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| **Comment #** | **Commenter ID** | **Comment** | **USCIS Response** |
| **1.** |  | **Commenter: AILA** |  |
|  | [USCIS-2007-0034-0097](https://www.regulations.gov/comment/USCIS-2007-0034-0097) | The American Immigration Lawyers Association (AILA) submits this comment in response to the updates USCIS has made to the Instruction form for Form I-589, Application for Asylum and Withholding of Removal. Established in 1946, AILA is a voluntary bar association of more than 16,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. AILA’s mission includes the advancement of the law pertaining to immigration and naturalization and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. Furthermore, AILA members include legal experts and practitioners of asylum law who work with the Form I-589 on a daily basis. Improvements to the filing process AILA appreciates efforts that United States Citizenship and Immigration Services (USCIS) is making to streamline processing. AILA thus commends USCIS for changing its Instructions (Section VI) from the previous requirement that multiple copies of the I-589 and supporting documents be filed for the primary applicant and each derivative applicant, to the proposed change1 that the primary applicant need only include one original of the signed application and any affidavit(s) as well as one copy of primary supporting documents such as birth certificates. Eliminating the requirement to file unnecessary duplicate copies streamlines the filing process.  As asylum applications increasingly become digitalized, there does not seem to be a purpose for submitting multiple copies to the agency. Similarly, AILA appreciates the change to the Instructions (Section IX) that no longer requires submission of photographs with the I-589 application form. Given that applicants are required to have biometrics taken at USCIS Adjudication Support Centers, and again, at Asylum Offices, filing passport photos with the application is needlessly duplicative and we applaud USCIS’s decision to end this requirement. AILA urges USCIS to edit the Instructions with regard to blank spaces AILA appreciates that the Instructions clarify (Section XI) that applications will not be returned as incomplete for failure to file extra copies or passport photos, which are no longer required. We are concerned, however, that this section of the Instructions continues to indicate that the application can be returned if “[t]he application does not include a response to each of the questions contained in Form I-589.” This requirement violates the settlement in Vangala v. USCIS, which rescinded the “No Blank Space Rejection Policy.” By including instructions that state that the entire application can be rejected if any question does not receive a response, asylum seekers may mistakenly believe that they must fill in information in every segment of the application, even if questions do not apply to them. AILA urges USCIS to reword this question in a manner that is compliant with Vangala. AILA urges USCIS to amend its “Where to File” section of the Instructions The Instructions include detailed information on where asylum applicants should file their applications (Section XII), but they are not complete. Having instructions that are detailed but not comprehensive is confusing and could mislead asylum seekers. AILA urges USCIS to either include all of the information included on the USCIS website about where to file in the Instructions, or to not include Where to File information on the Instructions at all, and, instead to refer the asylum seeker to the instructions on the website. For example, nowhere in the written Instructions is there any mention of the ability for many asylum seekers to file their applications online. When available, online filing is generally preferable since doing so yields an immediate receipt and avoids any processing “frontlogs.” USCIS should not provide detailed Instructions on where to file that leaves out this critical filing option. Similarly, the Instructions provide some information about types of cases that must be filed with the Asylum Vetting Center, such as cases where the applicant’s asylum application was previously denied by USCIS and applications where the applicant lost dependent status. However, there are other procedural postures that the website lists as having to be filed with the Asylum Vetting Center that are not delineated in the Instructions. These include: for applicants who need to seek asylum nunc pro tunc, for applicants who are simultaneously proceeding as a principal and a dependent, and for applicants who have previously been in immigration court proceedings. Given the large number of removal proceedings with defensive asylum applications that have been dismissed by the Immigration and Customs Enforcement Office of the Principal Legal Advisor, it is especially critical that asylum seekers understand where they must file this last category in particular. AILA urges USCIS to change its Instructions for Unaccompanied Children AILA recognizes the special vulnerability of Unaccompanied Children (UCs) and believes it is especially important that instructions for how they should file their asylum applications be clearly set forth. Even experienced immigration practitioners may be confused about where to file I-589s for UCs in immigration court proceedings if they do not specialize in this area of representation. First, the Instructions (Section I) explain the requirement that asylum seekers file within one year of their last arrival