

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

1405-0091, Application to Determine Returning Resident Status (Form DS-117)

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 immigrant visas to enter the United States. INA Section 221 (a) [8 U.S.C. 1201] (Attachment 1) provides that a consular officer may issue an immigrant visa to an immigrant who has made proper application therefor.

The regulations of the Department of Homeland Security (DHS), 8 CFR 211.1 (Attachment 2) establish conditions under which an immigrant alien may return to an unrelinquished lawful permanent residence in the United States without an immigrant visa. These regulations provide for entry with an Alien Registration Receipt Card (Form I-551) or a reentry permit in lieu of a visa in certain circumstances. Aliens not covered by these regulations must obtain a special immigrant visa as a returning resident under INA Section 101(a)(27)(A)[8 U.S.C. 1101] (Attachment 3).

INA Section 101(a)(27)(A)[8 U.S.C. 1101] defines a special immigrant to mean an alien lawfully admitted for permanent residence who is returning from a temporary visit abroad. The regulations governing the implementation of this section of the law are in 22 CFR 42.22 (Attachment 4).

2. Department of State consular officers use Form DS-117 (Application to Determine Returning Resident Status) in conjunction with a personal interview, to elicit information necessary to ascertain the applicability of the legal requirements for a returning resident. The information requested on the form is limited to that which is necessary for consular officers to determine the eligibility of an alien applicant for special immigrant classification as a returning resident. The applicant must provide the reasons he or she was unable to return to the United States, thereby losing permanent resident status. A consular officer is unable to approve such immigrant visa status without collecting this information. Consular officers currently use the form as an indispensable part of adjudicating the cases of approximately 875 applicants for returning resident status each year.

3. The form is made available to download from the Internet. The Department is working to automate the entry of visa form data into consular systems and to provide forms on the Department of State and U.S. Embassy websites that afford an electronic option consistent with requirements of both homeland security and the Government Paperwork Elimination Act. The Department is currently implementing a program for electronic collection and submission of visa applicant information and hopes to include the DS-117 in the system by Fall, 2012.

4. The information is unique to each applicant and is not a duplication of other data. While the information requested in questions 7, 8 and 9 might be available from the files of the DHS, consular officers abroad do not have direct access to such files. Since the information is readily known by the applicant, it is easier and more efficient for the alien to supply the information than for the consular officer to try to obtain the information from secondary DHS sources.
5. The information collection does not involve small businesses or other small entities.
6. The information collected on Form DS-117 is essential for determining whether an applicant is eligible for returning resident status. An applicant fills out the form one time; it is not possible to collect the information less frequently.
7. Not applicable; no such circumstances exist.
8. The Department of State (Office of Visa Services, Bureau of Consular Affairs) published a Public Notice in the *Federal Register* seeking comments. No comments were received. 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. No assurance of confidentiality is provided on the DS-117. In accordance with Section 222(f) (Attachment 5) of the INA, visa records are considered confidential and are to be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States. Certified copies of visa records, such as the DS-117, may be made available to a court which certifies that the information is needed in a case pending before the court. Visa records can also be shared with foreign governments in certain circumstances.
11. The DS-117 does not ask any questions of a sensitive nature.
12. The form is completed by approximately 875 respondents each year. The information collected does not require any special research on the part of the applicant, and will require that an applicant spend thirty minutes filling out the entire form. The hour burden is 438 hours annually (875 x 30 minutes).
13. The Department of State charges a fee of \$360 per Form DS-117 resulting in a total cost burden of \$315,000 (875 respondents x \$360).
14. The total cost to the USG of processing the 875 DS-117s adjudicated annually is approximately \$332,500 (875 x \$380 per form).

15. There are no changes requested for this 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.

B. STATISTICAL METHODS

This collection does not employ statistical methods.

Attachment 1

INA Section 221 [8 U.S.C. 1201]

(a) Under the conditions hereinafter prescribed and subject to the limitations prescribed in this Act or regulations issued thereunder, a consular officer may issue (1) 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 (2) 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.

Attachment 2

8 CFR 211.1

(a) General. Except as provided in paragraph (b)(1) of this section, each arriving alien applying for admission (or boarding the vessel or aircraft on which he or she arrives) into the United States for lawful permanent residence, or as a lawful permanent resident returning to an unrelinquished lawful permanent residence in the United States, shall present one of the following:

(Amended 7/22/98; 63 FR 39217)

(1) A valid, unexpired immigrant visa;

(2) A valid, unexpired Form I-551, Permanent Resident Card, if seeking readmission after a temporary absence of less than 1 year, or in the case of a crewmember regularly serving on board a vessel or aircraft of United States registry seeking readmission after any temporary absence connected with his or her duties as a crewman; (Amended effective 1/20/99; 63 FR 70313)

(3) A valid, unexpired Form I-327, Permit to Reenter the United States;

(4) A valid, unexpired Form I-571, Refugee Travel Document, properly endorsed to reflect admission as a lawful permanent resident;

(5) An expired Form I-551, Permanent Resident Card, accompanied by a filing receipt issued within the previous 6 months for either a Form I-751, Petition to Remove the Conditions on Residence, or Form I-829, Petition by Entrepreneur to Remove Conditions, if seeking admission or readmission after a temporary absence of less than 1 year; (Amended effective 1/20/99; 63 FR 70313)

(6) A Form I-551, whether or not expired, presented by a civilian or military employee of the United States Government who was outside the United States pursuant to official orders, or by the spouse or child of such employee who resided abroad while the employee or serviceperson was on overseas duty and who is preceding, accompanying or following to join within 4 months the employee, returning to the United States; or

(7) Form I-551, whether or not expired, or a transportation letter issued by an American consular officer, presented by an employee of the American University of Beirut, who was so employed immediately preceding travel to the United States, returning temporarily to the United States before resuming employment with the American University of Beirut, or resuming permanent residence in the United States.

