American Immigration Lawyers Association
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February 13, 2006

Department of Homeland Security
USCIS
Director, Regulatory Management Division
Clearance Office
111 Massachusetts Avenue, 3rd Floor
Washington, DC 20569

RE: *Request for Comments Relating to:*
(1) 45-Day Notice of Information Collection under review: i-account; USCIS Form 1;
(2) 45-Day Notice of Information Collection under review: Employer Registration, USCIS Form 2;
(3) 45-Day Notice of Information Collection under review: Employer Registration, USCIS Form 2 A;
(4) 45-Day Notice of Information Collection under Review: r-account, USCIS Form 3;
(5) 45-Day Notice of Information Collection under Review: Application for Change or Extension of Nonimmigrant Status for H-1B, Form 41;
(6) 45-Day Notice of Information Collection under Review: Petition for Temporary Worker–H-1B Cap, Form 60.

Dear Sir or Madam,

The American Immigration Lawyers Association ("AILA") submits the following comments to the Notice[s] published in the *Federal Register* on December 23, 2005, regarding: (1) 45-Day Notice of Information Collection under review: i-account; USCIS Form 1; (2) 45-Day Notice of Information Collection under review: Employer Registration, USCIS Form 2; (3) 45-Day Notice of Information Collection under Review: r-account, USCIS Form 3; (4) 45-Day Notice of Information Collection under Review: Application for Change or Extension of Nonimmigrant Status for H-1B, Form 41; (5) 45-Day Notice of Information Collection under Review: Petition for Temporary Worker–H-1B Cap, Form 60; on or about December 29, 2005 draft Form 1, Form 2; Form 3, Form 41 and Form 60 were posted on the USCIS website–it is the agency's intent to incorporate the forms into the Notice[s] by reference.

AILA is the immigration bar association of more than 9,600 attorneys and law professors practicing and teaching in the field of immigration and nationality law. Founded in 1946, the association is a nonpartisan, nonprofit organization and is an affiliated organization of the American Bar Association ("ABA").

AILA is uniquely situated to evaluate the impact of USCIS' proposed restructuring of its business processes "to move from an exclusive transaction based focus to customer management". Nearly 6,500 of AILA's current members handle business based immigration matters. Over 83% of our members practice in firms with 9 or fewer attorneys; 43% are solo practitioners and 22% practice in firms with 3 or fewer members. The "information collection request[s]" submitted to OMB indicated that initial, mandatory electronic filing for H-1B cases subject to the statutory "cap" will begin on April 1, 2006. In subsequent discussions with USCIS, AILA has been advised: (1) the April 1, 2006 commencement date has proven to be unrealistic; (2) USCIS is revisiting the i Account initiative looking toward e-filings for numerous benefits starting before the end of fiscal year 2006.

AILA wishes to compliment USCIS for its vision and its sensitivity to the concerns of stakeholders as it crafts and implements this far reaching initiative that will inevitably result in a dramatic sea change in processing immigration benefits. Although acknowledging that it is deferring launching the electronic filing initiative while it rethinks its scope, USCIS has not withdrawn the Request for Comments, nor has it amended or extended the Comment period ending on February 13, 2006. This notwithstanding, AILA has been advised that its continuing input is sought as USCIS hones its proposal and that the USCIS final proposal will be subject to the rulemaking procedure.

AILA strongly recommends avoiding implementing the program to meet any arbitrary schedule. USCIS can benefit from the recent lessons of history: after over five years of planning, the 2005 implementation of the U.S. Department of Labor's "Program Electronic Review Management" (PERM) program has proven to be disastrously premature. The USCIS needs to evaluate and learn from, and largely avoid, the PERM model. If for no reason other than the PERM experience, AILA has concerns about the feasibility of successfully launching the program on relatively short notice, within the current fiscal year. As part of the process AILA urges USCIS, through subsequent notices, to formally seek further comment as it amends its proposal, prior to formal rulemaking.

