



25 Massachusetts Avenue, NW
Suite 335
Washington, DC 20001
202 232 5590
202 464 3590 (fax)
www.irl.org

Board of Directors

Hon. Elizabeth A. Hacker (Ret.)
Hon. Mahlon F. Hanson (Ret.)
Jeffrey R. Parkin
Daniel A. Stein

**Executive Director
& General Counsel**

Dale L. Wilcox¹

Director of Litigation

Christopher J. Hajec²

Senior Counsel

Michael M. Hethmon³
Julie B. Axelrod⁴

Staff Counsel

Elizabeth A. Hohenstein⁵
Mark S. Venezia⁶

**Director of Legislative/Regulatory
Affairs & Staff Counsel**

Sarah R. Rehberg⁷

Of Counsel

Kris W. Kobach⁸
John M. Miano⁹

Founded in 1986, the Immigration Reform Law Institute (IRLI) is a public-interest legal education and advocacy law firm dedicated to achieving responsible immigration policies that serve national interests.

IRLI is a supporting organization of the Federation for American Immigration Reform.

¹Admitted in DC & IN

²Admitted in DC & PA

³Admitted in DC & MD

⁴Admitted in DC & CA

⁵Admitted in DC & VA

⁶Admitted in DC & VA

⁷Admitted in DC & MD

⁸Admitted in NE & KS

⁹Admitted in DC, NJ, & NY

April 2, 2018

Samantha Deshommès
Chief, Regulatory Coordination Division
USCIS Office of Policy and Strategy
20 Massachusetts Avenue NW
Washington, DC 20529-2140

OMB Control Number 1615-0001: Public Comment of the Immigration Reform Law Institute Regarding Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection

Dear Chief Deshommès:

The Immigration Reform Law Institute (“IRLI”) submits the following public comment to U.S. Citizenship and Immigration Services (“USCIS”) in response to the Agency’s Notice of Information Collection Activities; Extension, Without Change, of a Currently Approved Collection to the Petition for Alien Fiancé(e), Form I-129F, as published in the Federal Register on January 31, 2018. *See* OMB Control Number 1615-0001; Docket ID USCIS-2006-0028; 83 Fed. Reg. 4503-4504.

IRLI is a non-profit public interest law organization that exists to defend the rights of individual Americans and their local communities from the harms and challenges posed by mass migration to the United States, both lawful and unlawful. IRLI works to monitor and hold accountable federal, state, and local government officials who undermine, fail to respect, or fail to comply with our national immigration and citizenship laws. IRLI also provides expert immigration-related legal advice, training, and resources to public officials, the legal community, and the general public.

I. Background.

IRLI believes that immigration law and policy should serve the interests of the American people. This means putting their safety, security, health, and overall welfare first. Our immigration laws and policies fail to do this when they fail to prevent unsuspecting citizens and legal residents from being taken advantage of by criminal enterprises and those with deceitful motives. Sadly, one of the ways this failure is occurring is through marriage fraud.

Under the Immigration and Nationality Act, an individual commits marriage fraud if he or she “knowingly enters into a marriage for the purpose of evading any provision of the immigration laws.”¹ Committing marriage fraud is a crime, punishable by imprisonment for up to five years, or a fine of not more than \$250,000, or both.² Marriage fraud is a “threat to our national security and public safety[,]” and may “allow ineligible individuals to obtain employment at critical infrastructure sites, gain access to government buildings, and board airplanes.”³ It also puts U.S. citizens and nationals at risk by allowing unknown persons with false pretenses access to personal and financial information.⁴

The devastating effects of marriage fraud are not isolated to individual families or persons. Rather, its “negative impact” undermines the overall integrity of the *lawful* immigration system.⁵ As a result of chain migration, once an individual obtains a green card or citizenship through a fraudulent marriage, he or she is free to petition for numerous other family members to enter the country, having a “ripple effect” on the entire system.⁶ Therefore, entering into a fraudulent marriage to obtain eventual naturalization for oneself or family members not only demeans our entire immigration system, but makes a mockery of those using the fiancé(e) visa process in good faith.

II. Recommendations.

To diminish marriage fraud and protect U.S. citizens and legal permanent residents, IRLI recommends the following changes to the I-129F⁷ form and process:

1. **Extend the number of years both petitioners and beneficiaries must report address and employment history from five years to at least 10 years on the Form I-129F.**

Questions 9-12 and 13-20 under Part 1 of the Form I-129F require petitioners to list his or her address and employment history, respectively, for the last five years. This is true whether such residence or employment took place outside of the United States. Similarly, questions 12-15 and 16-23 under Part 2 of the Form I-129F require petitioners report the address and employment history of the intended beneficiary for the last five years. Again, this is true regardless of where the residence or employment took place.

