



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

January 19, 2021

Ms. Samantha Deshommnes
Chief, Regulatory Coordination Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office of Policy and Strategy
20 Massachusetts Avenue, NW
Washington, DC 20529-2120

Submitted via www.regulations.gov

**Re: Revision of a Currently Approved Collection - Application for T Nonimmigrant Status
OMB Control Number: 1615-0099; Docket ID: USCIS-2006-0059**

Dear Ms. Deshommnes:

The American Immigration Lawyers Association (AILA) respectfully submits the following comments in response to the above-referenced 60-day notice and request for comments on proposed revisions to the Application for T Nonimmigrant Status on Form I-914 (Form I-914), the Application for Family Member of T-1 Recipient on Form I-914, Supplement A (Form I-914A), the Declaration of Law Enforcement Officer for Victim of Trafficking in Persons on Form I-914, Supplement B (Form I-914B), and their accompanying instructions (collectively, the Proposed Revisions), published in the Federal Register on November 17, 2020.¹

Established in 1946, AILA is a voluntary bar association of more than 15,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality 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. We appreciate the opportunity to comment on the Proposed Revisions and believe that our members' collective expertise and experience makes us particularly well-qualified to offer views that will benefit the public and the government.

USCIS Should Withdraw the No-Blanks Policy from the Form I-914 Instructions

The proposed revisions to the Form I-914 instructions purport to formalize the U.S. Citizenship and Immigration Services (USCIS)'s recent processing policy of rejecting applications that allegedly contain blank answer fields (the No-Blanks Policy).² As explained below, USCIS has

¹ 85 Fed. Reg. 73,290 (Nov. 17, 2020).

² See Proposed Form I-914 Instructions at page 2 ("Any Form I-914 that is not filled out completely will be rejected with a notice that the application is deficient. If the instructions indicate that you must fill out a field, that field is required, and your application will be considered deficient if you do not provide a response." (emphasis omitted)).

now ceased to apply the No-Blanks Policy to Applications for Asylum and for Withholding of Removal on Form I-589 (Forms I-589) and Petitions for U Nonimmigrant Status on Form I-918 (U-Visa Petitions). For parity, as well as for the reasons discussed in more detail below, USCIS should similarly withdraw the portion of the Form I-914 instructions that would apply this ill-conceived policy to trafficking survivors seeking T nonimmigrant status (T-Visas). To do otherwise would contravene Congress’s clear intention to protect this vulnerable population. To the extent that USCIS nonetheless applies the No-Blanks Policy to Forms I-914 – which it should not – USCIS should take various steps to protect human trafficking survivors from the harsh consequences that will result from such a policy.

As a Result of Litigation, USCIS Has Withdrawn the No-Blanks Policy in the Asylum and U-Visa Context and Should Do the Same Here

In October 2019, USCIS upended long-standing practice and – without any notice whatsoever – began rejecting Forms I-589 on the basis that asylum seekers allegedly left answer fields blank or did not use specific terminology to indicate that a question was inapplicable.³ The following month, USCIS began applying the same policy to U-Visa Petitions.⁴ USCIS’s application of the No-Blanks Policy to Forms I-589 and U-Visa Petitions was arbitrary, inconsistent, and, in many cases, nonsensical. For example, in AILA’s analysis of hundreds of Forms I-589 and U-Visa Petitions rejected pursuant to the policy,⁵ there were several examples of USCIS rejecting applications solely on the basis that:

- the applicant allegedly failed to complete an answer field that the applicant had in fact completed;
- the applicant completed an answer field using one of the No-Blanks Policy’s accepted word choices (e.g., “None”) rather than another (e.g., “N/A”);

the applicant did not respond to a question requiring an answer “if any” or “if applicable” (indicating that the applicant should leave the answer field blank when the question did not apply); and

- the applicant did not respond to a question that clearly did not require a response (for example, the applicant did not provide the current location of a relative whom the applicant marked as “deceased,” or the applicant did not provide an apartment, suite, or floor number after specifically stating that his or her home address did not contain an apartment, suite, or floor number).