Experience with various programs over the years leads AILA to strongly believe that electronic filing needs an extensive trial or "beta" period to identify and resolve problems without penalizing the stakeholders. And, whenever implemented, AILA encourages the agency to have a comprehensive "back up" plan allowing for an abbreviated online (or hardcopy) filing.

As noted, USCIS has published draft Form 1, Form 2; Form 3, Form 41 and Form 60 which are implicitly incorporated by reference into the Notice[s]. AILA believes that these information collection requests exceed the authority of the USCIS, as the volume and nature of the information sought reaches beyond that necessary for the proper performance of the functions of the agency. The USCIS seriously underestimates the burden on those who will have to collect and submit the information; much of the information sought is subject to change or is not relevant, thereby undercutting the

quality, utility and clarity of the information requested. Further, the proposed information collection imposes excessive burdens on those who are required to respond. AILA urges that the forms and the instructions be withdrawn, and that new information collection requests only be proposed after essential policies and operational elements of the electronic filing and adjudication initiative are established. And, perhaps most importantly, as noted below, the forms may not be implemented until regulations are changed after a reasonable notice and comment period.

As noted above, while acknowledging that it is reassessing the program, the agency has not altered the Comment period. Thus, AILA's comments necessarily focus on the December 23, 2005 Notice[s], the draft forms (and their instructions).

In seeking comments and suggestions concerning the collection of information each of the Notices specifically sought information regarding the following points:

(1) . . .whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) . . . the accuracy of the agency's estimates of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) . . . the quality, utility, and clarity of the information to be collected; and

(4) . . .the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In response AILA offers general, overall comments regarding the issues posed by the Notices and necessarily evaluates the draft forms released by the agency to date, whose form and substance would initially constitute the core of the program as envisioned in the Notices.

General Concerns

The information sought substantially and onerously exceeds the documentation required for the benefit sought, which, in the initial instance, is approval of an H-1B petition subject to the annual cap. Requiring submission of comprehensive information at the outset, in anticipation that the petitioner might subsequently sponsor the beneficiary for another benefit, will very often prove to be inefficient, since the employer's, or employee's, circumstance may prove to be unexpectedly or radically different at a later time, or the employer may simply never file another petition.

AILA members experienced with data base and forms preparation systems report that collection of extensive data at the outset of representation proves not to be a useful exercise, as circumstances from education level, career goals, and marital status and parenthood can change in the course of representation and certainly in the time between possible petitions by an employer for a beneficiary. Retaining outdated information results in errors and confusion in law offices, but could have far more serious consequences if maintained in a government database where disparate information can too often be mistaken for attempted fraud.

AILA believes that rather than initially soliciting information for most conceivable benefits, the agency should take a modular, or building block, approach. When a file is opened, only require information which is needed for the adjudication of the particular benefit sought; with the electronic filing program having the capacity of saving the information and transferring it to additional applications if, and when filed.

Noting that the agency is committed to an interactive program, AILA believes that the architecture of the system must be transparently structured and user friendly, to easily allow updates, corrections and amendments. Further, "footprints" must be preserved in order to easily determine when amendments and additions to the file occurred and who made the change(s).
As to whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility: (1) to the extent national security can be legitimately enhanced through the efficient and effective processing of data, AILA supports electronic filing, and, (2) to the extent collection of information is necessary to more efficiently perform the USCIS' adjudicatory functions AILA supports electronic filing.

Naturally, the proverbial devil is in the details. The enhanced collection of data alone, through electronic filing does nothing to insure the "quality, utility, and clarity of the information." AILA is concerned about the collection of irrelevant and distracting data and the collection of redundant information that does nothing to enhance national security and which may be available and fully accessed though other means such as USVISIT's biometric capacity. AILA is aware of the experience of another federal agency where access to a large data system resulted in a virtual shutdown of adjudications as officers felt compelled to follow up on endless, irrelevant "leads".

