

# **SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION**

## **Nonimmigrant Visa Electronic Application OMB Number 1405-XXXX DS-160**

### **A. JUSTIFICATION**

1. The Immigration and Nationality Act (“INA”), 8 U.S.C. 1101 *et seq.*, statutorily mandates the application and eligibility requirements for aliens seeking to obtain nonimmigrant visas. INA Section 221(a) [8 U.S.C. § 1201] (Attachment 1) provides that a consular officer may issue a nonimmigrant visa to an alien who has made proper application therefore. INA Section 222(c) [8 U.S.C. § 1202] (Attachment 2) specifically requires that, “Every alien applying for a nonimmigrant visa and for alien registration shall make application therefore in such form and manner as shall be by regulations prescribed. In the application the alien shall state his full and true name, ...and such additional information necessary to the identification of the applicant, the determination of his eligibility for a nonimmigrant visa, and the enforcement of the immigration and nationality laws as may be by regulation prescribed.” The Department of State’s regulations pertaining to nonimmigrant visas under the INA are published at 22 CFR 41. The regulations pertaining to filing an application for a nonimmigrant visa is specifically provided for in 22 CFR 41.103 (Attachment 3). 22 CFR will be amended to refer to this new form.
2. Department of State consular officers will use the information provided to fulfill the legal requirements identified in item 1 above. The information requested on the form is limited to that which is necessary for consular officers to determine efficiently the eligibility and classification of an alien seeking a nonimmigrant visa. This determination would not be possible without collecting this information.
3. The Department has developed an application process that will allow respondents to electronically submit their applications to the Department. The applicant will go to an internet website, <http://evisaforms.state.gov/>, to begin the application process. The applicant will be asked to provide answers to a series of standardized questions. Depending on the applicant’s answers to these standard questions, the applicant will be asked specific questions concerning their application. For example, all applicants are asked “What is the purpose of your trip to the United States?” If the applicant answers, “fiancé” the applicant will then be directed to answer questions specific to nonimmigrants that are coming to the United States to marry U.S. citizens. Or, if the applicant answers “student”, the applicant will be asked questions pertaining to his or her education plans. Once the application is completed and the applicant has verified the answers provided, the applicant will electronically sign and submit the application to the Department in electronic form. The applicant may print a copy of the application for record keeping purposes, but no paper copy of the application is submitted to the Department. The applicant will present to the Department in paper an application confirmation page which will contain a record locator in the form of a 2-D bar code. The consular officer will scan the bar code to electronically retrieve the application from the

computer database. The electronic form will ensure that consular officers have all the necessary information to process the application and will significantly reduce the need for additional paperwork during the applicant's interview. The electronic submission of the application to the Department will allow for the information to be reviewed before the time of an interview.

4. Information collected by the DS-160 is currently duplicative of data gathered from other collections, but, it is the intention of the Department to discontinue these other collections as this electronic submission option becomes fully integrated into the Visa application process. Applicants who submit the DS-160 will not be required to submit the other forms that collect the same information.
5. This information collection does not involve small businesses or other small entities.
6. This information collection is essential for determining whether an applicant is eligible for a nonimmigrant visa. An applicant completes the form once per visa application. It is not possible to collect the information less frequently, as consular officers need up-to-date information to determine efficiently whether an applicant is eligible to receive a visa.
7. No such circumstances exist.
8. The Department of State (Office of Visa Services, Bureau of Consular Affairs) has solicited public comments on this collection via Public Notice published in the *Federal Register*. One comment was received. After reviewing the comment, Visa Services determined that the comment was unrelated to the information collection and instead addressed the underlying visa program which is a statutory program mandated by Congress. The DS-160 solicits information necessary to carry out the nonimmigrant visa program. The Office of Visa Services also meets regularly with immigration experts of the Department of Homeland Security to coordinate policy. The Office of Visa Services also meets with student groups, business groups, the American Immigration Lawyers Association and other interested groups to discuss their opinions and suggestions regarding visas procedures and operations.
9. No payment or gift is provided to respondents.
10. In accordance with Section 222(f) of the INA (Attachment 4), information obtained from applicants in the nonimmigrant process is considered confidential and is to be used for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States.
11. The questions in the collection are designed to solicit the information necessary to determine whether an applicant is eligible for a visa under Section 101(a)(15) of the INA. Consular officers may not issue a visa to aliens who are ineligible under Section 212(a) of the INA. In order to enforce this provision of the law, the application form specifically asks for information on a variety of issues, including information concerning the alien's health, criminal offenses, narcotic addiction, political affiliation with subversive organizations and participation in genocide or terrorist activities. In addition, questions concerning the applicant's marital status, employment and financial support are necessary to identify the applicant and to assist in determining eligibility for a nonimmigrant visa. As noted in 10 above, such information is considered confidential under Section 222(f) of the INA.
12. The Department expects that approximately 10,000,000 aliens will complete the form each fiscal year. Finding the necessary background information and filling out the entire form is

