



U.S. Citizenship  
and Immigration  
Services

## Memorandum

TO: Katherine Astrich, Office of Management and Budget,  
USCIS Desk Officer

THROUGH: Richard Mangogna  
DHS Chief Information Officer

FROM: Jeff Conklin  
USCIS Chief Information Officer

SUBJECT: Request for Emergency OMB Paperwork Reduction Act Clearance –  
Form G-28, Notice of Entry of Appearance as Attorney or Accredited  
Representative, and Form G-28I, Notice of Entry of Appearance of Foreign  
Attorney

Regulations at 8 CFR 103.2 and 292.1 allow persons to have legal representation in matters before U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement, and U.S. Customs and Border Protection, which are components of the Department of Homeland Security (DHS). A representative must file a notice of appearance on the appropriate Form G-28 or G-28I in each case. DHS uses the data collected on Form G-28 to determine eligibility of the individual to appear as a legal representative. Attorneys admitted to practice in the United States and accredited representatives of charitable organizations recognized by the Board of Immigration Appeals (BIA) use Form G-28. An attorney admitted to the practice of law in a country other than the United States will use the new Form G-28I only with matters filed in DHS offices outside the geographical confines of the United States. If the DHS component finds the representative eligible to represent the applicant, the form is filed with the case and the information contained on the form is entered into the appropriate database.

Originally, both the BIA and the Immigration and Naturalization Service (INS) used Form G-28 when both agencies were part of the U.S. Department of Justice (DOJ). As part of a departmental reorganization, DOJ moved the BIA into the newly-created Executive Office of Immigration Review (EOIR) on January 9, 1983. Both before and after that reorganization, Form G-28 was used for notices of appearance in immigration court proceedings as well as

administrative matters before INS. Thus, Form G-28 pre-dated the Paperwork Reduction Act (PRA) and then was exempt from its regulations under the “Administrative Action” exemption contained in 5 CFR 1320.4. In 1989, EOIR developed notice of entry of appearance forms (Forms EOIR 27 and 28) for use in matters before the immigration courts and the Board of Immigration Appeals. EOIR rules require the use of its own appearance forms. In practice, attorneys continued to file Form G-28 with INS, including in matters before the immigration courts. When INS was dissolved and its immigration functions were transferred to the newly-formed Department of Homeland Security in 2003, all three immigration-related components of DHS continued using Form G-28. Form G-28 is also used by the U.S. Department of State and the U.S. Department of Labor in cases under the Immigration and Nationality Act where the applicant is represented by an attorney before those departments.

Recently, USCIS took the lead in revising Form G-28 and developing a new Form G-28I for use in cases filed in agency offices outside the United States. During the review process, USCIS discovered that Form G-28 had never been approved by the Office of Management and Budget (OMB) under the PRA. USCIS has reviewed Form G-28 and determined that the “Administrative Action” exemption no longer applies and both Form G-28 and Form G-28I require OMB approval.

Accordingly, DHS seeks emergency processing of this information collection request in accordance with 5 CFR 1320.13. USCIS certifies that the requirements of 5 CFR 1320.13(a)(1) are met and that:

- The collection of information is needed immediately and is essential to the mission of the agency.
- The agency cannot reasonably comply with the normal clearance procedures because public harm is likely to result if normal clearance procedures are followed.

Further, DHS requests OMB approval to continue using the current Form G-28 until OMB approval of the revised Form G-28 and new Form G-28I is obtained. Disruption in the use of Form G-28 would have a significant negative impact on the public. An estimated 2.5 million Form G-28s are filed with petitions and applications annually. If DHS ceases requiring and accepting Form G-28 until OMB approval is received, individuals may submit the requisite representation notice (required by 8 CFR 292) in nonstandard formats that will greatly complicate and frustrate DHS’s ability to determine an individual’s eligibility to appear as a legal representative and record his or her appearance in the case. Further, without the G-28:

- Information contained on Form G-28 would no longer be entered into a database to generate correspondence to the representative and, therefore, would not be part of the electronic record.
- If correspondence is not sent to an applicant’s representative, DHS attorneys may be in jeopardy of violating state bar ethics rules by treating applicants as if they were not represented by an attorney.

- DHS frequently communicates with an applicant’s representative when an application is submitted under the Violence Against Women Act (VAWA), which provides the necessary “safe address.” If Form G-28 cannot be used, DHS will be unable to communicate with the applicant through protected channels.

USCIS greatly appreciates the timely consideration of this request.

Distribution List:

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