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October 15, 2024

Samantha Deshommes
Chief, Regulatory Coordinator
Division Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

Re: Comment in Response to the DHS/USCIS Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition for Amerasian, Widow(er), or Special Immigrant; OMB Control Number 1615-0020; USCIS Docket Number USCIS-2007-0024.

Submitted via Regulations.gov

Dear Chief Deshommes,

The Immigrant Legal Resource Center (ILRC) submits the following comment in response to the U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security's (DHS) Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition for Amerasian, Widow(er), or Special Immigrant, published on August 16, 2024.
The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity.

The ILRC is also a leader in interpreting family-based immigration law as well as VAWA, U, and T immigration relief for survivors and Special Immigrant Juvenile Status and other relief for immigrant youth. The ILRC has a long history of producing trusted legal resources including webinars, trainings, and manuals such as *Families & Immigration: A Practical Guide*; *The VAWA Manual: Immigration Relief for Abused Immigrants*; and *Special Immigrant Juvenile Status and Other Immigration Options for Children and Youth*. Through our extensive network with service providers, immigration practitioners, and immigration benefits applicants, we have developed a profound understanding of the barriers faced by vulnerable immigrant and low-income communities of color – including survivors of intimate partner violence, parental abuse and neglect, as well as other forms of trauma. It is through this lens that we provide the following comment on the proposed Form I-360 and Instructions as it pertains to Special Immigrant Juvenile Petitions, VAWA Self Petitions and widow/er petitions.

I. Comments on the form generally

The ILRC thanks USCIS for creating a more condensed and comprehensive Form I-360, where petitioners can focus on the questions that pertain to them. The creation of supplements for each form of relief has the potential to reduce confusion and make clear to applicants which sections apply to them and need to be completed. This change is particularly important for *pro se* applicants, who may not be able to find or afford legal counsel to help them navigate a long and complicated form. USCIS is to be commended for the changes that aim to make the form more accessible for applicants, practitioners, and adjudicators. Further, the addition of the more inclusive option of "another gender identity" on the form is a welcome change to ensure that applicants can more accurately indicate the gender option with which they identify.

While these changes are welcome, there are still areas where the agency should further enhance clarity on the form. Generally, there is a need for easier to understand instructions on the form making it clear which supplement is required for the applicant. USCIS should number the supplements and adding the corresponding number to "Part 1. Classification Requested." The form is still quite dense, and the addition of supplement numbers may make it easier to digest. USCIS should also consider more explanatory language on the form itself prior to Part 1, such as:

You must complete and submit Parts 1.-7., plus the individual supplement required for the specific classification you are requesting. Do not submit supplements that are not applicable to the specific classification that you are seeking. You should only file one supplement that corresponds with the list of categories below.

USCIS should also revise Part 2, Question 10 on marriages to reduce applicant confusion to the language on the current form. The addition of "legally separated," and "marriage annulled" may be confusing for *pro se* individuals. Applicants may not understand the legal nuance of the term "legally separated" and may answer in the affirmative if only physically separated. Further, the distinction between annulment and divorce may cause confusion. USCIS should include more information either on the form or in the instructions as to the legal distinctions for both the "legally separated" and "marriage annulled" options in Part 2. For example, for legal separation, it would be useful to add language stating that legal separation is similar to a divorce in that it requires documentation from a court.

II. Special Immigrant Juvenile

With respect to special immigrant juveniles (SIJs), we appreciate that certain superfluous questions from the current edition have been removed given that much of the requested information is already contained in the state court predicate order, which is more than enough to adjudicate the petition. However, there are some changes to the proposed form that should be changed given the implications and ramifications they could have on certain vulnerable noncitizen populations. One specific note on the proposed form: there is no box provided to answer Question 1.a. on the SIJ supplement.

The proposed form requires the physical address of the juvenile in Section 1 of the SIJ supplement. The current edition only requires a mailing address, which is a better alternative than the proposed change of requiring a physical address. The proposed change could create issues for juveniles living in confidential placements such as foster homes. If the juvenile cannot provide their physical address because it is confidential, this could lead to filing rejections that could prejudice the youth from filing timely before their 21st birthday.

Similarly, requiring the address of the legal guardian/custodian is problematic because the address of the juvenile and the address of the legal guardian/custodian might differ for reasons related to schooling or the best interest of the child. For example, a juvenile currently living in a college dormitory will have a different physical address than the legal guardian/custodian. In addition, a juvenile living temporarily with a family relative that is not the legal guardian/custodian because it is in the child's best interest could cause an adjudicator to question the validity of

the guardianship, even though state law may allow for the juvenile to live in a location determined by the guardian that is in the child's best interest, and not require that the juvenile always reside with the guardian.[1] Some guardians may also wish to limit the amount of their personal information that is included in the juvenile's Form I-360, so requiring their address on the Form I-360 could dissuade them from taking on the role of legal guardian. As such, requiring this information could unduly prejudice the juvenile at adjudication.

Another change that should be adopted is the necessity of requiring the date of birth and the last known address of the natural or prior adoptive parents of the juvenile. This information is not currently required. The requirement could lead the juvenile to give inadvertently incorrect information due to the juvenile's or guardian's limited information about the natural or prior adoptive parent, particularly where there is a history of abuse by the prior natural or adoptive parent.[2] Requiring this information could result in the submission of inconsistent information that might affect the adjudication of the petition and prejudice the juvenile. At best, the inclusion of this question is unnecessary and could result in the needless expenditure of resources by the agency to clarify submitted information.