estimated to take the average applicant 1 hour and fifteen minutes. Therefore, the annual hour burden to respondents is estimated to be 12,500,000 hours. By eliminating the usage of some other forms in the application process with a current 19,000,000 hour burden, the Visa Office estimates that applicants will realize a net saving of 6,500,000 hours of application time per year.

13. The Department of State charges an application fee of \$131 per application. We estimate that the total cost burden for the collection is \$1,310,000,000.
14. Section 140(a) of the Foreign Relations Authorization Act, Public Law 103-236 (Attachment 5) authorizes the Department to collect a visa fee from nonimmigrant visa applicants. The fee was established to cover the cost of processing nonimmigrant visa applications. The Department estimates that the costs to the Federal Government of processing a single nonimmigrant visa application are \$131.00. The estimated annual cost to the Federal Government is therefore \$1,310,000,000 ( $\$131 \times 10,000,000$  applications). Both direct and indirect costs are included in the calculation. Direct costs include salaries and expenses and indirect costs consisting of a broad range of support costs related to consular services.
15. There are no program changes or adjustment as this is a new collection.
16. A quantitative summary of all Department of State visa activities is published in the annual Report of the Visa Office.
17. The Department will display the expiration date for OMB approval of the information collection.
18. The Department is not requesting any exception to the certification statement identified in item 19 of OMB Form 83-I

**B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not employ statistical methods.

## Attachment 1:

## INA Section 221(a) [8 U.S.C. § 1201]

(a)

- (1) Under the conditions hereinafter prescribed and subject to the limitations prescribed in this Act or regulations issued thereunder, a consular officer may issue (A) to an immigrant who has made proper application therefor, an immigrant visa which shall consist of the application provided for in section 222, visaed by such consular officer, and shall specify the foreign state, if any, to which the immigrant is charged, the immigrant's particular status under such foreign state, the preference, immediate relative, or special immigrant classification to which the alien is charged, the date on which the validity of the visa shall expire, and such additional information as may be required; and (B) to a nonimmigrant who has made proper application therefor, a nonimmigrant visa, which shall specify the classification under section 101(a)(15) of the nonimmigrant, the period during which the nonimmigrant visa shall be valid, and such additional information as may be required.
- (2) The Secretary of State shall provide to the Service an electronic version of the visa file of each alien who has been issued a visa to ensure that the data in that visa file is available to immigration inspectors at the United States ports of entry before the arrival of the alien at such a port of entry.

## Attachment 2:

## Section 222(c) [8 U.S.C. § 1202]

(c) Every alien applying for a nonimmigrant visa and for alien registration shall make application therefor in such form and manner as shall be by regulations prescribed. In the application the alien shall state his full and true name, the date and place of birth, his nationality, the purpose and length of his intended stay in the United States; his marital status; and such additional information necessary to the identification of the applicant, the determination of his eligibility for a nonimmigrant visa, and the enforcement of the immigration and nationality laws as may be by regulations prescribed. The alien shall provide complete and accurate information in response to any request for information contained in the application. At the discretion of the Secretary of State, application forms for the various classes of nonimmigrant admissions described in section 101(a)(15) may vary according to the class of visa being requested.

## Attachment 3:

## CFR § 41.103 Filing an application and Form DS–156.

(a) *Filing an application—*

- (1) *Filing of application on Form DS–156 required unless waived.* The consular officer may waive submission of an application, under paragraph (a)(3) of this section, for certain aliens for whom personal appearance has been waived under §41.102. Except for persons for whom such waivers have been granted, every alien seeking a nonimmigrant visa must make application therefor on Form DS–156, Nonimmigrant Visa Application, unless a prior Form DS–156 is readily available at the consular office which can be appropriately amended to bring the application up to date.
- (2) *Filing of Form DS–156 by alien under 16 or physically incapable.* The application for an alien under 16 years of age or one physically incapable of completing an application may be completed and executed by the alien's parent or guardian, or, if the alien has no parent or guardian, by any person having legal custody of, or a legitimate interest in, the alien.
- (3) *Waiver of filing of application.* (i) When personal appearance is waived under §41.102(a)(2) or (3) the consular officer may also waive the filing of a visa application.  
(ii) When personal appearance is waived under §41.102(a)(7), the consular officer may also waive the filing of a visa application in cases of hardship, emergency, or national interest.  
(iii) Even if personal appearance is waived pursuant to any other subparagraph of §41.102(a), the requirement for filing an application may not be waived.

