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November 17, 2016
By electronic submission

Ms. Samantha Deshommes
Chief, Office of Policy and Strategy
Regulatory Coordination Division
U.S. Citizenship and Immigration Services
20 Massachusetts Ave. NW
Washington, D.C. 20529-2140

Re: Response to DHS/USCIS Request for Comment on Revision of Form I-590 by
English First, English First Foundation, United States Justice Foundation,
Conservative Legal Defense and Education Fund, and Policy Analysis Center

Dear Ms. Deshommes:

These comments are filed jointly on behalf of English First, English First Foundation, United States Justice Foundation, Conservative Legal Defense and Education Fund, and Policy Analysis Center, all of which are nonprofit educational organizations having mutual interests in the proper construction of the Constitution and laws of the United States, and in securing the nation's borders.

Each organization is exempt from federal income tax under the Internal Revenue Code ("IRC"). English First Foundation, Conservative Legal Defense and Education Fund (www.cldef.org), and Policy Analysis Center (www.paconline.org) are Virginia corporations, tax-exempt under IRC section 501(c)(3), as is United States Justice Foundation, a California corporation (www.usjf.net). English First (www.englishfirst.org) is a Virginia corporation exempt under IRC section 501(c)(4).

These comments are being filed pursuant to the request of the Department of Homeland Security's ("DHS") U.S. Citizenship and Immigration Services ("USCIS") regarding the revision of Form I-590 for the collection of information for classification as a refugee under the Refugee Act of 1980 used to "[e]valuate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility."

We appreciate the extension of the time period within which to submit the following comments for your consideration.

COMMENTS

I. The Proposed Revised Form I-590 Fails to Collect the Information Necessary to Enable the USCIS to Perform Properly Its Statutory Duties.

A. The Form Does Not Elicit Information Calculated to Determine the Eligibility of the Applicant for Admission into the United States under the Refugee Act of 1980.

For everyone who seeks asylum as a “refugee” in the United States, the Form I-590 is the initial step in the formal process by which USCIS gathers information. Thus, this form seeks information about the applicant’s personal and family identity, including marital status and children, educational background, and military service. Additionally, this form seeks information relevant to a number of questions directed to the applicant’s “admissibility,” including criminal history, if any; prior deportation or removal; and participation in any armed activity.

However, as more specifically explained below, the Form seeks very little information necessary to determine the applicant’s “eligibility” for entry into the United States as a “refugee” — a status that is specifically delimited by statute. This glaring omission not only seriously undermines the Attorney General’s statutory duty to adopt procedures designed specifically to determine whether each individual applicant meets the statutory criteria entitling his admission into the United States as a “refugee,” but also significantly impairs the overall effort to confirm the applicant’s identity.

B. The Information Sought Falls Short of the Minimum Necessary to Indicate that the Applicant is Refugee-Eligible.

Admission of a person as a “refugee” under the Refugee Act of 1980 requires that an applicant meet the statutory definition of a “refugee.” While the dictionary defines a refugee to be one who flees his country or place of habitual residence to another country to escape either (i) danger or (ii) persecution because of race or religion, the Act extends refugee status only to persons who face persecution or the threat of persecution on the ground of race, religion, nationality, or membership in a social group or political opinion. *See* 8 U.S.C. Section 1101(a)(42).

Today’s refugee crisis in Syria, however, is commonly understood to be one of “danger,” not “persecution.” Thus, in a report on the United Nations Summit of 2016 regarding the current refugee and migration crisis, the United States is urged to take a leadership position “against conscience shocking wrongs ... for human beings fleeing carnage and destruction to be denied refuge and the chance of a new life” in response to the mass

Syrian exodus.¹ Indeed, the refugee crisis in Syria is viewed to be part of a larger middle east displacement problem dating back to 2011. Thus, the U.N. report urges the United States to “work with its NATO partners to help stop the unconscionable drownings in the Mediterranean, to bring stability to Libya, and use a combination of military pressure and diplomacy to bring the carnage in Syria to an end.” *Id.*

This is not to say that the Syrian crisis does not include some persons who are subject to persecution or the threat of persecution. Rather, it is to point out that the Syrian exodus overwhelmingly consists of those who are fleeing the ravages of civil war.

Because the Refugee Act of 1980 singles out only those facing persecution, it is incumbent upon USCIS to elicit from every applicant the specific reason prompting his application for “refugee” status. Yet, the Form I-590 fails to elicit whether the applicant is actually fleeing from persecution. This omission is consistent with the Obama administration’s policy to admit larger and larger quotas of Syrian refugees that might otherwise not be possible if at the point of entry there must be evidence of persecution.² Otherwise, there can be no lawful basis upon which to open the door for asylum in the United States.

C. Failure to Seek Information Relevant to an Applicant’s Reason for Fleeing Weakens USCIS Efforts to Detect Fraud and Exclude Terrorists.

On September 22, 2016, it was reported that an internal Immigration and Customs memorandum (“the USCIS memo”) was leaked by House GOP lawmakers who asserted that “refugee fraud is ‘easy to commit,’ as the Obama administration seeks to increase the number of Syrian refugees allowed into the U.S.”³ Similarly, according to the USCIS memo, “[r]efugee fraud is easy to commit, yet not easy to investigate.”⁴ That difficulty is no excuse, however, for “relaxing the statutory requirements” in order to meet some predetermined number of “refugees,” as the Obama administration is wont to do.

Indeed, notwithstanding the reports of increasing fraud, the current policy allowing the increase in the number of refugees from countries such as Syria is inexcusable. To be sure,

¹ <https://www.brookings.edu/research/the-refugee-and-migration-crisis-proposals-for-action-u-n-summit-2016/>.

² See, e.g., <http://www.breitbart.com/texas/2016/06/11/obama-administration-surge-agenda-threatening-u-s-100-syrian-refugees-per-day/>.

³ <http://thehill.com/policy/national-security/297359-ice-memo-refugee-program-vulnerable-to-fraud>.

⁴ <http://www.washingtontimes.com/news/2016/sep/22/dhs-memo-admits-refugee-fraud-easy-commit/>.

identifying an individual person who seeks political asylum in the United States as a refugee may be a daunting task, but there is no excuse for passively accepting the applicant's assertion. A person's claim to be a "refugee" does not fulfill the USCIS duty to heed the statutory mandate to admit only refugees. Moreover, it is impossible to know who a "refugee" is if USCIS fails to even ask each applicant to furnish in writing a statement describing the factual basis upon which he relies to rest his claim of "persecution or a well-founded fear of persecution on account of race, religion, nationality, [or] membership in a particular social group, or political opinion." Only if armed with such a specific account in writing at the outset, would a USCIS interviewer be able to detect "manufactured histories, biographies, and other false statements" that appear to be plaguing the USCIS' search for truth and, more importantly, to screen out terrorists.⁵

II. Proposed Part 8 of the Form I-590 Is Seriously Deficient, Impairing the Performance of the Agency's Duty to Determine Whether the Applicant Is a Refugee Within the Meaning of the Refugee Act of 1980.

A. Congress Requires the Attorney General to Determine if an Applicant Is a Refugee as Defined by Statute.

Section 208(a) of the Refugee Act of 1980 requires the Attorney General to "establish a procedure for an alien ... to apply for asylum" and authorizes the Attorney General to "grant[] asylum in [his] discretion ... if the Attorney General determines that such alien is a refugee within the meaning of section 101(a)(42)(A)." (Emphasis added.) Section 101(a)(42)(A), in turn, defines a "refugee" to be an individual:

- "who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided," and
- "who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion," [but is]
- "not [a] person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion."

⁵ See footnote 3.

B. The Revised Form I-590 Fails to Elicit Any Information That Would Establish Either the Nationality or Statelessness of the Applicant.

Although Part 8 of the proposed Form I-590 asks three questions concerning the applicant's nationality, it fails to ask the person to state his nationality or whether he is stateless. Moreover, the Form fails to ask if he has suffered or been threatened with persecution in or by the country of his nationality.⁶

C. The Revised Form I-590 Fails to Elicit Information Relevant to the Persecution Required to Establish Refugee Status.

Having failed to pinpoint the applicant's nationality or lack thereof, the Form I-590 also fails to ask whether the applicant has suffered or been threatened with persecution on the basis of "race, religion, nationality, or membership in a particular social group, or political opinion." Yet, the statutory definition of "refugee" requires the Attorney General to "determine" that it was the persecution, or the threat thereof, that caused the applicant not only to leave his country or, in the case of the stateless person, to leave his habitual residence, but also to be unwilling or unable to return because of the persecution or the threat of persecution.

To be sure, Question 2 of Part 8 of the Form I-590 asks the applicant, "why did you first flee your country," and it asks the "stateless" applicant why he first fled from his last habitual residence, but the question invites applicants to make a spur-of-the-moment claim based on considerations that are superficial and temporary. True refugee status is not determined on the basis of a single action, but on the basis of an accumulation of factors that contribute to either an "unwillingness" or "inability" of an applicant to return to his homeland, adopted or natural.

Additionally, there is space for the applicant to furnish a detailed narrative of the circumstances compelling the applicant not only to leave but to stay away. The three questions asked in Part 8 might elicit some useful information, but only incidentally. There is no question asking the applicant's race, religion, nationality, or membership in any social or political group, much less any questions designed to elicit information about persecution or threat of persecution. Yet, without such evidence there can be no determination of persecution or threat of persecution, which is the *sine qua non* to the establishment of refugee eligibility.

⁶ If he has no nationality, then the persecution or threat thereof must arise in the country in which he has last habitually resided, but again the revised Form I-590 does not ask for that information.

III. The Revised Form I-590 Fails to Elicit Any Information Relevant to the Applicant's Participation in the Persecution of Others.

There is a broad array of questions appearing on two full pages of Part 11 designed to identify any factor that would not only negate the admission of persons on refugee status, but also would require exclusion for a variety of public safety considerations that have nothing to do with persecution. However, these questions appear to be relevant to the screening of any alien coming into the country. Surprisingly, none of the questions addresses the specific question about persecution of others, which might exclude an applicant who would otherwise be eligible for refugee status.

This omission is startling, especially in light of today's international religious and political environment. Many persons who complain about having been persecuted or threatened with persecution actually have themselves engaged in the persecution of others. This is particularly true of the Moslem world. For centuries, Moslem sects have persecuted one another, both politically and religiously.⁷ With the outbreak of the civil war in Syria, the differences between the Sunni majority and Alawite minority have "sharpened dangerously."⁸ It is simply naive to omit from the Form I-590, as USCIS apparently has done, any question probing the political or religious identity of an applicant for refugee status. This omission is even less defensible with respect to a Syrian applicant, not only in light of the civil war in Syria, but the presence of ISIS on Syrian soil,⁹ a major, if not *the* major, source of international terrorism in the world today.¹⁰

⁷ See, e.g., "Sunni v Shia: Why the Conflict is More Political than Religious" <https://www.theguardian.com/world/2015/apr/05/sunni-shia-why-conflict-more-political-than-religious-sectarian-middle-east>.

⁸ See <http://middleeast.about.com/od/syria/tp/The-Difference-Between-Alawites-And-Sunnis-In-Syria.htm>.

⁹ See <http://www.vox.com/cards/things-about-isis-you-need-to-know/isis-syria>.

¹⁰ See <https://www.theguardian.com/world/2014/jun/11/isis-too-extreme-al-qaida-terror-jihadi>.

Conclusion

If the Obama administration is truly serious about its mission to keep terrorists out of its refugee program, then it must revise its Form I-590. Otherwise, its current refugee program will prove to be nothing but a sham, allowing the nation's enemies to infiltrate the land to the grave endangerment of the health, safety, and welfare of the American people.

Sincerely yours,

/s/

Herbert W. Titus

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