AMERICAN IMMIGRATION LAWYERS ASSOCIATION

July 1, 2016

Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director, Mailstop 2000
20 Massachusetts Ave, NW
Washington, DC 20529-2000

Submitted via: publicengagementfeedback@uscis.dhs.gov

Re: PM 602-0134: Signatures on Paper Applications, Petitions, Requests, and Other Documents Filed with U.S. Citizenship and Immigration Services (posted June 7, 2016)

To Whom It May Concern:

The American Immigration Lawyers Association (AILA) submits the following comments in response to the USCIS Policy Memorandum, "Signatures on Paper Applications, Petitions, Requests, and Other Documents Filed with U.S. Citizenship and Immigration Services," (PM 602-0134).

AILA is a voluntary bar association of more than 14,000 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, lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws.

Introduction

Questions surrounding signature requirements and power of attorney on USCIS forms have been swirling as far back as 2010, when the January 19, 2010 memorandum from Acting Deputy Director Lauren Kielsmeier, "Signatures on Applications and Petitions Filed with USCIS," was released and then promptly withdrawn. Given the uncertainty that has surrounded USCIS policy in this area over the ensuring years we applaud USCIS for issuing this memorandum and setting forth what appear to be, in general, very generous signature and power of attorney requirements. We offer these comments to encourage USCIS to clarify some specific language in the memorandum, and suggest a few modifications.

Notice and Opportunity to Comment

Preliminarily, we note that the current version of the memorandum that is posted on the USCIS website is designated as "interim" with an effective date of June 21, 2016, whereas the original

memorandum, which was posted on June 6, 2016, was designated as a "draft" memorandum with no effective date. To our knowledge, no notice or explanation was given to justify this change.

In order to provide a meaningful opportunity to comment on new memoranda, we ask that USCIS, as a matter of course, post all new memoranda in "draft" form, provide at minimum, a 30 day comment period, and consider all public comments prior to releasing a final memorandum with a future effective date. In addition, given the sudden change, we ask that USCIS extend the June 21, 2016 effective date to September 5, 2016 (90 days from the date the memorandum was published) in order to provide sufficient time to review public comments and incorporate them into a final memorandum.

Signature Requirements

Copies of Signatures

According to the memorandum, unless otherwise authorized by the regulations, the memorandum itself, or the form instructions, an applicant, petitioner, or requester "must personally sign his or her request before filing it with USCIS."[1] However, the memo goes on to state:

> *[a] signature is valid even if the original signature is later photocopied, scanned, faxed, or similarly reproduced. Regardless of how it is transmitted to USCIS, such copy must be of an original document containing a handwritten, ink signature, unless otherwise provided by regulation or form instruction.*[2]

Thus, it appears that the memorandum is confirming that applications, petitions, and requests for immigration benefits that are submitted to USCIS need not contain an original signature, and may in fact consist of a photocopy or reproduction of the form or application that contains an original signature. Assuming this is true, we welcome this change and applaud USCIS for recognizing the validity of photocopied signatures, particularly in an environment where communications and technology are constantly evolving and have opened up new opportunities for representation arrangements on an increasingly global level. That said, we have heard from several of our members who have reviewed the memorandum and find the language confusing. To the extent that it can be clarified, we would be grateful.

Signatures on Form I-907, Request for Premium Processing

In addition, we note that immediately following the release of the January 19, 2010 signature memo, at least one USCIS service center began rejecting Forms I-907, Request for Premium Processing Service, that were signed by the attorney, and not by the petitioner or applicant. Since then, we have confirmed with USCIS that an attorney of record may prepare and sign Form I-907 on behalf of the petitioner or applicant (without requiring a signature from the petitioner or applicant) when the attorney completes the form as the "requester." Given the

[1] Interim Policy Memorandum at 2.
[2] *Id.* at 3.

confusion on this point back in 2010, we ask USCIS to confirm the signature policy specific to Form I-907 in the Form I-907 instructions, the final version of this policy memo if appropriate, or on the USCIS website as an alternative.