(b) *Application form—*

- (1) *Preparation of Form DS–156, Nonimmigrant Visa Application.*
  - (i) The consular officer shall ensure that Form DS–156 is fully and properly completed in accordance with the applicable regulations and instructions.
  - (ii) If the filing of a visa application is waived by the consular officer, the officer shall prepare a Form DS–156 on behalf of the applicant, using the data available in the passport or other documents which have been submitted.
- (2) *Additional information as part of application.* The consular officer may require the submission of additional necessary information or question an alien on any relevant matter whenever the consular officer believes that the information provided in Form DS–156 is inadequate to permit a determination of the alien's eligibility to receive a nonimmigrant visa. Additional statements made by the alien become a part of the visa application. All documents required by the consular officer under the authority of §41.105(a) are considered papers submitted with the alien's application within the meaning of INA 221(g)(1).
- (3) *Signature.* When personal appearance is required, Form DS–156 shall be signed and verified by, or on behalf of, the applicant in the presence of the consular officer. If personal appearance is waived, but the submission of an application form by the alien is not waived, the form shall be signed by the applicant. If the filing of an application form

is also waived, the consular officer shall indicate that the application has been waived on the Form DS-156 prepared on behalf of the applicant, as provided in paragraph (b)(1)(ii) of this section. The consular officer, in every instance, shall initial the Form DS-156 over or adjacent to the officer's name and title stamp.

- (4) *Registration.* Form DS-156, when duly executed, constitutes the alien's registration record for the purposes of INA 221(b).

## Attachment 4:

## INA Section 222(f) [8 U.S.C. 1202]

- (f) The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States, except that—
- (1) in the discretion of the Secretary of State certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interest of the ends of justice in a case pending before the court.
  - (2) the Secretary of State, in the Secretary's discretion and on the basis of reciprocity, may provide to a foreign government information in the Department of State's computerized visa lookout database and, when necessary and appropriate, other records covered by this section related to information in the database--
    - (A) with regard to individual aliens, at any time on a case-by-case basis for the purpose of preventing, investigating, or punishing acts that would constitute a crime in the United States, including, but not limited to, terrorism or trafficking in controlled substances, persons, or illicit weapons; or
    - (B) with regard to any or all aliens in the database, pursuant to such conditions as the Secretary of State shall establish in an agreement with the foreign government in which that government agrees to use such information and records for the purposes described in subparagraph (A) or to deny visas to persons who would be inadmissible to the United States.

## Attachement 5:

## Section 140(a) of the Foreign Relations Authorization Act, Public Law 103-236

## (a) SURCHARGE FOR PROCESSING CERTAIN VISAS—

- (1) Notwithstanding any other provision of law, the Secretary of State is authorized to charge a fee or surcharge for processing machine readable nonimmigrant visas and machine readable combined border crossing identification cards and nonimmigrant visas.
- (2) Fees collected under the authority of subsection (a) shall be deposited as an offsetting collection to any Department of State appropriation, to recover the costs of providing consular services. Such fees shall remain available for obligation until expended.
- (3) For fiscal years 1994 and 1995, fees deposited under the authority of paragraph (2) may not exceed a total of \$107,500,000. For subsequent fiscal years, fees may be collected under the authority of paragraph (1) only in such amounts as shall be prescribed in subsequent authorization Acts.
- (4) The provisions of the Act of August 18, 1856 (Revised Statutes 1726-28; 22 U.S.C. 4212-14), concerning accounting for consular fees shall not apply to fees collected under this subsection.
- (5) No fee or surcharge authorized under paragraph (1) may be charged to a citizen of a country that is a signatory as of the date of enactment of this Act to the North American Free Trade Agreement, except that the Secretary of State may charge such fee or surcharge to a citizen of such a country if the Secretary determines that such country charges a visa application or issuance fee to citizens of the United States.