As to the accuracy of the agency's estimate of the burden of the collection of information, AILA believes that, not withstanding USCIS' contention that "the account system allows USCIS to avoid burdening the customer with repeated information. . . .", the agency has grossly underestimated the burden to stakeholders. The burden includes, but is not limited to: (1) supplying information which is not required by statute or regulation for the benefit sought; (2) in essence, prospectively supplying information on the assumption that it may someday be relevant to a benefit, which is not now sought and which need never be sought; and (3) supplying currently unnecessary information, which if ever legitimately required will likely be confusing or incorrect if not updated or restated *de novo*.

Regarding the "Paperwork Reduction Act Notice", the Notice[s] fails to provide the basis and methodology indicating how the agency made its time estimates. Based on the experience of its members, AILA is certain that completion of these forms will involve untold hours of paperwork, and the agency's time estimate of the burden will prove to be altogether unrealistic.

By way of illustration, for Form 1, the predicted time of "40 minutes" is inaccurate at the outset because of the nature of information sought, to wit: many of the questions lack definitions and are confusing. Therefore the user necessarily needs not only to thoroughly review the answers, but perhaps seek independent counsel for fear of providing an incorrect answer. Similarly, the "employer" forms severely underestimate the time burden, since the employer must obtain and be prepared to produce corporate ownership and organization information; specific details about parents, subsidiaries, affiliates and joint ventures; employer letters; copies of written contracts with the alien; copies of licenses and other official permission to practice the occupation; and complex tax information. Small businesses often must provide more extensive documentation (such as "certified" tax returns, which can take months to obtain).

Although AILA members represent many of the stakeholders in the business community, the size of many practices, noted earlier, and the "boutique" nature of many of them, is such that the nuts and bolts details, and the ensuing costs, of imposing mandatory technology is of great concern to our attorneys and their clients alike. Concerns include: what commercial off-the-shelf (COTS) software is USCIS using; what are the software standards that case management and forms software vendors must adopt; if the agency has done business process mapping (and will it share the maps) of the e-filing/e-adjudication lifecycle (cradle to grave, i.e., matter opening, adjudication, notification, retention, storage, data mining capability); what are the plans for opting for either, or both, image scanning or optical character recognition (OCR) scanning, of text-based images?

The breadth and scope of information subject to the proposed collection raises serious privacy concerns. Much of the information requested, as noted already, may not be relevant to the completion of a process for which an applicant or user is providing the information, thus requiring the applicant or user to provide private information unnecessarily. Any information provided pursuant to any information collection must be secure and protected from unwarranted, unauthorized, or illegal distribution or use. The proposed information collection does not provide any information on plans to secure the confidentiality of the information being collected.

Filers are warned: "We do provide certain information given us to other government agencies." Because this process seeks information that may never be required for a benefit, AILA strongly believes that the petitioner/applicant should be given additional, explicit warnings as to the consequences of providing information that could lead to criminal prosecution, civil or criminal fines, and removal.

With the above-stated broad concerns in mind, we turn our attention to more particular issues and concerns regarding e-filing and e-adjudication system operations, architecture, user interface, an processes, and the interplay between these information collections and e-filing and e-adjudication overall.

General Concerns Regarding Forms 1, 2, 2a, 3, 41 and 60 and the Instructions

1. **Email should be a supplemental method of communication.** According to the Instructions and the Forms, USCIS favors "*primarily using*" the user's email as the means for communication with the user. AILA is greatly concerned about the possibility of USCIS choosing to solely rely on email, especially in light of system failures, spam filters, and other problems unique to emails. With the breadth of information the form seeks, and the significance of the benefit decision sought, AILA believes that USCIS should not be allowed to rely on email contact alone.

2. **Need for multi-screen accessibility:** The user might be confused about his or her answers, unless several screens can be seen concurrently. In the alternative, the form should allow the user to toggle back and forth between screens. Or preferably, the screen view should mirror the look and feel of current immigration benefit-request petitions and applications so that the users do not need to adjust to unfamiliar screens. Behind the scene the software can be programmed to maintain information in a user-accessible account.

3. **Need to have bi-directional input capabilities.** To the extent that the benefits-request transactional form has fields in common with the account forms, the user should have the option of data entry in either the transactional form or the account form, with reverse population of data automatically occurring in the other form. Thus, there should be a capability within the software to automatically populate all the forms, to the extent that there are common fields, so it can be easily and efficiently used.

4. **Need to be able to electronically download the forms:** The program needs to allow electronic downloads, and force the user to print and retain a hardcopy. It needs to allow the user to email a copy to the client, company, attorney, and whoever else legitimately needs to access the information.

5. **Need to allow sharing of information:** It is not clear whether the system allows the parties (e.g. alien, dependents, employer, attorneys, law firms) to see each other's screen views (assuming that consent to view is authorized as a means of addressing any privacy concerns). Obviously, this system should not preclude access to relevant information. Its restrictive nature interferes with compliance and the processing of immigration matters, which require cooperation by all interested parties, of course with authorization.

6. **The system should be sensitive to potential conflict-of-interest issues:** The agency needs to recognize that its on-line tools must accommodate users, while being sensitive to the inherent potential conflict-of-interest issues between parties (for example, between

alien and employer; between different employers in H-1B or adjustment of status portability contexts; between family members in both employment-based and family-based cases; between successor and predecessor companies with regard to ability to pay; between law firms and departing lawyers, etc.). As a result, the USCIS needs to address the rules concerning the right to representation (8 CFR § 292) and the software utilized must have the capability to provide notice to all parties with legal standing and a cognizable legal interest with respect to a discrete immigration matter.

7. **Problems with the unauthorized practice of law:** AILA is concerned regarding the agency's current efforts to enforce existing prohibitions on the Unauthorized Practice of Law and attempts to protect the public from predatory and illegal UPL practices. AILA encourages the agency to use electronic filing as a new beginning of vigorous prevention of UPL at every level.

The forms allow representation by a friend, relative, neighbor, clergyman, business associate, and others. USCIS needs to clarify how it will limit representation in order to bar or discourage the unlawful practice of law and minimize fraudulent representation of parties.

8. **Need reliable quality assurance measures:** Electronic filing will be no more than a burdensome electronic mail drop, unless consistent quality assurance measures at all Service Centers, and applying to each individual adjudicator, are observed.

AILA commends the model approach contained in the U.S. Government Accountability Office (GAO) Report to Congressional Requesters, entitled "*Immigration Benefits – Improvements Need to Address Backlogs and Ensure Quality of Adjudications*" dated November 2005, in dealing with improvements to address backlogs and ensure quality of adjudications. On page 21, the Report explains: "In November 2004, a proposed rule was published in the Federal Register that would generally give USCIS discretion to issue an RFE or NOID and would allow USCIS to determine whether additional information is required to decide cases. . .USCIS officials expect that reducing the number of RFEs and NOIDs required to be issued will reduce the average case-processing time by reducing the time a case is held awaiting decision and decreasing administrative burden . . . However, in commenting on the proposed rule, the American Immigration Lawyers Association expressed concern that USCIS is placing a higher priority on streamlining processes than on maintaining due process protections for applications. . .the association said that the proposed rule has no safeguards for ensuring that cases will be fairly adjudicated and that denying applications instead of giving applicants an opportunity to submit additional evidence results in a significant growth of arbitrary and capricious decisions."

On page 49 of the report, the GAO stated: "Since April 2002, USCIS's Service Center Operations Division has performed quality assurance review designed to evaluate the quality and correctness of adjudicative decisions for selected benefit applications filed exclusively at service centers. This quality assurance review uses the same guidance as the agency-wide program to select cases to review." Further, on page 50, "USCIS also

checks quality through supervisory review of case files at the local office level. However, these reviews are not consistently performed across all local offices." At the end of the report, pages 61 through 71, several internal "quality assurance" checklist and forms were produced.

We encourage the agency to employ similar quality assurance methodology found in the GAO report to prevent processing delays of these forms. This should entail a system which, first, makes the examiner certify that he or she read every document, and, second, routes the application to proper channels of review either by a human supervisor or by an artificial intelligence mechanism for confirmation that the intended action is correct. These active fail-safe measures should be incorporated into the software to preclude rogue-officer or inattentive-officer issuance of unwarranted RFEs or NOIDs.

9. **Forms should not be case sensitive:** The forms require the use of CAPITAL letters. The forms should not be case-sensitive, or otherwise the user will find it difficult to perform key word searches or forms in lower case might be needlessly rejected and require re-entry of data.

Regarding Specific forms:

Form 1:

1. §1.1, Question 1 – Include "Travel Document" as an alternative to a valid passport.

2. §1.1, Question 8 –Define "Part-time."

3. §1.1, Question 12 – Change "*INS*" to read "USCIS and INS"

4. §2.1, Question 2, which states: "*If you have any other academic credentials relevant to the **benefit** you are seeking, explain below*." This question is inconsistent with the concept of developing an account. In many instances, the individual is filling out the account before he or she knows what application to file with USCIS.

5. §2.2, Question 7, which states: "*Briefly describe job duties*" and Question 11, which states in part: *". . . summarize any employment . . . or any other employment that is relevant to your eligibility for the immigration* **benefit** *you seek*." – Again, the individual may be filling out the account before he or she knows what application to file with USCIS. This line of questioning is in an employment-related request, and does not serve the purpose of this form.

6. §3.2, Question 3, states*: "If convicted, what was the Court Docket number and the total sentence imposed at conviction?"* – The question should distinguish between "sentence imposed" and "sentence suspended."

7. §3.2, Question 5, which states*: "If you were not incarcerated, were you placed in an alternative sentenceing [sic] or a rehabilitative program . . ."* – Correct the spelling to "sentencing," and add the definition of "sentencing."

8. §3.3, Question C, D, G – Needs consistency between "*illegal drugs*," "*controlled substance*," and *illegal narcotic*."

9. §3.3, Question G – correct spelling and eliminate the extra "*k*."

10. §3.3, Question H – correct spelling of "*subjectoin*" to "subjecting;" "*involuntaay*" to "involuntary;" and "*wihth*" to "within."

11. §3.3, Question I, which states: "*Have you been a Government official, and been responsible for or directly violated the religious freedom of others*" – Correct the compound sentence and error in syntax.

12. §3.3, Question M, which states, in part: " . . . *have you ever engaged in any terrorist activity, including providing material support . . .* " – Add the word "knowingly" before *"providing material support."*

13. §3.3, Question O, which states: "*Have you ever, or do you intend to engage*" – Add the word "engaged" before the word "*or*" to read: "*Have you ever* engaged*, or do you intend to engage*."

14. §3.3, Question P – Same as above. Add the word "engaged" before the word "*or*" to read: "*Have you ever* engaged*, or do you intend to engage*."

15. §3.3, Question Q, which states: "*Have you ever lied or misrepresented information to gain entry into the United States, or to obtain any kind of immigration benefit or service?* – Eliminate the words: "*or service*." Or preferably, expressly track the language of INA §212(a)(6)(C)(i).

16. §3.3, Question R, which states: "*Are you likely to receive public assistance* . . . " – Preferably, track the language under the grounds of exclusion and removal for a "public charge."

17. §3.3, Question X, which states: "*Have you ever been refused admission or a visa?*" – This is overly broad. For instance, the alien could have been denied a visa under INA §221(g) for presenting an inadequate document, but subsequently obtained the visa after curing the defect. This question is ambiguous and confusing to the user.

18. §3.3, Question Y, which states: "*Are you now, or have you ever been, in exclusion . . . in immigration court or federal court?*" – Delete the words: "or

federal court." A person can have a variety of encounters with federal court outside the context of the immigration and criminal law.

19. §3.3, Question AA, which states: "*After November 30, 1986, have you, without reimbursing the school, attended a U.S. public secondary school as either an 'F' nonimmigrant student, while not in valid nonimmigrant status . . .*" – The question is not relevant to many immigration applications. Eliminate the words "while not in valid nonimmigrant status", the answer to which requires a legal conclusion which is not easily defined. Moreover, the date stated is confusing. It is likely the intended date is November 30, 1996, the effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA).

20. §3.3, Question AB, which states: "*Do you object to the principles of the U.S. Constitution. . . .*" – Delete: this is a naturalization question and does not need to be in this general form. In the alternative, track the language of INA §313 (prohibition upon the naturalization of persons opposed to government or law, or who favor totalitarian forms of government).

21. §3.3, Question AD: "*Have you ever taken steps to seek permanent status in the U.S.?"* – Vague. Change "*permanent status*" to: "legal permanent residence" or "an immigrant visa."

22. §3.3, Question AD, which states: "*Have you been employed since last admitted? . . . Have you violated your status since entry?"* – Vague and inconsistent. It should be either "admission" or "last entry," not both. Further, there is no definition of what constitutes a "violation of status." For example, 8 CFR 214.1(f) requires the alien to comply with any registration, photographing, fingerprinting and reporting requirements; and subsection (g) deals with crimes. There needs to be a definition of what constitutes a "failure" or "violation" of status.

23. §3.4 – It is overly burdensome and irrelevant to list all prior addresses for the past 5 years.

24 §5.1, which states: "*USCIS requires the disclosure of **any** person . . .*" – Only the person *primarily* responsible should provide his or her information.

25. §5.1, *Declaration*, which states: *". . . it is based on all the information of which I have knowledge . . .*" – Add the word "actual" before "*knowledge*."

26. §5.2 – It does not describe how the agency will communicate with a law firm designated for representation. Additionally, the form does not allow entry for more than one law firm.

27. Does this eliminate the need for Form AR-11? If so, please confirm and proceed with the requisite Rule making.

Instructions for Form 1:

1. §1.1, last bullet – "*INS*" should be replaced with "USCIS.

2. §3.4, which states in part: "*give each address as which you resided . . .*" – Delete the phrase "*as to which*"and replace with the word "where."

3. Page 9 – Define "*Application 20*."

Form 2:

1. §2, "*Company or Organization . . .*" – The word "*Organization*" should be replaced with "Legal Entity." To include "*organization*" would be overly broad, and unduly require submission of all "organizations", though not legal entities, within the family of companies.

2. §3, "*Managerial position*" – Define who qualifies as a manager, such as the definition found at 8 CFR 214.2(l) or a similar provision.

"Must hold an official managerial position." Many large companies and universities have on-staff HR professionals who handle their immigration matters, but who do not hold a position that internally would be designated as "managerial." They are usually designated as "Immigration Coordinator," "Immigration Specialist" etc. INS/USCIS has historically recognized such individuals as competent company representatives for immigration filings.

3. §5, Page 4, *Organization and Ownership* – Currently, the form does not allow "limited liability partnership" as a choice. AILA suggests a "catch-all" option at the end, such as: "Other Legal Entity" and "Explain."

4. §5, Page 4, *Foreign Ownership - "Is this company owned or controlled by foreign interests?"* Vague. "Foreign interests" must be defined. Potentially limited to specific applications.

4. §5, Page 5, *Ownership by Parent Companies, Organizations or Individuals* – This is not relevant, and should be completed only if the user intends to file for certain limited applications, such as in §6.

5. §7, *Operations and Financial Information* – Same as above. It is unnecessary, unless the user is filing for similar applications as in §6.

6. §7, "*Provide current information or what was reported as of the most recent tax year with U.S. IRS.*" – This is vague and overly broad. What period? What time frame?

7. §7, "*Number of full-time employees outside the U.S."* – This is irrelevant and *ultra vires*.

8. §7, "*part-time*" – define "part-time."