Finally, ILRC notes that the proposed instructions for the Form I-360 include erroneous language under the law regarding certain restrictions pertaining to legal guardians or custodians. The proposed instructions note that the natural or prior adoptive parents of the special immigrant juvenile cannot receive any immigration benefit based on their relationship to the juvenile, which includes "legal guardians or custodians of the SIJ petitioner pursuant to the juvenile court order submitted in support of the SIJ petition."[3] Under the law, the restriction is limited to any "natural parent or prior adoptive parent," and does not create a bar on the legal guardian or custodian deriving an immigration benefit from the juvenile (which is unlikely anyway since a legal guardian or custodian is not a "parent" under the INA).[4] It is imperative that USCIS corrects the instructions to accurately reflect the statute and to avoid creating confusion for petitioners.

III. VAWA

With respect to the supplement for Violence Against Women Act (VAWA) Self-petitioners, the reorganization of the questions and grouping of questions creates a form that is easier to follow. The proposed changes include improvements, such as:

- The inclusion of language on disclosures as it pertains to 8 U.S.C. § 1367(b).
- The inclusion of a section for derivatives, allowing self-petitioners to add family members who are also eligible for the benefit. This can facilitate an easier inclusion of information in future benefit applications.
- The proposed addition for the type of qualifying relationship between parent or child self-petitioner, asking the self-petitioner to identify if they are considered a "natural parent or child," "adoptive parent or child," or "step-parent or child." This will allow applicants to identify what evidence will be needed to show eligibility and the qualifying relationship. However, Section 1, Question 2 should include the term "biological" to reduce confusion ("Natural or biological parent or natural or biological child.")

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[1] *See, e.g.,* Cal. Prob. Code Section 3252 ("The guardian may establish the residence of the ward at any place within this state without the permission of the court. The guardian shall select the least restrictive appropriate residence that is available and necessary to meet the needs of the ward, and that is in the best interests of the ward.").

[2] As noted in the proposed amended instructions for the Form I-360, under 8 U.S.C. § 1357(h), a juvenile cannot be required to contact the alleged abuser. As such, a requirement to obtain this information could be construed as unlawful.

[3] Page 9 of I-360 Redline Instructions available on regulations.gov.

[4] 8 U.S.C. § 1101(a)(27)(J)(iii)(II).

However, there are some proposed changes that will make the form more difficult for survivors of abuse to complete, particularly *pro se* applicants. One specific note on the proposed form: there is no box provided to answer Section 3, Question 1.a. on the VAWA supplement.

Specifically, there are numerous proposed changes and additions of questions related to self-petitioning spouses including: questions on prior marriages, how the abuser obtained status, and the self-petitioner's residence with the abuser. These extra questions will create confusion and are not needed to determine a self-petitioner's eligibility for VAWA. Specifically:

- Section 1, Question 2 refers to an "alleged" abuser which is not language that is repeated throughout the rest of the form. The inclusion of "alleged" in this context is unnecessary and should be removed.
- Section 4, Question 2, which asks how a U.S. citizen abuser obtained their status as a U.S. Citizen, should be eliminated. Many self-petitioners do not know this information and will not be able to determine if the abuser obtained their U.S. citizenship through birth, acquisition, or naturalization. This is especially true for abusers who acquired U.S. citizenship after being born abroad, which may cause confusion for applicants when answering this question.
- Section 4, Question 3 combines two questions from the current form. It is better to keep these questions separate as it may cause confusion for applicants. An A-Number is not necessary if the self-petitioner is applying as the spouse of a naturalized citizen. Requiring the A-Number should be relegated to those self-petitioners applying as spouses of lawful permanent residents.
- Section 4, Questions 7-9 should be eliminated, and the form should revert to the current I-360 regarding the self-petitioner's residence with the abuser. Keeping the question on the date range of when the self-petitioner lived with the abuser and being asked to provide the last address where the self-petitioner resided with the abuser, is clearer and causes less confusion for applicants. To be eligible, VAWA self-petitioners must show that they resided at one point with their abuser, but it is no longer required that they reside currently or that they should have resided for a set period with their abuser to be eligible. The added questions are superfluous and unneeded and will create an additional burden on the applicant that is not supported by the law.
- The instructions for safe address for VAWA applicants should be updated to include the term "legal representative" to account for accredited representatives who may be representing the applicant.

IV. Widow/er

With respect to the supplement for widows and widowers of U.S. citizens, ILRC has the following comments:

- USCIS should change the title to the Widow/er Classification Supplement as follows to clarify only widow(er)s *of U.S. citizens* are eligible to self-petition: "(Complete Only If Filing as a Widow/Widower of a U.S. Citizen)." This also comports with how the instructions refer to this classification.
- Section 1, Question 5 should be eliminated. As raised in the VAWA Classification Supplement comments above, the self-petitioner may not know exactly how, or when, their deceased U.S. citizen spouse became a U.S. citizen. Further, this question is unnecessary for determining eligibility.
- Section 2, Question 2 has a duplicate word "times": "How many times times was your deceased spouse married?"
- Section 2, Questions 3 and 4 have duplicate words "your": "When did you and your your…"
- Section 2, Question 5 should only ask if at time of death the self-petitioner was legally separated or divorced from the U.S. citizen spouse, since these match the eligibility requirements recited in the Instructions.

Please reach out to Elizabeth Taufa, etaufa@ilrc.org., with any questions.

Sincerely,

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