(b) Waivers. (1) A waiver of the visa required in paragraph (a) of this section shall be granted without fee or application by the district director, upon presentation of the child's birth certificate, to a child born subsequent to the issuance of an immigrant

visa to his or her accompanying parent who applies for admission during the validity of such a visa; or a child born during the temporary visit abroad of a mother who is a lawful permanent resident alien, or a national, of the United States, provided that the child's application for admission to the United States is made within 2 years of birth, the child is accompanied by the parent who is applying for readmission as a permanent resident upon the first return of the parent to the United States after the birth of the child, and the accompanying parent is found to be admissible to the United States.

(2) For an alien described in paragraph (b)(1) of this section, recordation of the child's entry shall be on Form I-181, Memorandum of Creation of Record of Admission for Lawful Permanent Residence. The carrier of such alien shall not be liable for a fine pursuant to section 273 of the Act.

(3) If an immigrant alien returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad believes that good cause exists for his or her failure to present an immigrant visa, Form I-551, or reentry permit, the alien may file an application for a waiver of this requirement with the district director in charge of the port-of-entry. To apply for this waiver, the alien must file Form I-193, Application for Waiver of Passport and/or Visa, with the fee prescribed in § 103.7(b)(1) of this chapter, except that if the alien's Form I-551 was lost or stolen, the alien shall instead file Form I-90, Application to Replace Permanent Resident Card, with the fee prescribed in § 103.7(b)(1) of this chapter, provided the temporary absence did not exceed 1 year. In the exercise of discretion, the district director in charge of the port-of-entry may waive the alien's lack of an immigrant visa, Form I-551, or reentry permit and admit the alien as a returning resident, if the district director is satisfied that the alien has established good cause for the alien's failure to present an immigrant visa, Form I-551, or reentry permit. Filing the Form I-90 will serve as both application for replacement and as application for waiver of passport and visa, without the obligation to file a separate waiver application. (Amended effective 1/20/99; 63 FR 70313)

(c) Immigrants having occupational status defined in section 101(a)(15) (A), (E), or (G) of the Act. An immigrant visa, reentry permit, or Form I-551 shall be invalid when presented by an alien who has an occupational status under section 101(a)(15) (A), (E), or (G) of the Act, unless he or she has previously submitted, or submits at the time he or she applies for admission to the United States, the written waiver required by section 247(b) of the Act and 8 CFR part 247.

(d) Returning temporary residents. (1) Form I-688, Temporary Resident Card, may be presented in lieu of an immigrant visa by an alien whose status has been adjusted to that of a temporary resident under the provisions of § 210.1 of this chapter, such status not having changed, and who is returning to an unrelinquished residence within one year after a temporary absence abroad.

(2) Form I-688 may be presented in lieu of an immigrant visa by an alien whose status has been adjusted to that of a temporary resident under the provisions of § 245a.2 of this chapter, such status not having changed, and who is returning to an unrelinquished

residence within 30 days after a temporary absence abroad, provided that the aggregate of all such absences abroad during the temporary residence period has not exceeded 90 days.

Attachment 3

INA Section 101 [8 U.S.C. 1101]

(a) As used in this Act-

(27) The term "special immigrant" means-

(A) an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;

Attachment 4

22 CFR 42.22 Returning Resident Aliens

- (a) Requirements for returning resident status. An alien shall be classifiable as a special immigrant under INA 101(a)(27)(A) if the consular officer is satisfied from the evidence presented that:
- (1) The alien had the status of an alien lawfully admitted for permanent residence at the time of departure from the United States;
 - (2) The alien departed from the United States with the intention of returning and has not abandoned this intention; and
 - (3) The alien is returning to the United States from a temporary visit abroad and, if the stay abroad was protracted, this was caused by reasons beyond the alien's control and for which the alien was not responsible.
- (b) Documentation needed. Unless the consular officer has reason to question the legality of the alien's previous admission for permanent residence or the alien's eligibility to receive an immigrant visa, only those records and documents required under INA 222(b) which relate to the period of residence in the United States and the period of the temporary visit abroad shall be required. If any required record or document is unobtainable, the provisions of Sec. 42.65(d) shall apply.
- (c) Returning resident alien originally admitted under the Act of December 28, 1945. An alien admitted into the United States under Section 1 of the Act of December 28, 1945 ("GI Brides Act") shall not be refused an immigrant visa after a temporary absence abroad solely because of a mental or physical defect or defects that existed at the time of the original admission.

Attachment 5

INA Section 222(f)

(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.