Signature of Preparer on Form N-400, Application for Naturalization

USCIS has historically accepted N-400 applications that were completed at naturalization workshops and which include a stamp or sticker, in lieu of a signature, in the preparer's section with the name and date of the workshop, and contact information for the workshop's organizers. However, on April 26, 2016, USCIS announced that when the new N-400 goes into effect on August 9, 2016, USCIS will reject any N-400 application that includes a stamp or sticker in the preparer's section instead of a preparer's signature. Requiring an actual preparer's signature on applications completed in a naturalization workshop setting is not feasible and will have a negative impact on the future of such workshops across the country.

In order to serve the most people in an efficient and effective manner, the traditional workshop model has several different stations where multiple parties assist each applicant in preparing, reviewing, and finalizing the naturalization application. Because multiple volunteers are involved in the preparation process, it is not appropriate for a single "preparer" to sign the preparer's section. Thus, for many years, workshop volunteers have completed the preparer's section with information about the clinic and the organizers' contact information. By including this information, USCIS is able to track applications to workshop organizers.

Requiring workshop volunteers to sign the preparer's section would significantly reduce volunteer turnout, thereby reducing the number of applicants served at naturalization workshops. In addition, if a single volunteer preparer is required to sign the preparer's section, the efficient workshop model will be significantly compromised as it would no longer be possible to divide labor and duties amongst the volunteers. This will result in a reduced number of N-400 applications that are completed and submitted through the community workshop model. Finally, naturalization workshops are a critical component in furthering the goals of the administration, and in particular, the Department of Homeland Security and USCIS to facilitate access to U.S. citizenship.[3] If not reversed, the new signature policy will undoubtedly reduce the effectiveness of the workshop model and will actually decrease public access to citizenship.

For the foregoing reasons, we ask that USCIS recognize the importance of the community-based naturalization workshop in facilitating access to citizenship and include in the final memorandum, language that exempts N-400s completed in a workshop setting from the preparer's signature requirement.

[3] Memorandum from DHS Secretary Jeh Johnson, "Policies to Promote and Increase Access to U.S. Citizenship," (Nov. 20, 2014). ["(USCIS) should explore options to promote and increase access to naturalization and to consider innovative ways to address barriers that may impede such access …."]. See also, Presidential Memorandum: "Creating Welcoming Communities and Fully Integrating Immigrants and Refugees," (Nov. 21, 2014).

Who Must Sign a Request or Document Submitted to USCIS?

Individuals Requesting an Immigration Benefit or Other USCIS Action

According to the memorandum, a legal guardian may sign a request for a child who is less than 14 years old or for an incapacitated adult. For purposes of 8 CFR §103.2(a)(2), "a legal guardian means an individual currently vested, by appointment from a court or other public authority to act on behalf of the child or incapacitated adult as the authorized representative of the court or other public authority." However,

> *Legal guardian does not include other individual(s) having only a legitimate interest other than the above-referenced appointed authority in the legal affairs of the child or incapacitated adult or acting in loco parentis, or an individual who is a spouse, son or daughter, sibling or another individual unless conferred with signature authority based on legal guardianship as described above.*

Thus, it appears that USCIS is saying that legal guardianship will be recognized only where there has been adjudication of guardianship by a court or other public authority. While we agree that it would not be prudent to recognize the authority of any individual to act on behalf of an incapacitated adult without an adjudication of guardianship, we submit that there may be instances where the close relatives listed in the language cited above (spouse, son or daughter, sibling) should be recognized as such without a formal adjudication. We encourage USCIS to recognize an exception of the formal adjudication requirement for close family relatives and to simplify and clarify this language in the final memorandum.

Individuals Employed within a Corporation or Other Legal Entity

In the context of petitions filed by a corporation or other legal entity, the memorandum recognizes that "only certain individuals have the authority to sign a request or other document that will be filed with USCIS" on behalf the entity."[4] However, the memorandum then states:

> *In all cases, the benefit request must contain a statement by the person signing the request, affirming that he or she has the legal authority to file the request on the petitioning employer's behalf, that the employer is aware of all of the facts stated in the request, and that such factual statements are complete, true, and correct. If such an affirmation is contained in the form itself, a signature by the person filing the form may be sufficient to meet this requirement. In cases where the affirmation specified above is not contained in the form or document, USCIS will require a separate statement from the person signing the form or document affirming that he or she has the authority to legally bind the corporation or other legal entity.*

[4] Interim Policy Memorandum at 4.

Though it appears that this language is derived from recent versions of the "petitioner's certification" or "applicant's certification," we note that the certification language across USCIS forms is wildly inconsistent. Thus, according to the memorandum, an authorized representative would be required to determine which forms meet these requirements and which forms do not. For those that do not, the authorized representative would need to prepare and submit a statement affirming their authority to sign, along with the other attestations noted above.

For example, it appears that the certification language on Form I-129, Petition for a Nonimmigrant Worker, and Form I-129S, Nonimmigrant Petition Based on Blanket L Petition meets the requirements outlined in the memorandum, but the certification language in the I-140, Immigrant Petition for Alien Worker and Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative does not, and would require a supplementary statement. Given that a separate G-28 must accompany each individual application or petition for immigration benefits, this policy could easily lead to situations where a supplementary statement is required for one form, but not for another submitted in the same package (i.e, filing an I-129 petition with a G-28). USCIS should reconsider this disparate treatment of forms and instead work to bring consistency in the certification language across all forms. Alternatively, and at a minimum, USCIS should make it very clear which forms meet the listed requirements and which forms do not.

In light of the confusion which some may encounter when attempting to navigate the "supplementary statement" requirement, we urge USCIS to issue Requests for Evidence rather than reject forms that are filed without a separate statement of signatory authorization, and to instruct adjudicators, lockbox contractors and mailroom personnel accordingly.

Finally, the memorandum lists as a person authorized to sign on behalf of a corporation or entity, "[a]n agent … acting on behalf of the corporation or other legal entity to the extent provided below by section B.3 of this memorandum." Section B.3 sets forth the power of attorney requirements discussed in more detail below. Thus, it appears that where an employer/petitioner enters into a contract with an outside management company to handle its human resource functions, and authorizes the company to sign immigration forms and documents on its behalf, the management company would be permitted to do so only with a valid power of attorney. We would appreciate clarification on this point in the final memorandum.

Power of Attorney/Form G-28

We applaud USCIS for solidifying a policy that recognizes the signatory authority of an agent through a written power of attorney (POA) for an individual acting on behalf of an incapacitated adult, a corporation, or other legal entity. In the corporate context, USCIS will recognize the signatory authority of an agent where:

1. The INA or governing regulations do not preclude an agent from acting on behalf of the applicant or petitioner;

2. The agent has been authorized to act on the corporation or legal entity's behalf through a written unexpired POA that meets various criteria;
3. The POA has been executed in accordance with the state laws governing the jurisdiction in which the corporation or legal entity conducts business or has filed its articles of incorporation or organization;
4. The POA is personally signed by an "authorized person" of the corporation or legal entity; and
5. The POA authorizes the agent to act on behalf of the corporation or legal entity in specific matters (but does not need to detail any individual immigration filing or document).

An original or copy of a valid POA must be submitted each time an agent files a request with USCIS. However, the memorandum explicitly states that with the exception of two forms (I-290B and EOIR-29), a Form G-28 "does not by itself, authorize a representative to sign a request or other document on the individual's, corporation's, or legal entity's behalf…. [and] and attorney or accredited representative may not use a POA to sign a Form G-28 on behalf of an individual, corporation, or other legal entity to authorize his or her own appearance." We respectfully request that USCIS reconsider this position. A durable POA authorizing an agent to act on behalf of an entity and to sign all forms with respect to matters before USCIS should entitle the agent to do just that – sign all forms on behalf of the entity, including the G-28. To require an authorized representative to sign a G-28 where a valid, executed POA between the entity and the attorney of record exists, defeats the very purpose of the POA.

Finally, a POA that is facially valid should be sufficient for USCIS to recognize it as such. We ask USCIS to clarify in the final memorandum that a facially valid POA is presumptively valid, and that it will not, as a matter of course, require the petitioner or applicant to submit additional evidence, such as copies of the applicable state laws, unless there is a reasonable basis for questioning the validity of the POA.

Conclusion

We thank USCIS for providing the opportunity to comment on this guidance, and look forward to seeing our feedback incorporated into the final memorandum.

Respectfully Submitted,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION