THE ASSOCIATION OF AMERICANS RESIDENT OVERSEAS

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Mark Phillips
Residence and Naturalization Chief
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, DC 20529-2140

Comments from the Association of Americans Resident Overseas (AARO) on proposed rule changes concerning the Affidavit of Support (Form I-864) as proposed by the U.S. Citizenship and Immigration Services under DHS Docket No. USCIS-2019-0023.

Dear Mr. Phillips,

AARO is a non-partisan, non-profit public service association based in Paris, France, representing Americans living and working overseas and, as such, objects to the proposed rules as explained below.

Filing an Affidavit of Support in conjunction with filing the Petition for Alien Relative (Form I-130) is a requirement for virtually all U.S. petitioners intending to sponsor family member immigrants to the United States. The proposed rule changes would:
- Require submitting credit scores and credit reports, which current regulations do not require;
- Require submitting certified copies or transcripts of the last three years of U.S. income tax returns, as opposed to current rules that only require one year with an option of providing returns for three years;
- Require submission of bank account information, which current regulations do not require, notwithstanding optional reporting for cases in which the sponsor's income is below 125% of the federal poverty line.

Credit reports:
For U.S. citizens who have lived outside the U.S. for several years, it is simply not possible to obtain a recent U.S. credit report. Such reports are only available for U.S. residents with a current residential address in the U.S. Requiring U.S. citizens living abroad legally with a non-U.S. citizen spouse and non-U.S. children imposes an unfair, unjust, and arguably impossible obstacle. AARO agrees with the contention that the denial of legal immigration in this fashion would be wrong, not least because the proposed standard is virtually meaningless for persons with no ongoing economic activity, including the accumulation of debt, in the U.S. Applying such a standard for this purpose is arguably too grave an executive branch distortion of authority granted by the Congress. AARO believes that only the Congress should consider the dubious merits of such a change to longstanding practice.

Tax returns:
AARO has long been on record criticizing the poor to non-existent service provided U.S. taxpayers overseas. In almost every respect, such taxpayers face considerable challenges from filing tax returns to obtaining transcripts of returns filed or other confirmation that they have discharged their legal obligations. This might be a reasonable request had successive administrations and the Congress mandated the IRS to provide specialized service for overseas taxpayers and provided sufficient funding in the federal budget. Imposing this requirement will subject U.S. petitioners to a lengthy and overly complicated paper chase.

Bank accounts:
The requirement to provide detailed bank account information is an especially sore point for U.S. citizens living abroad who already have to provide such information through the annual Foreign Bank Account Report and in accordance with the Foreign Account Tax Compliance Act. Current rules for proving that a petitioner possesses sufficient means of financial support should be enough.

I would further note that AARO shares concerns over how the new rules would fairly evaluate the financial capacity of the sponsor. Current rules are clear and fixed in requiring proof of income at or above 125% of the federal poverty line. It is hard to see how requiring supplemental information, such as U.S. credit reports (assuming they existed and could be obtained) and raw bank account information without establishing clearly how those reviewing a petition would evaluate it, thus opening the door to arbitrary and unaccountable decisions.

Finally, I would note AARO's concerns about the proposed change that would make it too easy for other agencies to access private information. Current regulations require a duly issued subpoena before USCIS can provide a certified copy of Form I-864. The proposed rule, ostensibly to facilitate sharing of information to and among agencies providing means-tested benefits would eliminate the requirement for a duly issued subpoena before USCIS will provide a certified copy. Inasmuch as all of the proposed rules changes would entail the collection of credit reports, three years of tax returns, and bank account information, this would constitute the transfer of considerable personal financial information that would normally be accorded some measure of legal protection. Requesting agencies should be required to follow a legal procedure that ensures respect for due process and privacy. AARO worries as well that the laws and regulations governing the provision of benefits by different agencies differ, often in dramatic ways. Assuming otherwise arguably runs counter to the governing statute establishing a given benefit. Again, AARO believes that this should be decided by the Congress as part of an overdue comprehensive review of the Immigration and Nationality Act.

In conclusion, AARO OBJECTS to the proposed rule changes on the grounds that they are unfair, unjust, unnecessarily harsh (if not outright punitive), unrealistic, and arguably beyond the scope of the executive branch to make absent explicit consent and authorization by the legislative branch.

Respectfully,

William Jordan

President, Association of Americans Resident Overseas