in the United States or meet an exception to the filing deadline. While this section of the Instructions includes information about UCs, it does not explicitly state that the One Year Filing Deadline does not apply to UCs. We urge USCIS to clarify this section of the Instructions. Second, we are concerned that the Instructions (Section XII) on Where to File, do not adequately explain how UCs who are protected under the J.O.P. v. DHS, No. 8:19-cv-01944 (D. Md.) preliminary injunction2 should file their applications and we urge USCIS to make the Instructions clearer. Under the J.O.P injunction, USCIS is required to implement the 2013 Kim Memorandum, meaning that so long as the asylum seeker was previously designated a UC by the Department of Homeland Security (DHS), the individual remains a UC unless there is an affirmative act that negates the designation. As written, the Instructions could mislead UCs and their counsel to think that the asylum seeker must currently be under 18 and remain “unaccompanied” in order to file affirmatively with USCIS if they are in removal proceedings. AILA urges USCIS to clarify that anyone who was previously designated a UC can file with USCIS. Likewise, the Instructions should clarify that asylum seekers who have been designated UCs can file with USCIS even if they have a final order of removal or an appeal pending before the Board of Immigration Appeals. USCIS’s jurisdiction in this circumstance is made clear by the J.O.P injunction, and the Instructions should also alert UCs and their counsel to UCs’ ability to pursue asylum before USCIS in this posture. Finally, the Instructions (Section XII) list categories of asylum seekers who are not entitled to receive a USCIS asylum interview and instead are placed in asylum-only proceedings before EOIR. UCs should not be subject to asylum-only proceedings, regardless of their manner of entry. See, e.g., USCIS Affirmative Asylum Procedures Manual III.L.3.c (2016) (noting in the context of Visa Waiver Program entrants that “USCIS has initial jurisdiction over all [UC]s seeking asylum, including all [UC]s who entered under the Visa Waiver Program, regardless of filing date”). AILA urges USCIS to clarify in the Instructions that UCs are exempted from asylum-only proceedings. AILA appreciates the opportunity to comment on the revisions USCIS is proposing and hopes the agency will make changes based on this comment. Please feel free to reach out to Amy Grenier at agrenier@aila.org if there is any further information we can provide. | Thank you for your comments. USCIS’s revision in this notice was a limited revision to facilitate agency processing of the Form I-589. USCIS will consider these recommendations during the next comprehensive revision action for Form I-589. |
| **2.** |  | **Commenter: Asylum Advocacy Project (ASAP)** |  |
|  | [USCIS-2007-0034-0100](https://www.regulations.gov/comment/USCIS-2007-0034-0100) | The Asylum Seeker Advocacy Project (ASAP) respectfully submits the following comment in response to the USCIS request for comment on the revision of the currently approved Form I589, Application for Asylum and for Withholding of Removal. ASAP works alongside its members—now over 500,000 asylum seekers—toward a future where the United States welcomes individuals fleeing violence. ASAP members come from more than 175 countries and live in every U.S. state and territory. ASAP staff have provided guidance to thousands of pro se applicants on filling out and filing their Form I-589 asylum application.  ASAP has a strong interest in the proposed extension of the Form I-589 and suggests changes that USCIS should make to the Form I-589 before reauthorizing it. The Form I-589 (“the form” or “I-589”) is an essential document that allows people fleeing persecution to initiate a request for asylum and other protections. As the largest membership organization of asylum seekers in the United States, ASAP is uniquely positioned to offer insight into the Form I-589 based on member feedback. Hundreds of thousands of ASAP’s members have filled out the Form I-589 and thousands more will do so in the future. Thus, ASAP members have a strong interest in making sure the Form I-589 is accessible, transparent, and not overly burdensome. ASAP proposes several changes that would improve the experience for people completing and filing their Forms I-589. First, we discuss the modifications and steps USCIS should take to make sure the online form is as accessible as possible to all those seeking to file online. Second, we note changes that USCIS can make to simplify and clarify how to determine the filing location for Form I-589. Third, we reiterate our suggestion to make the form and instructions available and acceptable in multiple languages. Finally, we suggest edits that USCIS can make to the language of the Form I-589,2 Form Instructions3 and I-589 website4 to increase clarity and accessibility while still collecting all necessary information. The suggestions included in this comment reflect the experiences of ASAP members and attorneys on ASAP’s staff who have interacted extensively with the Form I-589 and the I-589 filing process. I. ASAP commends USCIS’ efforts to improve online filing for the I-589 and encourages USCIS to continue making the online form as accessible as possible. USCIS recently improved its online Form I-589 tool by optimizing it for mobile phones. ASAP has long advocated for an online I-589 that has a mobile-friendly interface, and we commend USCIS for this development. Now, the vast majority of ASAP members who use their phones to access online content will be able to access, prepare, and submit their I-589 applications through their phones. The online Form I-589 also helped to reduce receipt notice delays, which have significantly improved in recent months.5 However, ASAP continues to have several concerns about the online application. In particular, USCIS can improve the online form by: A. Removing the requirement that applicants create a USCIS account before filling out the online Form I-589. Creating an account can be a barrier to applicants accessing the form. USCIS can fix this by allowing applicants to submit their applications without creating an account, triggering the automatic creation of an account upon receipt. B. Providing the option to attach a pdf of the I-589 for online filing. Much like the regulations.gov website allows commenters to either type their comment directly into an online submission form or attach a file containing their comment, USCIS should create this option for asylum applicants submitting their I-589s online. Allowing applicants to fill out a separate PDF form will improve accessibility by giving them the option to use an application or interface that they are familiar with to fill out the form or to fill the form out by hand and scan it. Allowing applicants to upload completed I-589s will also avoid problems with saving application progress online. C. Clarifying warning dialog regarding cover letters and written statements. If an applicant does not upload a separate cover letter or written statement, the online application prompts them to do so. 6 This correctly suggests that cover letters and written narrative statements are useful to the officer adjudicating the application. Given their importance, USCIS also permits applicants to directly type a cover letter and/or written statement within the Additional Information field of the online application. Because there are two options for submitting cover letters and written statements—document upload and direct entry—ASAP recommends listing both options in the relevant prompts. For example, the cover letter prompt could read: “You may upload a letter that summarizes your case and why you are applying for asylum. You may also type a cover letter in the Additional Information section of the application.” D. Providing additional guidance to applicants regarding country conditions evidence. Under the section for general country conditions, ASAP suggests editing the instructions7 to include examples of types of country conditions that may be relevant. Additional guidance could be given to applicants by adding a sentence such as: “Examples of evidence include, but are not limited to, newspaper articles, news reports, studies, reports, and other publications.”8 E. Making sure that information about asylum eligibility, evidence, and risk of removal are clear and accurate. The initial landing page of the online application9 contains important information about asylum eligibility and the risks of filing an application. However, the statement “[a]ny applicant-caused delay will result in denial of your application for employment authorization if the delay is unresolved at the time you file for employment authorization” is legally incorrect and reflects regulatory language that has since been amended.10 Further, this section is organized in a manner that is sometimes confusing, including by providing information relevant to individuals with cases before the immigration court. To improve accessibility, ASAP suggests the following changes: Please | Thank you for your comments. USCIS’s revision in this notice was a limited revision to facilitate agency processing of the Form I-589. USCIS will consider these recommendations during the next comprehensive revision action for Form I-589. |
| **3.** |  | **Commenter: KIND NIPNLG PC** |  |
|  | [USCIS-2007-0034-0098](https://www.regulations.gov/comment/USCIS-2007-0034-0098) | We write to share comments from Kids in Need of Defense (KIND), the National Immigration Project (NIPNLG), and Public Counsel in response to the invitation for public comment (OMB Control Number 1615–0067; Docket ID USCIS–2007–0034) published in the Federal Register by U.S. Citizenship and Immigration Services (USCIS). Specifically, in our role as class counsel in J.O.P. v. DHS, No. 8:19-cv-01944 (D. Md.), we suggest revisions to the revised Form I-589 Instructions (Instructions) and related web pages. Our proposed changes are designed to improve the quality, utility, and clarity of the information relevant to the nationwide class of asylum seekers who previously received “Unaccompanied Alien Child” (UC) determinations. Our suggested changes are in some instances mandated by the J.O.P. nationwide injunction,1 and in any event are designed to benefit asylum seekers, legal representatives, and USCIS alike. KIND is a national nonprofit organization that provides free legal and social services to unaccompanied immigrant children. Since January 2009, KIND has received referrals for over 30,000 children from 80 countries. KIND’s legal services staff and over 800 pro bono partner organizations combine to serve children through seventeen locations across the United States, including in applications for asylum and related relief. In addition to our work in J.O.P., we represented asylum-seekers in a challenge to employment authorization regulations in Asylumworks v. Mayorkas. KIND also works to address the root causes of child migration, and advocates for laws, policies, and practices to improve the protection of immigrant children in the United States. | Thank you for your comments. USCIS’s revision in this notice was a limited revision to facilitate agency processing of the Form I-589. USCIS will consider these recommendations during the next comprehensive revision action for Form I-589. |