9. §7, "*Number of foreign workers for which you have filed with USCIS in the last five years*." - This is vague and overly broad. For that legal entity? Or, for all in the family group? Additionally, the request is over burdensome and has no basis in the statute or the regulations.

10. §8, *Designation of Representation*, which states in part: ". . . *I authorize USCIS . . . to disclose any information pertaining to me. . .*" - This should reflect the company, not the individual. Therefore, the word "*me*" should be replaced with "the company."
11.§8, *Your Signature and Attestation* – The forms should allow the user to make a distinction between "*represent me*" and/or "*receive all communications*" by checking each separately. The company and individual can agree, independently, if the attorney will facilitate submission of documents and receive all notices.

Instructions for Form 2:

1. §7, Page 6, "*Number of Full-time Employees - Enter the number of full-time employees in the U.S. and outside the U.S. (current or as reported in the last tax year filed with the IRS.)"* - What IRS form contains this information? What section?
Same comment regarding part-time employees question.

Form 2a and
Instructions for Form 2a

1. The form is burdensome and redundant. It is duplicative of Form 2, especially since the user can check "*sole proprietor*" on Form 2.

Form 3:

1. This form does not provide for the designation of a law firm.

2. §4, Page 3, "*. . . I will verify my client's* ***agreement*** *that such information is true and correct.*" – This portion of the sentence is vague and confusing. What is the "*agreement*?" This phrase should be deleted.

2. Step 1: provides " . . .you must retain your client's signed attestation authorization your appearance and consenting to release of information for three years." This requirement is burdensome, *ultra vires* and not required by statute or any regulation promulgated to date.

Instructions for Form 3:

1. Step 3, Page 2, "*Filing Fee Mechanics – the fee to register as an attorney . . . is $30*." Imposition of a fee is unjustified and contrary to public policy. A mandatory filing fee impairs the ability to secure legal representation and for this reason is impermissible.

Form 41 and Instructions for Form 41:

1. USCIS exceeds its authority by imposing burdens not contemplated by the statute or regulations. This form suggests a bifurcation of the adjudication of the employer's petition and the alien's status, as was the case many years ago with form I-129 coupled either with form I-506 or I-539. While that may eliminate some confusion and the too common problem of omitted dependents, the regulations must be changed prior to implementation of Form 41. The current regulations contemplate that only the petitioner can request a change or extension of H-1B nonimmigrant status, as the alien is unauthorized to do this. The regulations also state "Form I-129" shall be the vehicle of changing and extending status. Specifically, 8 CFR 214.2(h)(15)(i) states: "*The Petitioner shall apply for extension of the alien's stay in the U.S. by filing a petition extension of Form I-129 . . .*" And, 8 CFR 214.2(h)(2)(i)(D)(1) states: "*If the alien is in the United States and seeks to change employers, the prospective new employer must file a petition on form I-129 . . . requesting classification and extension of the alien's stay . . .*" As previously suggested AILA encourages the agency to withdraw the forms, until the regulations are

changed in compliance with the notice and comment requirements of the Administrative Procedures Act.

Section 2 asks “Do you have any dependents that are applying with you?” By including dependents does the agency mean for this application to include the whole qualifying family, or will the other dependents have to file separate applications, *e.g.*, does this form eliminate the need for H-4’s to file a separate application?

Conclusion

AILA thanks USCIS for the opportunity to comment on the electronic filing initiative that will dramatically change immigration benefits processing. With careful and comprehensive planning, electronic filing will enhance the quality and speed of adjudications, fulfilling USCIS’ motto: “the right benefit to the right applicant in the right amount of time”. AILA encourages the agency not to promulgate the forms until they are consistent with regulations that may be changed only in compliance with the notice and comment requirements of the Administrative Procedures Act. AILA urges USCIS, through subsequent Notices, to formally seek further comment as it amends its proposal, prior to formal rulemaking, and to include in its planning extensive “beta” testing of all electronic forms.

Sincerely,

AMERICAN IMMIGRATION LAWYERS ASSOCIATION