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Office of information and Regulatory Affairs
Office of Management and Budget (OMB)
USCIS Desk Officer
725 17th Street, NW
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RE: Agency Information Collection Activities: Form G-28, and Form G-28I. OMB Control no. 1615-0105

Dear Sir/Madam:

The American Immigration Lawyers Association (AILA) hereby submits additional comments to the Agency Information Collection of the Department of Homeland Security (DHS) proposing modification of Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, and the introduction of Form G-28I, Notice of Entry of Appearance of Foreign Attorney (74 Fed. Reg. 4448 (January 26, 2009)).

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. The organization has been in existence since 1946 and is affiliated with the American Bar Association. 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 rule and believe that our members' collective expertise provides experience that makes us particularly well-qualified to offer views that we believe will benefit the public and the government.

On September 8, 2008, AILA submitted comments on the first information collection regarding revisions to Forms G-28 and G-28i. 73 Fed. Reg. 46028 (Aug. 7, 2008). AILA is concerned that this subsequent information collection fails to address the concerns raised by AILA in our September 2008 comments. Moreover, in addition to not discussing our previous comments, the revised Form G-28 adopts changes that we expressed concern over. AILA hopes that prior to implementing changes to the G-28, which are a deviation from years of agency practice and policy and will have a profound effect on the way immigration attorneys practice before the agency, that the final publication of the rule integrate some of AILA's suggestions, or at a minimum provided a detailed explanation for the deviation from prior well-settled practices.

G-28:

AILA suggests the addition of an option in Part 1.A. that allows a representative to designate the G-28 as an entry for appearance on all matters before the agency. AILA is most concerned with the new Form G-28's change prohibiting attorneys from designating that they represent an individual in all matters before an agency. This change is a substantial deviation from prior agency practice. Not only does the most recent information collection not address AILA's prior concerns with this revision, the information collection does not provide a rational basis for changing a longstanding agency practice that up until this revision, allowed attorneys to designate on the G-28 that they were representing an individual on all matters before the agency.

Part 1. A of the G-28 limits the scope of an attorney's representation and would require multiple G-28 forms for related incidents that may be transferred to different DHS component offices. For example, if an I-129 is subsequently sent to ICE for investigation, then the attorney would need a new G-28 to proceed before ICE. Limiting the G-28 to such a specific scope of representation with the particular sub-components of DHS adds an additional paperwork and administrative burden to attorneys, clients, and the agency.

Similarly, requiring an attorney to designate and limit representation by form type in matters before the USCIS is unnecessary. An attorney should be able to indicate "all matters" when appropriate, or otherwise indicate that the attorney represents petitioner, applicant, or beneficiary (as will be further discussed below), in all matters before the USCIS, unless the representation is specifically limited.

AILA suggests the form include an option to file an entry of appearance for multiple parties. Again, the revised form fails to integrate proposed revisions suggested by AILA in September 2008, and fails to provide a rational reason for changing the form to only allow an attorney to enter an appearance for one party. This revision, unlike the currently valid form, fails to contemplate cases where an attorney may represent a petitioner and also a beneficiary in a case. It is important that attorneys representing both the petitioner and beneficiary be the counsel of record on certain cases, ensuring receipt of RFE's, approval notices, denial notices and any other notice that the agency may send regarding a petition.

The proposed form does not permit the entry of appearance for a beneficiary. Unlike the current G-28, which permits the entry of appearance of an attorney for a beneficiary, the proposed G-28 eliminates the check box for the beneficiary. The Service relies on 8 CFR §103.2(a)(3), which provides that a beneficiary is not a “party.” This interpretation of the right to representation is too narrowly drawn. For example, beneficiaries may be called for the purpose of giving testimony or other evidence under 8 CFR §103.2(b)(9), at which point the right to representation provided in 8 CFR §292.5(b) attaches. Moreover, in many petition proceedings, evidence from the beneficiary or testimony of the beneficiary is material to the petitioner’s case. Additionally, in nonimmigrant petition proceedings on Form I-129, several of the actions requested, e.g., change of the beneficiary’s status, extension of the beneficiary’s stay, amendment of the petition and change of the beneficiary’s stay, involve actions in which the beneficiary becomes an “applicant.” And, with respect to “permanent portability” under INA §204(j), AILA continues to urge that the beneficiary in an I-140 proceeding whose I-485 application has been pending for 180 days has acquired a vested interest in the outcome of the I-140 petition proceeding.

It is important that the G-28 provide an option for attorneys to check “beneficiary” in the box describing the Principal Petitioner, Applicant or Respondent section under part 1.B. for the purposes of entering an appearance for the beneficiary.

AILA suggests the addition of an option D. in part 2 which would allow a firm to enter the appearance of other attorneys in a firm or non-profit office. When there are multiple attorneys at a firm or non-profit office, it is common to list the other attorneys in this box. In such a situation the attorney listed in Part 1 remains the primary attorney in a matter, but those attorneys in the same firm that would be listed under Part 2 would be secondary and allowed to appear before the agency on the petitioner, applicant, or beneficiary’s behalf.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION