

July 26, 2016

U.S. Citizenship and Immigration Services
Office of Policy and Strategy
Regulatory Coordination Division
Acting Chief Samantha Deshommes
20 Massachusetts Avenue NW
Washington, DC 20529-2140

Submitted via email: USCISFRComment@uscis.dhs.gov

Docket ID: USCIS-2016-0004

**Re: OMB Control Number 1615-NEW
Agency Information Collection Activities: Application for Employment Authorization
for Abused Nonimmigrant Spouse, Form I- 765V; New Collection**

Dear Chief Deshommes:

The organizations listed below submit the following comments in response to the above-referenced 60-day Notice and request for comments on the Application for Employment Authorization for Abused Nonimmigrant Spouse, Form I-765V and related instructions.

We welcome the issuance of the I-765V form and instructions. Indeed, for the past decade, abused derivatives of A, E-3, G and H visa holders have waited for such procedures to be developed to assist them in leading more secure lives. We are grateful to U.S. Citizenship and Immigration Services (USCIS) for issuing guidance and the subsequent forms to finally implement these important protections.

I. Instructions Comments

A. What is The Purpose of I-765V Form? (Page 1)

The current instructions read:

The new section 106 provides eligibility for employment authorization for spouses of certain nonimmigrants who have been battered or subjected to extreme cruelty. Employment authorization is a benefit granted for a limited period of time and will not establish eligibility for a lawful status in the United States. Receipt of an Employment Authorization Document (EAD) will have no effect on your immigration status.

Recommendation: We recommend amending the text above by adding the following sentence:

Regardless of your immigration status, if your § 106 employment authorization is granted, you will not accrue unlawful presence during the work authorization period.

We also recommend making this change in the Adjudicator's Field Manual and other relevant USCIS resources.

B. Who May File Form I-765V

1. The Note on Remarriage (page 2)

The note on remarriage should conform to the rest of the instructions that speak directly to the applicant as "you."

Recommendation: We suggest amending the language as follows:

NOTE: If ~~the applicant~~ you **remarry** prior to adjudication of Form I-765V, Application for Employment Authorization for Abused Nonimmigrant Spouse, ~~he or she~~ you will be ineligible for issuance of employment authorization under INA § 106.

C. General Instructions

1. Evidence (page 2)

While the proposed instructions address both the evidentiary standard applicable to Form I-765V applications as well as confidentiality protections for applicants, the text on both topics is somewhat buried in the instructions at pages 8 (any credible evidence) and 9 (any credible evidence and confidentiality).¹

We recommend that these issues be included and highlighted in the general evidence section at page 2 of the instructions, so that applicants will see them more easily. We also suggest that the text addressing confidentiality include more detail to make this information meaningful to the applicant.

Recommended Text:

Evidence: At the time of filing, you must submit all evidence and supporting documentation listed in the **Required Documentation** section of the instructions. You may file your application with any credible evidence of your eligibility.

Confidentiality: Information concerning your application for employment authorization is protected from disclosure. An adverse determination of your eligibility for employment authorization, or your admissibility or deportability, may not be made based on information provided by the perpetrator (alt: your spouse or former spouse who committed the abuse) of the abuse against you. The disclosure of information related to a pending or approved application

¹ See discussion *infra*.

for work authorization for an abused nonimmigrant spouse is prohibited except in certain circumstances, such as to investigative agencies who have a reason to know based on a legitimate law enforcement purpose

2. Biometrics (page 2)

The instructions on biometrics have the potential to be very confusing to applicants. USCIS should provide additional information to clarify who, if anyone, is required to submit biometrics and how soon after the submission of the application they may be required. In the case of other forms that use similar language about biometrics in the instructions, like the I-751 and the N-400, biometrics are nevertheless routinely required except for age-based exemptions. If USCIS anticipates routine scheduling of biometrics appointments for I-765V applicants, we recommend that the language in the instructions be modified accordingly. Furthermore, the instructions do not mention whether there would be a fee for biometrics and whether that would be waivable for those who are unable to afford it. If there is no fee, we suggest adding in a sentence which specifically states, “There is no filing fee or biometrics services fee for Form I-765V.”

3. Copies (page 3)

We recommend that USCIS not take action to immediately destroy original documents submitted by an applicant where requested to do so by USCIS. In many instances, an abused spouse applying for work authorization may be traumatized, and under great stress, and understandably may miss or misunderstand an instruction to submit copies instead of originals. A policy of automatically destroying original documents mistakenly submitted by an applicant who has been subjected to domestic violence, thereby resulting in the destruction of what might be critical supporting evidence of eligibility for work authorization, undermines the protection this remedy was created to provide. We suggest that USCIS consider other alternatives, such as mailing the documents back to the applicant, sending the applicant an RFE for a Form G-884 Return of Original Documents, or sending the documents to the National Records Center to combine with the A file so that the applicant can later retrieve the documents by filing a Form G-884.

4. Additional General Instructions: We recommend that the general instructions explain how applicants should respond to questions where the information requested may be unknown (e.g. information related to their spouse’s A#, or I-94 number, etc.). The instructions should specify whether the applicant should write “unknown” or “N/A” for each question where an answer cannot be provided. Another option may be to have a separate space for applicants to check if they do not have the specific information available.

Recommended Text:

How to Answer Questions on the Application Form: Applicants should respond to all questions on the application form. If you do not know the answer to a particular question, please write “unknown.” If a particular question does not apply to you (for example, the question asks you for other names you have used and you haven’t used any other names), please write “none” or “N/A”, which stands for “not applicable.”

D. Specific Instructions

1. Item Number 4: Social Security Number (page 4)

We are unclear why social security numbers would be required for INA §106 work authorization applications. Nonetheless, if USCIS needs this information, we suggest striking the sentence “Also include all social security numbers you have ever used.” In other contexts, e.g. DACA, USCIS has clarified that the reference to social security numbers is limited to those which have been officially issued by the Social Security Administration.

Recommendation: Change the language as follows, adding the bolded and italicized section:

Item Number 4. U.S. Social Security Number (if any). Provide your U.S. Social Security Number. ~~Also include all social security numbers you have ever used.~~ ***If you do not have a Social Security Number officially issued to you by the Social Security Administration, write “none” or “N/A” in the space provided.***

2. Item Numbers 19.a. -19.f. Form I-94 Arrival-Departure Record (page 4)

The instructions as written make it seem like an applicant may not file a §106 work authorization application without having an I-94 number. The instructions should clarify that applicants who do not have this information readily available may write “N/A” or “unknown.” as long as the applicant has other evidence of eligible nonimmigrant status.

3. Part 2. Information About Your Spouse

- a. We appreciate the instruction, “Provide the information requested in this section, if known.” We suggest bolding the “if known” to clarify that it is appropriate for the applicant to write “N/A” or “unknown” if he or she does not have the information requested.

Recommendation: Bold the following language as indicated:

*“Provide the information requested in this section, **if known.**”*

- b. The same holds true for the other spousal information requested. For example:
We suggest adding the following language in bold:

- Item Number 5. A-Number (if any). Type or print your spouse’s A-Number, **if known.**
- Item Number 6. USCIS Online Account Number. If your spouse has previously filed an application, petition, or request using the USCIS online filing system (previously called USCIS Electronic Immigration System (USCIS ELIS)), provide the USCIS Online Account Number your spouse was issued by the system, **if known.**

c. USCIS Online Account Number

The instructions regarding the USCIS Online Account number seem to suggest that the abusive spouse will log on to his/her account to provide the survivor spouse applicant with the USCIS Online Account number. We do not find this instruction helpful as abusive spouses are not especially likely to actively help survivors apply for INA §106 work authorization applications. We suggest deleting the rest of this instruction in its entirety. In the alternative, USCIS may provide information in its instructions how the survivor may access this account independently and safely.

We recommend deleting the following:

~~Your spouse can find his/her USCIS Online Account Number by logging in to his/her account and going to the profile page. If your spouse previously filed certain applications, petitions, or requests on a paper form via a USCIS Lockbox facility, your spouse may have received a USCIS Online Account Access Notice issuing him/her a USCIS Online Account Number. If your spouse received such a notice, their USCIS Online Account Number can be found at the top of the notice. If your spouse was issued a USCIS Online Account Number, enter it in the space provided. The USCIS Online Account Number is not the same as an A-Number.~~

d. Item Numbers 7.a. - 7.e. Form I-94 Arrival-Departure Record.

We suggest adding the bold language as follows:

If CBP or USCIS issued your spouse a Form I-94, Arrival-Departure Record, provide your spouse's Form I-94 number and date that your spouse's authorized period of stay expires or expired (as shown on Form I-94), **if known**. The Form I-94 number also is known as the Departure Number on some versions of Form I-94.

In addition, we strongly encourage USCIS to delete all language in the instructions that may mislead an applicant into believing that this information must be sought if not known. As noted above, it is highly unlikely that an abusive spouse would be willing to provide information to the applicant or consent to the electronic verification of this information. To the extent that the instructions create an impression that the applicant will not be eligible for work authorization without this information, an applicant may believe he or she must make contact with the abuser to obtain this information, regardless of the threat to personal safety such contact may entail. In addition, the applicant may not properly use the CBP electronic verification system to obtain information about his or her spouse, per the advisal at www.cbp.gov/i94 below:

Declaring under penalty of perjury pursuant to 28 U.S. Code §1746 that you: (1) are only seeking records about yourself, (2) are seeking records about someone for whom you are the legal guardian, or (3) you have the consent of the person whose records you are seeking. You are not authorized to access this website to retrieve records of another person unless you are the person's legal guardian or you have the person's consent.

Similarly, Form I- 102 that is used to request a duplicate I-94 is not applicable for an applicant seeking an I-94 for another individual. For the applicant's safety, we recommend deleting the information below:

- ~~NOTE: If your spouse was admitted to the United States by CBP at an airport or seaport after April 30, 2013, he or she may have been issued an electronic Form I-94 by CBP, instead of a paper Form I-94. You may visit the CBP Web site at www.cbp.gov/i94 to obtain a paper version of an electronic Form I-94. CBP does not charge a fee for this service. Some travelers admitted to the United States at a land border, airport, or seaport, after April 30, 2013, with a passport or travel document, who were issued a paper Form I-94 by CBP, may also be able to obtain a replacement Form I-94 from the CBP Web site without charge. If your spouse's Form I-94 cannot be obtained from the CBP Web site, it may be obtained by filing Form I-102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Record, with USCIS. USCIS does charge a fee for this service. Passport and Travel Document Numbers.~~

e. Passport and Travel Document numbers,

In this section, we suggest adding the bold language as follows:

Passport and Travel Document Numbers. If your spouse used a passport or travel document to travel to the United States, enter either the passport or travel document information in the appropriate space on the application (**if known**), even if the passport or travel document is currently expired.

4. Questions Regarding Race and Other Physical Attributes (page 7)

Inquires regarding one's race, ethnicity, and physical attributes (height, weight, eye and hair color) should not be necessary for §106 work authorization and is incongruent with other survivor-based forms of immigration relief like VAWA self-petitions, T and U visas. We recommend deleting items 1-6 on page 7 of the instructions and the corresponding fields on the I-765V. To the extent that these inquiries are deemed necessary, USCIS should provide increased notice to crime victims about the purpose of collection of such information, as well as who has access to this information, given the increased safety and confidentiality concerns facing victims, and the confidentiality protections afforded victims under 8 U.S.C. sec. 1367.

5. Part 5. Applicant's Statement, Contact Information, Certification, and Signature Item Numbers (page 7)

This section states that the applicant must sign and date the application and provide a daytime telephone number, mobile telephone number (if any), and email address (if any). Every application **MUST** contain the signature of the applicant (or parent or legal guardian, if applicable). A stamped or typewritten name in place of a signature is not acceptable.

Recommendation: We recommend that USCIS follow the directive in the June 21, 2016 USCIS interim memo regarding copies of original signatures.²

6. Instructions on Biometrics (page 8)

The instructions in the box reference a biometrics appointment that, according to the earlier instruction, may or may not occur. As stated above, we recommend clarifying whether and when biometrics will need to be completed for INA §106 work authorization applications. In addition, we are concerned about the instruction that the applicant must attest to the contents of the application at the Application Support Center (ASC). Though we are aware that this instruction appears on other USCIS forms (N-400, I-751, I-192, etc.), in the context of an INA §106 work authorization application, there should be more clarity regarding biometrics and VAWA confidentiality provisions, and applicants should be assured that ASC officials will not have access to their case file. This instruction is NOT included in other applications for survivor-based forms of immigration relief (e.g. I-918, I-914) and to add this additional barrier for §106 work authorization applicants is unwarranted and burdensome.

E. Required Documentation (page 8)

1. Evidence of the Abuse:

- a. **Declaration:** The instructions state that “all applications should include a signed statement detailing abuse suffered after admission into the United States in qualifying nonimmigrant status and why you believe that you are eligible for employment authorization under INA section 106.”