| **4.** |  | **Commenter: Ruddy Ruddy** |  |
|  |  | Hola muy bien estoy satisfecho gracias Gloria a Dios Alabado |  |
| **5.** |  | **Commenter: The Legal Aid Society (NYC)** |  |
|  | U[SCIS-2007-0034-0101](https://www.regulations.gov/comment/USCIS-2007-0034-0101) | The Legal Aid Society submits this comment in response to the invitation of U.S. Citizenship and Immigration Services (USCIS) to comment on the proposed Revision of a Currently Approved Collection: Application for Asylum and for Withholding of Removal, posted on May 23, 2023. | Thank you for your comments. USCIS’s revision in this notice was a limited revision to facilitate agency processing of the Form I-589. USCIS will consider these recommendations during the next comprehensive revision action for Form I-589. |
| **6.** |  | **Commenter: Immigration Equality** |  |
|  |  | Immigration Equality appreciates the opportunity to submit this comment in response to the request for comments Revision of a Currently Approved Collection: Application for Asylum and for Withholding of Removal. We are an organization that provides direct representation to LGBTQ asylum seekers and others seeking protection, and that advocates for LGBTQ communities. We recommend that Part A.1, Question 10 (“Question 10”) of the I-589 be revised. Question 10 requires applicants to indicate their gender and providestwo options: Male or Female. By requiring an applicant to make this binary choice, many non-binary, gender non-conforming, transgender, intersex, and applicants of another gender cannot accurately disclose their gender in their asylum application. Essentially, they must “willfully subscribe[] as true a[ ] material matter which [they] do[ ] not believe to be true,” in apparent violation of the federal perjury statute.1 Recently, federal courts in related contexts have declared similar policies arbitrary and unconstitutional. In May 2020, a federal appeals court held that the U.S. Department of State’s (“DOS”) requirement that U.S. passport applicants select an “M” or “F” designation on their passport was arbitrary and capricious.2 The DOS issued the first U.S. passport with an “X” designation to the plaintiff in that case, who is both non-binary and intersex.3 And in November 2020, a federal court held that requiring medical documentation to obtain a U.S. passport with a correct gender marker violated the Constitution’s Equal Protection Clause.4 Based in part on this growing body of case law, and in part on the recommendations of groups like the American Medical Association,5 over twenty states have moved to ensure that individuals are not limited to a binary option when indicating gender, and can select an M, F, or X marker on IDs.6 The Social Security Administration implemented self-attestation of gender markers in October of 2022 and are exploring system 1 18 U.S.C. § 1621(2). 2 Zzyym v. Pompeo, 958 F. 3d 1014 (10th Cir. 2020). 3 Ned Price, US State Department Spokesperson, Issuance of the First U.S. Passport with an X Gender Marker (Oct. 27, 2021), https://www.state.gov/issuance-of-the-first-u-s-passport-with-an-x-gender-marker/. 4 Morris v. Pompeo, No. 19-cv-569, \_\_ F. Supp. 3d \_\_ (D. Nev. 2020). 5 Am. Med. Ass’n, Policy H-65.967: Conforming Birth Certificate Policies to Current Medical Standards for Transgender Patients (updated 2021). 6 E.g., Movement Advancement Project, “Equality Maps: Identity Document Laws and Policies,” https://www.lgbtmap.org/equality-maps/identity\_document\_laws. 2 updates needed to support an “X” designation.7 Similarly, USCIS recently implemented a policy of self-designation for gender markers across nearly all forms, and announced that the U.S. Department of Homeland Security (DHS) is working on options to include an additional gender marker (“X”) for another or unspecified gender identity. 8 We urge USCIS to make that change now by updating the I-589 to add a third option to Question 10, namely, the choices should be: “Male,” “Female,” and “Another Gender Identity.” This approach is in alignment with the recently updated DOS passport policy and application forms (DS-11, D-82, and DS-5504), as well as the proposed changes to the N-400, Application for Naturalization form.9 This change will ensure that all people, including non-binary, gender non-conforming, intersex, transgender, and applicants of another gender can truthfully and accurately indicate their gender when applying for asylum. This is particularly important when an applicant’s asylum claim is predicated on gender identity-based persecution and the applicant must be able to accurately and consistently convey information to the tribunal. The corresponding I-589 instruction should also be updated to make clear that an applicant may self-select the correct gender designation, regardless of the gender marker on birth certificates or other documents. We appreciate the ability to provide feedback on form I-589. We urge you to make the changes suggested above. Please do not hesitate to contact Bridget Crawford at bcrawford@immigrationequality.org if you have any questions or need any further information. | Thank you for your comments. USCIS’s revision in this notice was a limited revision to facilitate agency processing of the Form I-589. USCIS may consider these recommendations during the next comprehensive revision action for Form I-589. |