

USCIS continues to expand the number and length of the various certifications and acknowledgements on its forms without adequately explaining their purpose. These certifications and acknowledgements are lengthy and repetitive and contribute to the ballooning size of the forms. In addition, the attestations are confusing to applicants and petitioners, and appear to be overreaching and unnecessary. We ask USCIS to halt the current practice of adding these lengthy certifications and acknowledgements to all new proposed forms and reevaluate their utility. In particular, USCIS should examine whether the intended goals of the certifications can be met with existing regulations or more concise attestations that are less burdensome, easier to understand, and within the scope of USCIS's authority. At a minimum, AILA recommends the following edits.

**Page 24, Part 14—Preparer's Certification**

AILA remains concerned with the expanded language of the preparer's certification. The proposed language reads:

*By my signature, I certify, swear, or affirm, under penalty of perjury, that I prepared this application on behalf of, at the request of, and with the express consent of the applicant. I completed this application based only on responses the applicant provided to me. After completing the application, I reviewed it and all of the applicant's responses with the applicant, who agreed with every answer on the application. If the applicant supplied additional information concerning a question on the application, I recorded it on the application. I have also read the Acknowledgement of Appointment at USCIS Application Support Center to the applicant and the applicant has informed me that he or she understands the ASC Acknowledgement.*

This language is repetitive, confusing, and imposes a burdensome and unnecessary process for preparing and reviewing the Form N-400. Preparers are already required, under applicable regulations, to attest to the veracity and truth of what is submitted. Under 8 CFR §103.2(a)(2), “[b]y signing the benefit request, the ... petitioner ... certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct.” Moreover, under 8 CFR §1003.102(j) (1), “[t]he signature of a practitioner on any filing [or] application ... constitutes certification by the signer that the signer has read the filing [or] application ... and that, to the best of the signer's knowledge, information, and belief, formed after inquiry reasonable under the circumstances, the document is well-grounded in fact ....” An attorney who engages in frivolous behavior or who knowingly or with reckless disregard makes a false statement of material fact or law is subject to disciplinary sanctions including disbarment or suspension. *See generally* 8 CFR §1003.101–108.

Any concerns about fraud detection and prevention are more than adequately covered in the existing regulations cited above. Moreover, it is beyond the authority of USCIS to stipulate a specific review procedure for attorneys and their clients and require that it be followed. The Preparer's Certification, therefore, unnecessarily impinges on the rights of applicants and their legal representatives to determine their own legitimate procedures in the preparation of the form. As such, AILA urges USCIS to revise the “Preparer's Certification” to read as follows:

*By my signature, I certify, swear, or affirm, under penalty of perjury, that I prepared this form on behalf of the applicant, or another individual authorized to sign this form pursuant to form instructions. I prepared this form at his or her request, and with his or her express consent, and I understand that the preparation of this form does not grant the petitioner or beneficiary any immigration status or benefit.*

USCIS Response:

As more USCIS forms are available to be filed in an electronic, paperless environment we are adding language to combat immigration fraud as requested by federal law enforcement agencies. USCIS is also utilizing the attestation process to meet its identity-proofing and attribution

requirements established for electronic remote authentication under federal law. USCIS does not believe the language is overly long, repetitive or that it adds excessive burden on respondents. The language does not exceed USCIS' authority to make requests necessary to complete case processing. If any person other than the applicant completes the form, including an attorney, he or she is required to complete and sign the preparer's section. The certification does not require an attorney to swear to his or her knowledge and truth of all information in the application, and does not encumber the attorney/client relationship. Rather, by completing the certification, the attorney or preparer is certifying that he or she "completed the form based only on responses the applicant provided to" him or her and "reviewed it and all of the applicant's responses with the applicant, who agreed with every answer. The preparer certification language clarifies that the signatories are assuring DHS as to the source and completeness of the information on the form. The AILA suggested language only documents the applicant-preparer agreement and it does not address the veracity of the information on the form.

***Page 21, Part 12 – Applicant's Certification***

This section, allowing USCIS to access "*any and all of my records that USCIS may need,*" is overly broad, and may violate privacy laws. While we agree that USCIS has the authority to obtain records related to the applicant that are maintained by other agencies within the Department of Homeland Security, this statement seems to go beyond the acceptable parameters. We do not believe that the applicant should be compelled to allow USCIS to retrieve non-public information or release the applicant's information to any branch of the U.S. government, private companies, or the governments of foreign countries. We strongly object to this provision, and ask that it be revised to protect the privacy interests of the applicant.

USCIS Response:

The information that may be obtained is limited to information "that USCIS may need" to adjudicate the request. Thus the language only permits USCIS to obtain the information necessary to process the applicant's benefit request.

***Page 20, Part 12 - Acknowledgement of Appointment at USCIS Application Support Center (ASC)***

The proposed revision on page 20 of the proposed form requires each applicant to confirm that he or she "understands that the purpose of a USCIS ASC appointment is for me to provide my fingerprints, photograph, and/or signature and to *re-verify that all of the information in my application is complete, true, and correct and was provided by me.*" (Emphasis added).

The proposed form also requires applicants to confirm that, in signing the ASC appointment notice at the time of the biometrics appointment, the applicant declares that he or she reviewed and understood the application submitted, filed it willingly, that all submitted supporting documents are "complete, true, and correct" and that anyone assisting the applicant in preparing the application form "reviewed this Acknowledgment of Appointment at USCIS Application Support Center with [the applicant]."

Applicants who appear at an ASC appointment will not have the Form N-400 with them, nor do we presume the ASC contractor will review the contents of the form with the applicant. Moreover, neither the applicant nor the ASC contractor has the ability or the authority to correct typographical errors on the Form N-400.

Second, there is generally a lapse of at least several weeks between the time of filing the application and the time of the ASC appointment. During this time, the information which was true at the time of filing the form can legitimately change. If USCIS's intention is to require an applicant to re-affirm that the information in the application is true when, in fact, information might have *been* true at the time the application was filed but has since changed (e.g. an address change) the applicant will have difficulty

signing the ASC acknowledgement in good faith. Please consider a few of the possible scenarios that could happen, after an applicant files the form with USCIS, thus calling into question the efficacy of this language:

The applicant or attorney discovered errors on the form after filing and sent in a correction to USCIS.

The applicant moved since filing the form and filed an AR-11.

The applicant has traveled internationally since filing Form N-400, rendering the entry/exit dates inaccurate.

In light of these concerns, we respectfully request that DHS remove this requirement that applicants “re-verify” the contents of the application, which is redundant to the attestation made at the time of filing.

#### USCIS Response:

We understand how the reverification may seem redundant. Nonetheless, the ASC appointment acknowledgment and biometrics services accomplish the identity-proofing required under the Government Paperwork Elimination Act (GPEA) and Federal Information Security Modernization Act of 2014 (FISMA) by linking the individual and the online account.

As USCIS progresses to more forms filed in an electronic environment we are changing our forms to add features to meet the identity-proofing and attribution requirements established for electronic remote authentication under federal law, establish a legally enforceable electronic signature process, and combat immigration fraud in cases filed electronically where the applicant’s signature is not obtained. The updated certification and attestation language and acknowledgement provide notice to an applicant that they must re-affirm the content of their application at their ASC appointment. In addition, the ASC notice will remind applicants again that by appearing for their ASC appointment they would be re-affirming the contents of their applications were complete, true, and correct. The LiveScan screen at the ASC will display the attestation to the applicant when they provide their digital signature, and the signature will be linked to the attestation and become part of the account record.

This in-person identity verification is necessary for a paperless process to comply with the identity-proofing required by the Government Paperwork Elimination Act (GPEA) and Federal Information Security Modernization Act of 2014 (FISMA) for individuals who access a government system remotely, and has been implemented in anticipation of including Form N-400 into the electronic system of USCIS ELIS. Current processing time and programming requirements, requires that USCIS include this language now so that requirements and procedures are in place in time for implementation of electronic filing capability. USCIS recognizes that this adds space, text, and a little increase in burden to the application, especially for those forms, such as the Form N-400, that are not yet available for electronic filing. However, USCIS believes that the burden of the additional language will eventually be offset by the benefits of online filing. During this transition period, this additional language will slightly increase the burden of those forms not yet in USCIS ELIS.