³ See generally AILA Policy Brief: “USCIS’s ‘No Blank Space’ Policy Leads to Capricious Rejections of Benefits Requests,” Oct. 22, 2020 (hereinafter AILA Policy Brief), <https://www.aila.org/advo-media/aila-policy-briefs/uscis-no-blank-space>.

⁴ *Id.*; see also Practice Advisory: “Insight into USCIS’s Application of the ‘No-Blanks’ Policy to U-Visa Petitions,” Nov. 20, 2020 (hereinafter No-Blanks Policy Insight), <https://www.aila.org/advo-media/aila-practice-pointers-and-alerts/practice-advisory-insight-into-uscis-application>.

⁵ See generally AILA Policy Brief, *supra* note 3; “USCIS Accountability: An Examination of ‘Blank Space’ Rejections,” July 24, 2020, <https://www.aila.org/infonet/an-examination-of-blank-space-rejections->.

At the time USCIS applied the No-Blanks Policy to Forms I-589 and U-Visa Petitions, USCIS’s purported justification for the policy was that it was necessary to preserve the integrity of our immigration system.⁶ However, USCIS did not provide then – and has failed to provide now – any evidence demonstrating that USCIS’s acceptance of a form that is missing nonmaterial information degrades the agency’s ability to protect the homeland.

Indeed, at the time USCIS applied the No-Blanks Policy to Forms I-589 and U-Visa Petitions, the policy served no discernable purpose other than to allow USCIS to reject properly-filed applications – which it did time and time again. For example, within only six months of USCIS’s application of the No-Blanks Policy to U-Visa Petitions, USCIS utilized the policy to reject nearly **12,000** petitions.⁷ Thus, by requiring USCIS to process thousands of rejected and re-filed applications, the No-Blanks Policy created further inefficiencies and costs for an agency already faced with unprecedented processing delays and significant financial issues.

In November 2020, immigration advocates filed *Vangala v. USCIS*,⁸ a putative class action challenging the legality of No-Blanks Policy on the basis that, among other things, USCIS’s “wildly divergent adjudications under the . . . policy [were] so inconsistent and unpredictable that they render[ed] the policy arbitrary and capricious.”⁹ As a result of *Vangala*, USCIS agreed to cease rejecting Forms I-589 and U-Visa Petitions pursuant to the No-Blanks Policy.¹⁰ For parity and the reasons set forth in the *Vangala* complaint, USCIS should do the same in the T-Visa context and withdraw the No-Blanks Policy from the Form I-914 instructions.

Applying the No-Blanks Policy to Human Trafficking Survivors Contravenes Congressional Intent

Congress created the T-Visa to “protect” trafficking victims and, in so doing, expressly recognized that “victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked.”¹¹ As explained below, even though USCIS has attempted to clarify which fields in the Form I-914 are required, ambiguity persists. As a result, USCIS’s application of the No-Blanks Policy to Forms I-914 will result in scores of rejected applications to the detriment of a vulnerable class of immigrants that Congress explicitly has sought to protect.

⁶ See Catherine Rampell, *The Washington Post*, “The Trump administration’s No-Blanks Policy Is the Latest Kafkaesque Plan Designed to Curb Immigration,” Aug. 6, 2020, https://www.washingtonpost.com/opinions/the-trump-administration-imposes-yet-another-arbitrary-absurd-modification-to-the-immigration-system/2020/08/06/42de75ca-d811-11ea-930e-d88518c57dcc_story.html.

⁷ See No-Blanks Policy Insight 2, *supra* note 4.

⁸ See Complaint, 20 Civ. 08143 (N.D. Cal.).

⁹ *Id.* ¶ 144.

¹⁰ See generally “USCIS Updates Intake Policies and Halts Application of the Rejection Policy in Response to *Vangala v. USCIS*” at 1, Jan. 14, 2021, <https://immigrationlitigation.org/wp-content/uploads/2021/01/Vangala-FAQ-and-Updated-USCIS-Guidance.pdf>.

¹¹ See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, Oct. 28, 2000, 114 Stat. 1464 §§ 102(a), 102(b)(20).