From existing authority, it does not appear that a declaration is a requirement for a §106 work authorization application.³ Instead, a signed statement should be considered one form of credible evidence that could be submitted to prove eligibility for §106 work authorization. The instructions also state that if the applicant has a protective order in place, a copy should be submitted. We would reiterate here that an application may not be denied for failure to submit this particular evidence. The instructions should state that a protective order, if one exists, may be one form of evidence that the applicant may submit in support of the §106 work authorization application. We recommend that this section be modified so that applicants do not feel they are limited to a specific form of evidence. We suggest the following language:

*Evidence of the abuse, such as police reports, **protection orders**, court records, medical records, reports from social services agencies, **a signed statement of the applicant detailing abuse suffered after admission into the United States, and/or supporting affidavits.** ~~If there is a protective order in place, a copy should be submitted.~~*

² USCIS Policy Memoranda. PM-602-0134 “Signatures on Paper Applications, Petitions, Requests, and Other Documents Filed with U.S. Citizenship and Immigration Services” (June 21, 2016).

³ USCIS Policy Memoranda. PM-602-0130 “Eligibility for Employment Authorization for Battered Spouses of Certain Nonimmigrants” (March 8, 2016).

2. **Note on Credible Evidence:** As stated above, this information should appear in the general instructions, but applicants may benefit for seeing it again later in the instructions. If that is the case, we recommend that USCIS clarify the “credible evidence” standard pursuant to existing guidance. For instance, this section could state:

Applicants for §106 work authorization may submit "any credible evidence" and the applicant is not required to demonstrate the unavailability of primary or secondary evidence. An applicant may not be denied for failure to submit particular evidence. It may only be denied on evidentiary grounds if the evidence that was submitted is not credible or otherwise fails to establish eligibility. It is within the Service's sole discretion to determine what evidence is credible and to determine what weight to give that evidence.⁴

3. **Note on VAWA Confidentiality:** Similarly, we believe the discussion on VAWA Confidentiality should also appear in the general instructions, but applicants may benefit from seeing it again. In this section, the note on VAWA confidentiality contains language that is very legalistic. We recommend language similar to the I-918 U Visa Instructions regarding the “Prohibition on Disclosure of Information.” For example:

Prohibition on Disclosure of Information. Information concerning §106 work authorization applications is protected against disclosure. Adverse determination of admissibility or deportability cannot be made based on information obtained from the perpetrator of battery or extreme cruelty. The disclosure of information relating to a pending or approved application for work authorization under INA §106 is prohibited except in certain circumstances, such as to investigative agencies who have a reason to know based on a legitimate law enforcement purpose.

Furthermore, we recommend including information about which agency to contact if the applicant has questions or concerns about VAWA confidentiality violations.

4. Renewal Applications for Employment Authorization (page 9)

- a. **CAUTION:** We recommend that the language in this instruction be written in the affirmative. For clarity, we suggest including the bold language as follows:

You may apply for employment authorization renewal in the five-month period (150 days) prior to the expiration of your current EAD. If you file for renewal more than 150 days before the EAD expiration, USCIS may reject your submission and return it to you with instructions to resubmit your renewal request closer to the EAD expiration date. USCIS encourages applicants requesting EAD renewals to file within 90 to 120 days prior to the EAD expiration date.

- b. **Inconsistent Voice:** Some portions of this section refer to the applicant as “you” and other times it refers to the “applicant” (e.g. 3. Evidence of the applicant’s current residence in the United States.”). We recommend using a consistent voice for clarity.

⁴ See note 1 *supra*.

F. Fee (page 9)

As mentioned previously,⁵ the instructions do not mention whether there is a fee for biometrics associated with Form I-765V and whether fee exemptions are available. If there is no fee, we suggest adding in a sentence which specifically states, “There is no filing fee or biometrics services fee for Form I-765V.”

G. Where to File (page 10)

We request that these applications be adjudicated at the Vermont Service Center where there are specialized adjudicators trained in the dynamics of domestic violence, VAWA confidentiality and the proper evidentiary standards in these cases.

