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Re: Proposed Revision of Regulations Regarding *Members of a Family for Purpose of Filing a CBP Family Declaration*
Docket No.: USCBP 2012-0008

To Whom It May Concern:

The American Immigration Lawyers Association (AILA) submits the following comments on the proposed revision of CBP regulations regarding *Members of a Family for Purpose of Filing a CBP Family Declaration*.¹

AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Since 1946, our mission has included 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, United States citizens, United States lawful permanent residents, and foreign nationals regarding the application and interpretation of United States immigration laws. AILA appreciates the opportunity to comment on this proposed rule and believes that our members' collective expertise provides experience that makes us particularly well qualified to offer views that will benefit the public and the government.

AILA commends the decision of U.S. Customs and Border Protection (CBP) to revise the definition of "members of a family residing in one household" to include those in "domestic relationships" beyond the limits of blood, marriage, or adoption. This positive step reflects the real diversity of modern American families. By defining "family" to include step-children, wards, half-siblings, foster children, domestic partners, partners in civil unions, and similar relationships, the revised language of 19 CFR Part 148 incorporates an understanding and more accurate reflection of today's families, rather than the language it replaces.

¹ 77 FR 18143 (3/27/12), *CBP Federal Register Notice on Expanded Definition of Family for Customs Declaration*, AILA Doc. No. 12032639 <http://www.aila.org/content/default.aspx?docid=39060>

As other comments illustrate, the proposed revision will reduce the uncertainty and confusion faced by many families, including lesbian and gay couples, who are allowed to enter other countries but are not allowed to enter the United States together. Their stories indicate that some CBP agents have also found the regulations to be confusing, resulting in a license for arbitrary and inconsistent actions by those who present the first face of the United States to both returning residents and visitors from abroad.

1. Concerns Regarding Families with Mixed Immigration Statuses

Since CBP now administers both customs and immigration enforcement at the border, AILA worries about confusion that may result with regard to families that include individuals with different immigration statuses. For example, a domestic partner or legal ward student returning to the U.S. from a vacation with U.S. citizen family members may view himself/herself as part of a family and file a joint customs form based on their living “together in one household at their last permanent residence” in the United States. If CBP considers “permanent residence” for customs purposes as distinct from the concept of “permanent residence” under U.S. immigration law, this will not be a problem. If CBP incorporates a specific understanding of the immigration term “permanent resident” as officers examine customs forms, however, foreign nationals with true nonimmigrant intent may wrongfully be denied admission.

If CBP officials consider “residence” for customs purposes to be the same as for immigration purposes, CBP’s specific understanding will not likely be shared by many members of the general public. This confusion could endanger the immigration status of nonimmigrant students and others. If refused admission in nonimmigrant visa status, married different-sex couples and their legally recognized children may have the alternative to leave, apply for an immigrant visa and then return to the United States in “lawful permanent resident” status. Unfortunately, most of the nonimmigrant members of family groups covered by the extended definition will not have this option.

As a result, AILA recommends that CBP publish guidance to the public and train its employees with regard to the meaning of “resident” and “permanent residence,” as used for customs and immigration purposes.

2. Concerns About the Remaining Gendered Language in 19 CFR § 148.2

The possible confusion with mixed-status families may be exacerbated if 19 CFR § 148.2 is not also revised in light of the changes in 19 CFR Part 34 and 19 CFR Part 103. The text of 19 CFR §148.2 currently states that for certain customs purposes “the residence of a wife shall be deemed to be that of her husband unless satisfactory evidence is presented that the wife has established a separate residence elsewhere. The residence of a minor child shall be presumed to be that of his parents.” This language seems to anticipate that a mixed-status family will enter together in either resident or nonresident status for customs purposes under the category that describes the *pater familias*. While this may be appropriate for two-parent, married heterosexual family units, it provides no clear guidance with regard to the classification of other family groupings, including those with blood parents or siblings, as well as the newly defined families that include other “domestic relationships.” AILA recommends a revision of 19 CFR § 148.2 to account for other mixed-status family groupings.

3. Concerns About Partners Sharing Financial Assets and Obligations

According to the proposed rule, CBP's new definition for "members of a family" will be "two adult individuals in a committed relationship wherein the partners share financial assets and obligations..." Unfortunately, the added financial requirement in the proposed rule will actually decrease the number of families that are eligible to file a family customs declaration and will fail to meet CBP's goal of expanding the definition of "members of a family," since many two-income families do not share financial assets and obligations. In fact, many married couples who meet the current definition would not meet the proposed definition as a result of the additional financial requirement. Therefore, CBP should not define "members of a family" by their finances.

4. Conclusion and Recommendations

AILA commends CBP on its extension of the definition of "members of a family residing in one household" for customs purposes to include "domestic relationships" beyond the limits of blood, marriage, or adoption. The revision will generally simplify the customs process, which will also create greater efficiency and conformity with real-life family relationships.

AILA recommends that CBP consider revising the language of 19 CFR § 148.2 to be gender neutral, reflecting equality between husbands and wives and eliminating confusion about the customs "residence" of all mixed-status families involving "domestic relationships." AILA also recommends that CBP publish guidance and train its employees with regard to the meanings of "resident" and "permanent residence" as used in the customs and immigration contexts. Lastly, AILA recommends that CBP remove the requirement of sharing financial assets and obligations in order to meet the definition of "members of a family."

AILA appreciates the opportunity to submit comments to CBP on the proposed rule and looks forward to working with CBP in the future.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION