

April 22, 2022

Samantha L. Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services

**Re: Agency Information Collection Activities; Extension, Without Change,
of a Currently Approved Collection: Application for Asylum and for
Withholding of Removal (OMB Control Number 1615-0067)**

Submitted via regulations.gov

Dear Ms. Deshommes:

The Tahirih Justice Center (Tahirih)¹ submits the following comments to U.S. Citizenship and Immigration Services (USCIS) in response to the agency's proposal to extend the use of the current I-589 Application for Asylum and for Withholding of Removal. *See* 87 Fed. Reg. 18,379 (Mar. 30, 2022). We address both portions of the form that are not "necessary for the proper performance of the functions of the agency" and portions of the form and accompanying instructions that should be revised for "quality, utility, and clarity." 87 Fed. Reg. at 18,380.

I. Introduction

Tahirih is a national, nonpartisan policy and direct services organization that has served more than 30,000 survivors of gender-based violence and their families since its inception in 1997. Our clients are survivors of gender-based violence, including domestic violence, rape and sexual torture, forced marriage, human trafficking, widow rituals, female genital mutilation/cutting (FGM/C), and so-called "honor" crimes.²

Tahirih provides free legal and social services to help our clients find safety and justice as they engage in the daunting, courageous, and rewarding work

¹ <https://www.tahirih.org>.

² For background information on these types of gender-based violence, see, e.g., UNHCR, Guidelines on the Protection of Refugee Women 17, <https://www.unhcr.org/3d4f915e4.html>; UN Women, Defining "honour" crimes and "honour" killings, <https://endvawnow.org/en/articles/731-defining-honourcrimes-and-honour-killings.html>; https://en.wikipedia.org/wiki/Female_genital_mutilation; https://en.wikipedia.org/wiki/Forced_marriage; <https://www.widowsrights.org/>.

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of rebuilding their lives and contributing to their communities as illustrated by our clients' stories. Since its founding, Tahirih has also served as an expert resource for the media, Congress, policymakers, and others on immigration remedies for survivors fleeing gender-based violence. See, e.g., Tahirih Justice Center, *Tahirih in the News*;³ Tahirih Justice Center, *Congressional Testimony*;⁴ Tahirih Justice Center, *Comments*.⁵

II. Unnecessary Questions

The current Form I-589 includes five questions that do not bear directly on, and add nothing to, USCIS's inquiry into an individual's eligibility for asylum or withholding of removal. All of these questions should accordingly be removed to lower the burden on applicants, their representatives, and the agency.

Questions 1 and 2 in Part A.III seek an address history. But specific addresses are not relevant to whether someone suffered persecution on account of a protected ground. Further, to the extent that location in a country is relevant to the possibility of internal relocation, specific addresses are not necessary; the name of a municipality would suffice for that inquiry. USCIS also does not need specific address to inquire into past criminal history given the thorough nature of biometrics. And there is good reason to delete these questions: they often cause confusion because a substantial percentage of people seeking asylum lived in locations without formal address conventions like those in the United States.

Questions 3 and 4 in Part A.III are similarly unnecessary. Those questions seek a person's employment and educational history. But those questions again have nothing to do with whether someone was persecuted, or reasonably fears future persecution, on account of a protected ground. And past employment and education, even in the country in which a person fears persecution, also has nothing to do with internal relocation, which is forward looking. *See* 8 C.F.R. § 208.13(b)(3).

Finally, Question 2.A in Part C is unnecessary. That question asks whether a person traveled through, or resided in, another country before reaching the United States. This question is arguably relevant only to the issue of firm resettlement. Under governing law, however, a person can be considered firmly resettled in a third country only if they have "an offer of permanent resident status, citizenship, or some other type of permanent resettlement" in that country. 8 C.F.R. § 208.15.⁶ That eventuality is covered by Question 2.B, making Question 2.A wholly superfluous. And to the extent that USCIS believes current Question 2.B does not cover unaccepted offers, it can simply be reworded to ask whether a person has "applied for, received, or been offered any lawful status" in a third country.

³ <https://www.tahirih.org/news-media/latest-updates/?tab=tahirih-in-the-news>.

⁴ https://www.tahirih.org/pubs/?qmt%5Bpub_cat%5D%5B%5D=131.

⁵ https://www.tahirih.org/pubs/?qmt%5Bpub_cat%5D%5B%5D=261.

⁶ The Anti-Asylum Rule promulgated in 2020 would have changed this definition, but that rule is enjoined because it was promulgated by DHS officials who were—as every court to consider the question has concluded—serving in violation of law. *See Pangea Legal Servs. v. DHS*, N.D. Cal. No. 3:20-cv-9258, Dkt. No. 55 (Jan. 8, 2021).

III. Suggestions as to Utility and Clarity

A. *The options for “gender” questions must be expanded*

Question A.I.10 on Form I-589 asks for the applicant’s gender, and questions in Part A.II of the form ask for the gender of the applicant’s spouse and children. The only answers provided are “male” and “female.” The question therefore excludes people who are non-binary—even though non-binary people are subject to persecution in parts of the world and may seek asylum in the United States on that basis. It also excludes people who do not self-identify as male, female, or non-binary. We therefore suggest altering Question A.I.10 to be a fill-in-the blank question: “Gender: _____.” Alternately, we suggest adding to the existing options both “non-binary” and “I prefer to self-describe as: _____.”

B. *Question A.III.5 requires clarification*

The agency should clarify Question III.A.5, which concerns “information about [the applicant’s] parents and siblings.” Form I-589, at 4. Neither the form nor the instructions provide instructions on who constitutes a “parent” or “sibling” for this purpose. That absence of further instruction routinely creates confusion. We not infrequently have clients who have stepparents; have multiple parents because they were raised in a country in which polygamy is practiced; or were raised by people they consider parents but are either biologically more distant relations or unrelated. The form does nothing to clarify whether these relationships must be disclosed. The same confusion naturally arises around whether stepsiblings or half-siblings are to be included.

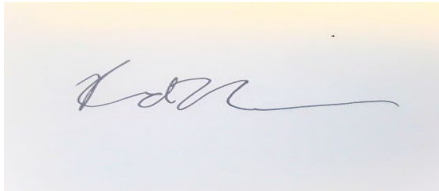
Further, the statutory definitions in 8 U.S.C. § 1101(b) do not meaningfully help matters. The statutory definition of “parent” in § 1101(b)(2) proceeds only by inverted reference to the definition of “child” in § 1101(b)(1), and that definition in turn is so convoluted, and so riddled with provisos, as to be unintelligible to many lawyers and, doubtless, to everyone who fills out Form I-589 pro se. Indeed, if USCIS simply intends to incorporate the entirety of § 1101(b)(1) and (b)(2) by reference, it is setting an obvious, avoidable trap for applicants. Clear, simply stated standards should therefore be included in the form or instructions.

C. *The form should be changed to more easily accommodate detailed information*

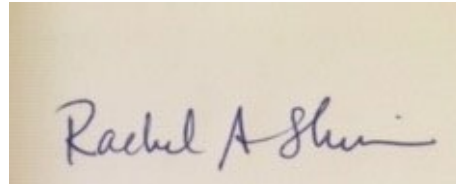
The current version of Form I-589 asks for “details” or “detailed” answers in no fewer than six places. The instructions accompanying the form similarly demand detail six times. Yet the form itself includes patently insufficient space for the supply of details. Applicants are therefore required to routinely resort to use of Supplement B—and not infrequently must include *several* such supplements. Indeed, the form itself expects the use of the supplement; it refers people to that supplement on no fewer than seven occasions.

This state of affairs sends mixed messages and causes unwarranted, needless confusion. The repeated injunction to include details is at odds with the inclusion of insufficient space for details, and the lack of space will naturally lead people to believe that few details are really needed. Further, forcing people to resort to numerous copies of an additional form increases the burden of organizing and submitting the application for no good reason. The agency can, and should, instead simply provide sufficient space for all answers on the I-589 itself.

Sincerely,

A rectangular image showing a handwritten signature in black ink on a light-colored background. The signature is stylized and appears to read 'R. Caldarone'.

Richard Caldarone
Senior Litigation Counsel

A rectangular image showing a handwritten signature in black ink on a light-colored background. The signature is written in a cursive style and reads 'Rachel A. Sheridan'.

Rachel Sheridan
Litigation Counsel