

## REQUEST FOR AMICUS BRIEF

Posted: 04-07-2015  
Submission Period Ends: 05-22-2015

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

### USCIS Administrative Appeals Office: Request for Amicus Curiae Briefs

The Administrative Appeals Office (the AAO) may request “amicus curiae” (friend of the court) briefs to allow concerned stakeholders the opportunity to provide input regarding a complex or unusual issue in a particular case or group of cases. An *amicus* brief is a written statement from a person or organization that is not a party in a case but may have a strong interest in the issue being considered. See AAO Practice Manual [section 3.8\(e\)](#).

Current DHS regulations provide that only “affected parties” may appeal or make motions relating to immigration benefit requests and that the beneficiary of a visa petition is not an “affected party.” See 8 C.F.R. § 103.3(a)(1)(iii)(B) (“For the purposes of this . . . part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.”). Similarly, 8 C.F.R. § 103.2(a)(3) limits representation to a recognized party and expressly excludes beneficiaries: “*Representation*. An applicant or petitioner may be represented by an attorney . . . . A beneficiary of a petition is not a recognized party in such a proceeding.” Other provisions, generally applicable to most immigration benefit requests, also expressly reference applicants and petitioners, but not beneficiaries. See, e.g., 8 C.F.R. § 103.2(a)(2) (signature of benefit requests); 8 C.F.R. § 103.2(b)(6) (withdrawal of benefit requests); 8 C.F.R. § 103.3(a)(1)(i) (notification of denial and appeal rights). The [form instructions to Form I-140](#) restate these petitioner-directed filing requirements.<sup>1</sup>

Last year, the U.S. Supreme Court issued a decision establishing an analytical framework to determine whether a statute grants standing to potential plaintiffs who seek redress in the courts. See *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. \_\_\_\_, 134 S.Ct. 1377, 1387, 188 L.Ed.2d 392 (2014).

In light of *Lexmark* and other court decisions,<sup>2</sup> the AAO seeks *amicus* briefing on whether the beneficiaries of certain immigrant visa petitions have standing to participate in the administrative adjudication process, including standing to appeal to the AAO (and if so, when, and under what circumstances). Specifically, the AAO seeks briefing on this issue in the context of Form I-140, Immigrant Petitions for Alien Workers, and the effect, if any, of the American Competitiveness in

<sup>1</sup> Individuals claiming eligibility under section 203(b)(1)(A) as aliens of extraordinary ability or requesting a National Interest Waiver (NIW) under section 203(b)(2)(B) of the Act are explicitly allowed to self-petition under the statute. In these two classifications, an individual may be considered both the beneficiary and the petitioner.

<sup>2</sup> See, e.g., *Kurapati v. USCIS*, 775 F.3d 1255 (11th Cir. 2014); *Patel v. USCIS*, 732 F.3d 633 (6th Cir. 2013); *Musunuru v. Holder*, --- F.Supp.3d ---, 2015 WL 365824 (E.D. Wis. 2015); *Vemuri v. Napolitano*, 845 F.Supp.2d 125 (D.D.C. 2012) and cases cited therein.

the Twenty-First Century Act of 2000 (“AC21”), on denied I-140 immigrant visa petitions or approved petitions later revoked.<sup>3</sup>

### **Format of the Briefs**

The appearance of *amici curiae* is limited to the filing of a brief no longer than 25 pages, single spaced. The author should sign the brief, indicate any organization represented, and prominently indicate "Amicus: Standing" to ensure proper routing.

### **When to Submit Briefs**

Amicus briefs must be received no later than May 22, 2015, 45 days from this announcement.

### **Where to Submit Briefs**

Please mail your brief to the following address:

ENCL: AMICUS  
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

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<sup>3</sup> AC21 created a new provision in the Immigration and Nationality Act, section 204(j), 8 U.S.C. 1154(j), that permits an eligible beneficiary of an approved I-140 petition who has filed an application for adjustment of status to “port” that petition to a new job (with the same or different employer) if the adjustment application has been pending for 180 days or more and the new employment is in “the same or a similar occupational classification as the job for which the petition was filed.” Some beneficiaries who have “ported” to a new employer under AC21 assert that, since they have a stated interest in the allocated immigrant visa based on a filed adjustment of status application, they should have standing related to the immigrant petition.