ineffective process that does not work to address emergency travel needs. When someone has a dying relative, every hour is critical. Making that applicant wait days or weeks while wading through a maze of call-backs just for the hope of getting an appointment is unnecessary and cruel. As it has historically done, in true emergencies, USCIS should allow applicants to go directly to the USCIS field office and provide evidence of the emergency so that an advance parole document can be issued. By making this simple process change to return to what the agency has historically done, USCIS could be responsive to emergency needs in a way that the InfoMod system fails to do.

Conclusion

We appreciate the opportunity to comment on the proposed revisions to Forms I-131A and its instructions. We look forward to a continuing dialogue with USCIS on these issues and related matters.

⁸ See e.g., *USCIS to Expand Information Services Modernization Program to Key Locations*, U.S. CITIZENSHIP & IMMIGRATION SERV. (October 30, 2018), <https://www.uscis.gov/news/news-releases/uscis-expand-information-services-modernization-program-key-locations>.

Respectfully submitted,

AMERICAN IMMIGRATION LAWYERS ASSOCIATION