H. Processing Information (page 10)

1. **Advisal on Document Destruction:** As mentioned above, we recommend that USCIS not take action to immediately destroy original documents where such documents were not requested by USCIS.⁶
2. **Requests for Interview:** We are very concerned about the prospect of §106 work authorization applicants being scheduled for interviews at USCIS Field Offices, and stridently recommend against it. This goes well beyond the scope of existing guidance on §106 applications, and would lead to inconsistent adjudications nationwide.
3. **Approval:** The instructions state that if the application is approved, USCIS will either mail the EAD to a safe mailing address or require the applicant to visit the local USCIS office to pick it up. It is unclear when or why it would be necessary for an applicant go to a USCIS Office to pick up a work authorization document. We recommend that approved EADs be mailed to the applicant’s safe mailing address.

I. USCIS Privacy Act Statement (page 11)

We recommend adding in language reiterating that any disclosure of information must be done in accordance with VAWA confidentiality provisions at 8 USC §1367.

II. Form Comments

- A. **Part 4: Biographic Information:** As mentioned above, there is no clear purpose for collecting data on the race, ethnicity, and other physical attributes of the applicant. We recommend deleting this entire section for purposes of congruence with other applications for survivor-based forms of immigration relief (VAWA, U, T visas).

⁵ See page 3, *supra*.

⁶ See page 3-4, *supra*.

B. Applicant's Certification: The Applicant's Certification should reference VAWA confidentiality provisions.

Recommendation: USCIS should include the following bold language as follows:

*I further authorize release of information contained in this petition, in supporting documents, and in my USCIS records to other entities and persons where necessary for the administration and enforcement of U.S. immigration laws, **but solely in accordance with the VAWA confidentiality provisions at 8 U.S.C. §1367.***

III. Outstanding Concerns

A. Process

It appears there are many outstanding questions regarding processing of §106 work authorization applications including whether or when biometrics will be necessary, whether an in-person interview will be necessary, and whether the EAD must be picked up by the applicant at a local USCIS office upon approval. We recommend, as a general matter, that interviews be used sparingly in these cases. Form I-765V adjudications should be performed by specifically trained adjudicators who are familiar with the sensitivities involved in adjudicating humanitarian benefits for vulnerable populations. It is of the utmost importance that these applications are treated with the same degree of care as other forms of survivor-based immigration relief, that VAWA confidentiality provisions are implemented, and that adjudicators are properly trained on topics including (but not limited to) the dynamics of domestic violence, trauma, and the appropriate evidentiary standards for these cases.

B. Access

We would also like to learn more about the Department's plan to ensure that the application process for nonimmigrant abused spouses to obtain work authorization is as accessible as possible. What plans or strategies are in development to ensure abused spouses are aware of this application process? Will the form be accessible in languages other than English? We recommend a robust outreach strategy to ensure derivative nonimmigrant spouses are aware of the new work authorization application. For example, information about this program could be added to the Wilberforce Pamphlet, given to temporary workers by the State Department, listing rights and protections for workers entering through A-3 and G-5 classifications. In addition, the form should be made language accessible, especially in the top languages by visa category.

C. Data

As highlighted through additional protections created for A-3 and G-5 workers in the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, these categories of workers are extremely vulnerable to exploitation and human trafficking. A-3 and G-5 visa holders enter the U.S. as domestic workers of diplomats and international organization employees. Often, as a result of isolation, visa restrictions that limit mobility, and debts accrued from expenses related to travel to the U.S. which must be repaid, the vulnerable position of these workers is amplified. Given these vulnerabilities, it is important to see how the implementation of this work authorization program provides an opportunity to collect (and make publicly available) data on how many spouses are

entering the U.S. by visa category and how many applications USCIS is presently anticipating receiving.

D. Retroactive application

Given the ameliorative purpose of the law and the lengthy delay in implementing it, it behooves USCIS to help as many eligible victims of domestic violence as possible. The framework should allow for retroactive application.

Conclusion

We appreciate the opportunity to comment on Form I-765V, Application for Employment Authorization for Abused Nonimmigrant Spouse, and the accompanying instructions. Thank you in advance for your consideration and we look forward to a continuing dialogue with USCIS on these important issues. For more information, contact Cecelia Levin, ASISTA Immigration Assistance at Cecelia@asistahelp.org

Respectfully submitted:

The American Immigration Lawyers Association (AILA)
Asian Pacific Institute on Gender-Based Violence (APIGBV)
ASISTA Immigration Assistance
Catholic Legal Immigration Network Inc. (CLINIC)
National Domestic Workers Alliance
We Belong Together