The consequences of a rejected Form I-914 are severe because the date on which USCIS acknowledges receipt of the application directly impacts the substantive rights of the human trafficking survivor and/or his or her qualifying family members. For example, if USCIS rejects or otherwise refuses to acknowledge a 20-year-old trafficking survivor’s Form I-914 as received, the trafficking survivor may be precluded from applying for and obtaining a T-Visa for his or her parents or siblings if the trafficking survivor is unable to resend the Form I-914 to USCIS such that USCIS acknowledges the application as received before the trafficking survivor’s 21st birthday.¹² In addition, if USCIS rejects or otherwise refuses to acknowledge a trafficking survivor’s Form I-914, USCIS will subject the individual to longer adjudication times, delay the right to a bona fide determination and a stay of removal,¹³ inhibit the ability to seek administrative closure or termination of removal proceedings,¹⁴ and, in some states, postpone the right to obtain critical health benefits.¹⁵

Without the existence of simple, intuitive, and easily-prepared forms – which the Form I-914 is not – the No-Blanks Policy is unfair, inefficient, and contrary to Congress’s intent to protect vulnerable trafficking survivors. In creating the T-Visa, Congress emphasized that our national laws should “protect[] rather than punish[]” trafficking survivors.¹⁶ Simply put, the No-Blanks Policy falls on the wrong side of that spectrum and must be eliminated from USCIS’s Proposed Revisions

To the Extent that the Form I-914 Instructions Incorporate the No-Blanks Policy – Which They Should Not – USCIS Should Take Steps to Protect Human Trafficking Survivors from the Harsh Consequences that Will Result

The proposed revisions to the Form I-914 instructions apparently attempt to clarify which answer fields in the Form I-914 are required by adding the word “must” to various instructions (e.g., “You must provide your legal name, as shown on your birth certificate or legal name change document.”). However, ambiguity persists. For example, the second question in Part 2 of the Form I-914 asks the applicant to write any “Other Names Used” in the following answer fields:

2. Other Names Used

Provide any other names you have used since birth, including aliases, maiden names, and nicknames. If you need extra space to complete this section, use the space provided in Part 9. Additional Information.

| Family Name (Last Name) | Given Name (First Name) | Middle Name (if any) |
|-------------------------|-------------------------|----------------------|
| | | |

¹² 8 C.F.R. § 214.11(a) (defining “eligible family member”).

¹³ *Id.* § 214.11(d)(1)(ii).

¹⁴ *Id.* § 214.11(d)(1)(i).

¹⁵ *See, e.g.*, Office of Health Ins. Programs, N.Y. State Dep’t of Health, Documentation Guide, Citizenship and Immigrant Eligibility for Health Coverage in New York State 4, https://www.health.ny.gov/health_care/medicaid/publications/docs/gis/04ma003att1.pdf (showing that a Form I-914 receipt notice affords PRUCOL status in New York State).

¹⁶ *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, Oct. 28, 2000, 114 Stat 1464 § 102(b)(24).

In explaining how to complete this question, the proposed Form I-914 instructions state: “You must provide all the names you have used, including aliases, maiden name, and nicknames, etc. If you have not used any other names, please type or print ‘N/A’ or ‘none.’”¹⁷ By stating that an applicant “must” only provide any names he or she has used, the instructions suggest that an answer to question 2 is not required if the applicant has never used any other names. However, to the extent that this interpretation is incorrect and USCIS expects an applicant to complete question 2 even if the applicant has never used another name, the instructions are unclear as to whether the applicant must write “N/A” or “None” in all six answer fields, or only one.

In recognition of such latent ambiguity, and to the extent that the Form I-914 Instructions incorporate the No-Blanks Policy, which they should not, USCIS should take at least two steps to protect trafficking victims from the harsh consequences of a rejected application. First, where USCIS rejects a Form I-914 pursuant to the No-Blanks Policy, USCIS should treat the application as “received” as of the date that the trafficking survivor first attempted to file the application. To do otherwise would unduly punish trafficking survivors for their innocent mistakes (i.e., reasonable (mis)interpretations of the Form I-914 instructions). Second, USCIS should publicly post any internal guidance documents concerning which fields in the Form I-914 USCIS considers to be required. While USCIS was applying the No-Blanks Policy to U-Visa Petitions, it was discovered through FOIA litigation that the agency was using a color-coded U-Visa Petition to help its agents and/or employees determine which fields in the U-Visa Petition were required.¹⁸ To the extent that USCIS either has developed or will develop a similar tool for Forms I-914, AILA urges USCIS to publicly share that document, as well as the Form I-914 Standard Operating Procedures.