¹ 8 U.S.C. § 1325(c).

² *Id.*

³ U.S. Senate, Committee on the Judiciary Hearing: “Vows for Visas: Investigating K-1 Fiancé Fraud” (Written Statement of Gregory Nevano, Deputy Assistant Director, Illicit Trade, Travel, and Finance Division, DHS-ICE Homeland Security Investigations, p.2) (Mar. 15, 2017).

⁴ *Id.* at p.2.

⁵ *Id.*

⁶ *Id.*

⁷ USCIS Form I-129F, OMB No. 1615-0001, Expires 08/31/2018.

To provide a fuller picture of residency and employment activities prior to the engagement, IRLI recommends USCIS extend the required reported address and employment history from five years to at least 10 years. Doing so would provide adjudicators with more information on both those seeking to bring a foreign national to the United States for marriage and the foreign national seeking to enter the United States.

Requiring applicants to report on address and employment history for more than five years is hardly unreasonable and is currently a common requirement for certain professional licenses in the United States. For instance, the National Conference of Bar Examiners (NCBE) standard form⁸ requires attorneys to report the past 10 years of address and employment history in its character and fitness application.⁹ And New York’s application to obtain a medical license requires applicants to, “[p]rovide a chronological list of all activities since graduation from professional school to the present,” which is to “[i]nclude residency, employment and vacation periods” with no limit on the reported time frame.¹⁰

Just as background checks for those seeking professional licenses are put in place to protect prospective clients and the general public safety, background checks for individuals seeking to enter the U.S.—and those seeking to bring someone to the U.S.—are put in place to protect sponsors, the intended alien beneficiary, and the public as a whole. Accordingly, the benefits of expanding reporting requirements for address and employment history information on the Form I-129F would far outweigh any limited burden it may cause on the applicants. USCIS should therefore consider amending future versions of the Form I-129F to include a longer timeframe for address and employment history of petitioners and beneficiaries.

2. Include questions regarding social media use, including any aliases or internet names used, as part of the Form I-129F.

IRLI recommends USCIS include questions regarding social media use and other online aliases and activity as part of the Form I-129F, particularly as it pertains to foreign national beneficiaries. Knowing and being able to investigate available information on the web could be vital to USCIS adjudicators who suspect an individual’s motives for marriage are disingenuous—or even dangerous.

In recent years, the massacre of 14 innocent lives by San Bernardino shooters Syed Rizwan Farook and his K-1 visa recipient wife, Tashfeen Malik, have been used by lawmakers to call for greater scrutiny of social media use by visa applicants. Although former FBI Director James Comey

⁸ Requirements vary by jurisdiction.

⁹ Character and Fitness Application, NCBE sample application form, <http://www.ncbex.org/dmsdocument/134> (last visited Apr. 2, 2018).

¹⁰ Application for Medical Licensure, N.Y. EDUC. DEP’T OFF. OF THE PROFESSIONS, <http://www.op.nysed.gov/prof/med/med1.pdf> (last visited Apr. 2, 2018).

refuted news reports that Tashfeen Malik’s radicalization was discoverable by viewing her *publicly* available social media accounts,¹¹ that’s not to say that doing so has no value whatsoever when making a determination as to whether a foreign national should be permitted to enter the United States or a relationship is otherwise genuine.

Americans’ social media accounts and online information are frequently examined as a way to screen applicants for things like jobs or even college. According to a 2017 CareerBuilder survey, “70 percent of employers use social media to screen candidates before hiring, which is up significantly from 60 percent in 2016.”¹² By reviewing social media accounts, employers reported they were able to discover critical information about prospective hires such as candidates lying about their qualifications or being linked to criminal behavior.¹³

Review of social media accounts is not unique to employers, but even extends to the college admissions process. As reported by *U.S. News & World Report*, a Kaplan Test Prep survey of more than 350 U.S. college admissions officers revealed that 35 percent of those polled viewed applicants’ social media accounts.¹⁴ This included sites such as Twitter, Facebook, and Instagram.¹⁵ Although this does not represent a majority of admissions officers, those who did review social media information “note[d] that social media can provide a more authentic and holistic view of applicants beyond the polished applications.”¹⁶

Accordingly, the same level of scrutiny should be paid to fiancé(e) visa petitioners and applicants as is given to prospective American job applicants or students. A simple review of social media activity could detect insincere motives for the engagement or other red flags that the intended marriage is not genuine. It could also assist federal law enforcement in discovering potential public safety or national security threats, as the issue of terrorists and terrorist organizations using social media to plan and carry out attacks, as well as seek new recruits, is a real threat that has been examined by Congress on numerous occasions.¹⁷ And, while requesting

¹¹ Richard Serrano, *FBI chief: San Bernardino shooters did not publicly promote jihad on social media*, LOS ANGELES TIMES (Apr. 2, 2018), <http://www.latimes.com/nation/la-ln-fbi-san-bernardino-social-media-20151216-story.html>.

