

SUPPORTING STATEMENT

G-28 and G-28I

Notice of Entry of Appearance as Attorney or Accredited Representative; Notice of Entry of Appearance of Foreign Attorney

OMB No. 1615-0105

1. 8 CFR 103.2 and 292.1 allow persons entitled to representation to be represented in matters before U.S. Citizenship and Immigration Services, U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection, Department of Homeland Security (DHS). Representatives must file an appearance on the appropriate form in each case.
2. The data collected on Forms G-28 and G-28I are used by DHS to determine eligibility of the individual to appear as a representative. Form G-28 is used by attorneys admitted to practice in the United States and accredited representatives of charitable organizations recognized by the Board of Immigration Appeals. Form G-28I is used by attorneys admitted to the practice of law in countries other than the United States and only in matters in DHS offices outside the geographical confines of the United States. If the representative is eligible, the form is filed with the case and the information is entered into DHS systems for whatever type of application or petition it may be.
3. The use of this form provides the most efficient means for collecting and processing the required data. This form can be e-filed.
4. A review of DHS Forms Inventory Report revealed no duplication of effort, and there is no other similar information currently available which can be used for this purpose.
5. This collection of information does not have an impact on small businesses or other small entities.

6. If the information is not collected, DHS will not be able to determine whether individuals are eligible to appear as representatives. If the information is not collected, DHS will not be able to document the necessity of communicating on matters with the eligible representative.
7. The special circumstances contained in item 7 of the supporting statement are not applicable to this information collection.
8. On November 20, 2008, USCIS published a 60-day notice in the Federal Register at 73 FR 70361 requesting comments from the public. USCIS received one comment on the 60-day notice from an individual who submitted the same comment in response to the August 7, 2008 emergency notice in the Federal Register. However, on August 7, 2008, USCIS published an emergency and 30-day notice in the Federal Register at 73 FR 46028. USCIS received comments from three individuals and one association of immigration lawyers. The following is a discussion of those comments and our response.

First Commenter: The commenter suggested that the proposed revision to Form G-28 leaves the form “essentially unchanged from the deeply flawed version that first appeared thirty years ago.” In particular, the commenter expressed concern that Form G-28 serves two purposes: one, to provide DHS with notice that an applicant or petitioner is represented; and, two, as a mechanism by which the applicant or petitioner waives any rights under the Privacy Act in order to permit DHS to communicate with the representative. The commenter suggested that an additional form be created in order to “deal with Privacy Act issues.” The commenter correctly identified a problem on the previous form that was corrected by DHS on the proposed revision to Form G-28.

A “notice of appearance entered in application or petition proceedings must be signed by the applicant or petitioner to authorize representation in order for the appearance to be recognized by DHS.” 8 CFR 292.4. The regulations at 8 CFR

103.2(a)(3) state that "...when a notice of representation is submitted that is not properly signed, the application or petition will be processed as if the notice had not been submitted." The previous version of Form G-28 did not have a signature block for the applicant or petitioner as required by the regulations. The only place for a signature of the applicant or petitioner on the previous version of Form G-28 was in the section of the form in which an individual who has rights under the Privacy Act may indicate their waiver in order to permit communication from DHS to the representative so designated on the form.

DHS has revised Form G-28 to include a block in which the applicant or petitioner must sign the form to authorize representation before DHS. If the applicant or petitioner has rights under the Privacy Act, that single signature would suffice for the waiver of those rights as well. DHS declines to create a separate form to "deal with Privacy Act issues" in order to avoid unnecessary duplication of effort and information.

Second Commenter: The commenter suggested that the proposed revised Form G-28 does not have sufficient space in which to enter the name of a corporate, or legal, entity as opposed to an individual, does not have sufficient space in which to enter a restriction on the scope of representation, the scope of consent or disclosure, or the form numbers associated with the Form G-28. This commenter also noted that there is no means by which to identify the beneficiary of an application and no means by which additional individuals represented by the representative may be listed in an attachment to Form G-28. The commenter identified several issues addressed by DHS in the proposed revision to Form G-28.

The revised Form G-28 does provide sufficient space to enter the name of a corporate entity as the petitioner, whether the form is completed as a paper document or as a computer generated "fillable" form. The form has been intentionally revised as DHS to eliminate notices of appearance for "all immigration matters." DHS has revised Form G-28 to require the designation of

the specific DHS agency and the specific form(s) or matter(s) in which the appearance is entered.

As noted in the instructions to Form G-28, representation will be recognized “until the conclusion of the matter for which it was entered. DHS does not presume that an attorney who has filed a G-28 with an application or petition with USCIS will remain as the representative of that individual should he or she be placed in removal proceedings upon the denial of that application or petition. The regulations at 8 CFR 103.5(a) mandate that a notice to appear be served personally upon the individual as it is a new proceeding. In the experience of DHS, it is not uncommon for an individual in this situation to acquire new counsel for proceedings before the Executive Office for Immigration Review. This new representation, even if with the original attorney, would result in a new retainer agreement and the necessity of filing a Form EOIR-27 with the immigration court. The requirement that a representative file a new Form G-28 with ICE is not unduly burdensome. DHS has revised the instructions on Form G-28 to confirm that a new Form G-28 must be filed with the Administrative Appeals Office when filing an appeal to that office on Form I-290B as required in 8 CFR 103.3(a)(2)(v)(A)(2).

The observation of the commenter expressing concern regarding the stapling of “additional sheets of paper” to Form G-28 is well founded. Another commenter expressed a concern that the revised Form G-28 does not permit representation of multiple parties. DHS considered the comments and will further revise the form to eliminate the provision for stapling additional sheets to Form G-28. The regulations require that the notice of entry of appearance form be signed by the applicant or petitioner in order to be properly submitted. Listing the names of additional applicants or petitioners on an attachment to Form G-28 does not comply with the regulation. DHS appreciates the comments and has revised the form accordingly.

Third Commenter: The commenter suggested that Form G-28I does not “ascertain whether applicable bar associate laws, rules and regulations that may pertain to a foreign licensed attorney desiring to practice before DHS in a given matter permit the foreign licensed attorney to practice U.S. immigration law.” The commenter specifically noted that several Canadian Law Societies restrict its attorneys from practicing foreign law unless they are licensed to practice law in that foreign country. The comments are instructive to DHS and though Form G-28I will not be changed as a result, appropriate guidance will be issued to DHS officials in offices outside the geographical confines of the United States.

Fourth Commenter: The commenter, a voluntary association of immigration lawyers, suggested that revised Form G-28 permit a general entry of appearance for all immigration matters and that it does not permit the “entry of appearance for multiple parties.” These comments were discussed in the response to the Second Commenter.

The commenter also suggested that DHS is interpreting its own regulations “too narrowly” by eliminating the option to designate representation for the “beneficiary” on Form G-28. DHS has determined that the revisions to the Form G-28 are necessary in order to ensure that the form properly reflects long existing requirements in the regulations. The example noted by the commenter was that an individual is a beneficiary of one application but an applicant with respect to another is accurate and precisely the reason that DHS revised Form G-28 to require the specific Form(s) or matter(s) for which the appearance is entered.

The commenter also suggests that the form be revised to permit the entry of an appearance by a law firm, or multiple lawyers in a law firm or non-profit office. Form G-28 is the mechanism by which DHS determines whether an individual is eligible to appear as a representative. *Matter of Sparrow*, 20 I&N Dec. 920 (BIA 1994). An attorney must attest, under penalty of perjury, that he or she is a member in good standing of the court of the applicable jurisdiction and that they

are not under any order of any court or agency restricting their practice of law. This is an individualized determination and requires an individualized attestation by the attorney on a separate Form G-28.

The commenter also suggested that Form G-28I note that foreign attorneys are only permitted to represent applicants or petitioners in matters outside the geographical confines of the U.S. These restrictions are noted on both the form and in the instructions.

No comments were received regarding the elimination of the “other” block category of representatives, the most significant revision made to Form G-28 by DHS. Regulations do not permit representation in application and petition proceedings by individuals other than attorneys in the United States or accredited representatives, and by attorneys outside the U.S. only in matters outside the geographical confines of the U.S. As noted in the instructions to Form G-28, law students, law graduates and reputable individuals may not file Form G-28 as they must seek permission of the DHS official before whom they seek to appear. The revised forms (G-28 and G-28I) reflect the commitment of DHS to address the problem of the unauthorized practice of law by unscrupulous, unlicensed immigration consultants and notarios.

9. DHS does not provide payments or gifts to respondents in exchange for a benefit sought.
10. There is no assurance of confidentiality.
11. There are no questions of a sensitive nature.
12. Annual Reporting Burden:
 - a. Number of Respondents 2,479,000

b.	Number of Responses per each Respondent	1
c.	Total Annual Responses	2,479,000
d.	Hours per Response	.333
e.	Total Annual Reporting Burden	825,507

Total annual reporting burden hours is 825,507. This figure was derived by multiplying the number of respondents (2,479,000) x frequency of response (1) x hours per response 20 minutes (.333). The number of estimated respondents was derived from the following information from USCIS, ICE and CBP:

USCIS: The average number of applications/petitions filed in a fiscal year, based on a review of FY 2003 through 2007, is 7,000,000. Applications and petitions are not always filed with this form as the law does not require that individuals be represented in proceedings before DHS. When the form is filed, it is frequently filed with multiple applications/petitions. For this purpose, DHS estimates that one third, or 2,389,500, of all applications/petitions are filed with this form.

ICE: The form is most frequently filed with ICE in conjunction with proceedings before the Executive Office for Immigration Review (EOIR). Individuals are not required to be represented before the EOIR, nor are they provided counsel at the expense of the government. The form is also filed in conjunction with administrative removal proceedings before ICE officials. The average number of individuals in proceedings before EOIR is 118,000. For this purpose, DHS estimates that three-quarters (75%), or 88,500, forms are filed with DHS by the attorneys or accredited representatives of individuals in proceedings before EOIR.

CBP: The form is not frequently filed with CBP in conjunction with proceedings before the agency. The form is occasionally improperly filed with FOIA and other record requests and may be filed when an attorney appears at a Border Patrol station and wishes to represent a client in custody. For this purpose, DHS estimates that 1,000 forms may be filed in a fiscal year with CBP.

13. There are no capital or start-up costs associated with this information collection. Any cost burdens to respondents as a result of this collection are identified in question 14. There is no fee associated with this information collection.

14. Annualized Cost Analysis:

Printing Cost	\$ 2,500
Collecting and Processing	\$ 33,017,780
Total Cost to Program	\$ 33,020,280
Fee Charge	\$ 0
Total Annual Cost to Government	\$ 33,020,280

Government Cost

The estimated cost to the Government is \$33,020,280. This figure is calculated by multiplying the estimated number of respondents 2,479,000 x 20 minutes (.333) (time required to collect and process information) x \$40 (Suggested average hourly rate for clerical, officer, and supervisory time with benefits). In addition, this figure includes the estimated overhead cost for printing, stocking, and distributing the form which is \$2,500.

Public Cost (No Fee Charge)

The estimated annual public cost is \$46,987,858. This is based on the number of respondents (2,479,000) x 20 minutes (.333) per response x \$56.92 (average hourly rate).

15. There is no increase or decrease in burden hours currently approved in the OMB inventory.
16. DHS does not intend to employ the use of statistics or the publication thereof for this collection of information.
17. DHS will display the expiration date for this information collection.
18. DHS does not request an exception to the certification of this information collection.

B. Collection of Information Employing Statistical Methods.

Not Applicable.

C. Certification and Signature.

PAPERWORK CERTIFICATIONS

In submitting this request for OMB approval, I certify that the requirements of the Privacy Act and OMB directives have been complied with including paperwork regulations, statistical standards or directives, and any other information policy directives promulgated under 5 CFR 1320.

Sunday Aigbe,

Chief,

Regulatory Management Division,

U.S. Citizenship and Immigration Services

Department of Homeland Security