The Form I-914 Instructions Should Explain the Right to a Bona Fide Determination and the Process for Seeking One

The T-Visa regulations unambiguously provide that, once a trafficking survivor files a Form I-914, USCIS “will conduct an initial review to determine if the application is a bona fide application,”¹⁹ in which case the trafficking survivor’s final order of removal, deportation, or exclusion (if any) will automatically be stayed.²⁰ Despite this affirmative obligation,²¹ USCIS historically has not provide trafficking survivors with the critically important bona fide determinations to which they are entitled. In recognition of USCIS’s regulatory obligations, the Form I-914 instructions should explain that trafficking survivors are entitled to a bona fide

¹⁷ Proposed Form I-914 Instructions at 2.

¹⁸ See No-Blanks Policy Insight 2-3, *supra* note 4.

¹⁹ 8 C.F.R. §§ 214.11(d)(7), 214.11(e) (emphasis added).

²⁰ *Id.* § 214.11(e)(3).

²¹ See, e.g., *Sergio S.E. v. Rodriguez*, No. 20-6751 (JMV), 2020 WL 5494682, at *7 (D.N.J. Sept. 11, 2020) (“[T]he regulation requires USCIS to consider an application and make an initial determination as to whether it is bona fide.”); *S.N.C. v. Sessions*, 18 Civ. 7680 (LGS), 2018 WL 6175902, at *6 (S.D.N.Y. Nov. 26, 2018) (noting that a T-Visa applicant “is entitled to use a procedural safeguard of requesting a bona fide determination from USCIS, which USCIS must review”); *Fatty v. Nielsen*, C17-1535-MJP, 2018 WL 3491278, at *3 (W.D. Wash. July 20, 2018) (“The regulations set forth the process USCIS is to follow in adjudicating T visa applications: Once an applicant submits his or her application, ‘USCIS will conduct an initial review to determine if the application is a bona fide application.’”).

determination and, in the event that they do not receive one, describe how they may affirmatively request one.

USCIS Should Clarify Other Proposed Revisions and Harmonize Them with the Law

In addition to withdrawing the No-Blanks Policy from the Form I-914 instructions and explaining the right to a bona fide determination in the Form I-914 instructions, USCIS should also make the following changes to its Proposed Revisions:

- Note in page 8 of the Form I-914 instructions that a grant of Continued Presence constitutes evidence of the trafficking survivor's cooperation with reasonable requests from law enforcement.²²
- Omit question 2 at Part 3 of the Form I-914 (asking if the trafficking survivor is submitting a Form I-914B and, if not, instructing the trafficking survivor to explain why). A Form I-914B "is not mandatory and is not given any special evidentiary weight."²³ Accordingly, a trafficking survivor should not be obliged to specify whether a Form I-914B is included or explain why one is not.
- In conformance with the law, edit question 7 at Part 3 of the Form I-914 to ask whether the trafficking survivor has complied with "reasonable" requests from law enforcement.²⁴
- To the extent that USCIS applies the No-Blanks Policy to the Form I-914A (which it should not), edit question 19 at Part 4 of the Form I-914A to clarify that, if the applicant answers "no" to question 19, then the applicant should write "N/A" in one or all of the answer fields in question 20 and then proceed to question 21.

Conclusion

We appreciate the opportunity to comment on the Proposed Revisions and look forward to a continuing dialogue with USCIS on these issues and related matters.

Respectfully submitted,

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

²² 8 C.F.R. § 214.11(h)(3)(ii).

²³ *Id.* § 214.11(d)(3)(i).

²⁴ *Id.* § 214.11(b)(3).