¹² Lauren Salm, *70% of employers are snooping candidates’ social media profiles*, CareerBuilder (Apr. 2, 2018), <https://www.careerbuilder.com/advice/social-media-survey-2017>.

¹³ *Id.*

¹⁴ Darian Somers, *Do Colleges Look at Your Social Media Accounts?*, U.S. NEWS & WORLD REPORT (Apr. 2, 2018), <https://www.usnews.com/education/best-colleges/articles/2017-02-10/colleges-really-are-looking-at-your-social-media-accounts>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See U.S. Senate Committee on Homeland Security and Governmental Affairs, Majority & Minority Staff Report: “Violent Islamist Extremism, the Internet, and the Homegrown Terrorist Threat” (May 8, 2008); U.S. House of Representatives’ Committee on Homeland Security: Subcommittee on Counterterrorism and Intelligence Hearing: “Jihadist use of Social Media – How to Prevent Terrorism and Preserve Innovation” (Dec. 6, 2011); U.S. House of Representatives’ Committee on Homeland Security: Subcommittee on Counterterrorism and Intelligence Hearing: “DHS Monitoring of Social Networking and Media: Enhancing Intelligence Gathering and Ensuring Privacy” (Feb.

social media and other online information on the Form I-129F inherently relies on self-reporting, any additional social media account or aliases discovered outside what is listed by the petitioner would be cause for additional concern and scrutiny that could later prove invaluable. As such, IRLI recommends adding questions about social media and internet aliases to the Form I-129F.

3. Consider requiring USCIS to conduct an in-person interview as part of the Form I-129F process.

Under the current process, USCIS approval of the Form I-129F is a precondition to the K-1 visa application and indicates that the agency recognizes the relationship.¹⁸ Upon approving the Form I-129F, USCIS sends it to the Department of State (DOS) National Visa Center where it is subsequently forwarded to the U.S. Embassy or consulate where the fiancé(e) lives.¹⁹ The foreign fiancé(e) then has four months to apply for the K-1 visa.²⁰ It is not until this point—during the K-1 visa application process and *after* approval of the Form I-129F—that the beneficiary is subject to an in-person interview.²¹

IRLI recommends USCIS consider adding an interview component to the Form I-129F process for either the petitioner, beneficiary, or both, to protect against potential fraud, and public safety and national security risks. During an in-person interview, an individual seeking to commit immigration fraud will often forget important details, thereby alerting the interviewer that the immigration benefit application is fraudulent.²² Furthermore, “[o]ver many years consular officers, immigration inspectors, and immigration adjudicators become familiar with patterns of conduct that criminals and terrorists use to perpetrate immigration fraud,” making their critical observations an essential element of a secure immigration vetting process.²³ While inserting an interview into the process (whether by adjudicators at home or abroad) would require an upfront investment in resources by USCIS, it has the potential to save government resources down the road by better discerning insincere applications in the first place or otherwise detecting fraud or possible red flags earlier on in the process. Accordingly, USCIS should consider incorporating an in-person interview as part of the Form I-129F process.

16, 2012); U.S. House of Representatives’ Committee on Homeland Security Hearing: “Terrorism Gone Viral: The Attack in Garland, Texas and Beyond” (June 3, 2015); U.S. Senate Committee on Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations Hearing: “ISIS Online: Countering Terrorist Radicalization & Recruitment on the Internet & Social Media” (July 6, 2016).

¹⁸ U.S. Senate, Committee on the Judiciary Hearing: “Vows for Visas: Investigating K-1 Fiancé Fraud” (Written Statement of Daniel M. Renaud, Donald Neufeld, and Matthew Emrich, USCIS, p. 2-3) (Mar. 15, 2017).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Matt O’Brien, *In-person interviews a critical step to fixing America’s immigration system*, THE HILL (Apr. 2, 2018) <http://thehill.com/blogs/pundits-blog/immigration/348983-in-person-interviews-a-critical-step-to-fixing-americas>.

²³ *Id.*

III. Conclusion.

In conclusion, IRLI recommends USCIS make the following changes to the Form I-129F: 1) Extend the number of years both petitioners and beneficiaries must report address and employment history from five to at least 10 years; 2) Include questions regarding social media use, including any aliases or internet names utilized by the petitioners and beneficiaries; and 3) Consider requiring USCIS to conduct an interview as part of the Form I-129F application process.

Sincerely,

/s/

Sarah R. Rehberg
Director of Legislative/Regulatory Affairs & Staff Counsel
Immigration Reform Law Institute