

**SUPPORTING STATEMENT FOR
Application for Waiver of the Foreign Residence Requirement of
Section 212(e) of the Immigration and Nationality Act
OMB Control No.: 1615-0030
COLLECTION INSTRUMENT(S): I-612**

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

The information is necessary and may be submitted only by an alien who believes that compliance with foreign residence requirements would impose exceptional hardship on his or her spouse or child who is a citizen of the United States, or a lawful permanent resident; or that returning to the country of his or her nationality or last permanent residence would subject him or her to persecution on account of race, religion, or political opinion. Certain aliens admitted to the United States as exchange visitors are subject to the foreign residence requirements of section 212(e) of the Immigration and Nationality Act (the Act). Section 212(e) of the Act also provides for a waiver of the foreign residence requirements in certain instances.

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

USCIS will use the information collected by the form I-612 to make a determination as to if circumstances exist to allow the respondents to receive a waiver that prevents their separation from their U.S. Citizen or Lawful Permanent Resident spouse or child, or to receive a waiver based upon if a return to their country of nationality would subject him or her to persecution.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

The form I-612 is available at <http://www.uscis.gov/files/form/i-612.pdf> and the respondent can access, complete and save the document electronically. There currently is no method by which the respondent can return the completed document electronically, but USCIS is continuing its efforts to allow for the eventual electronic submission of all

information collection instruments. For this form, USCIS respectfully requests a partial exemption to the GPEA compliance requirement and for the continued granting of a 2-year approval as the form can be accessed, completed and saved electronically.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

The information collected is unique to this process and there is no duplicative information collected elsewhere.

- 5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.**

There is no impact by this collection on small business or other small entities, all respondents are individuals or households.

- 6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

This form facilitates a waiver of the residency requirements based on an alien's hardships because of separation of family members or because of fear of persecution on account of race, religion, or political opinion. Without this venue, persons may be subjected to unnecessary hardship due to extended separation from family members. USCIS would not be able to consider circumstances that would allow for a waiver of the requirement to reside outside of the United States for a specific period of time.

- 7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

- **Requiring respondents to report information to the agency more often than quarterly;**
- **Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **Requiring respondents to submit more than an original and two copies of any document;**
- **Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**

- **In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **Requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

This information collection is conducted in a manner consistent with the guidelines in 5 CFR 1320.5(d)(2).

- 8. If applicable, provide a copy and identify the data and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

On September 10, 2014 USCIS published a 60-day notice in the Federal Register at 79 FR 53720. USCIS did receive 1 comment after publishing that notice. The comment objected to the requirement that *"If you (the applicant) are subject to the 2-year foreign residence requirement and your spouse and children were admitted as J-2 exchange visitors or acquired such status after admission, they are also subject to this requirement."* We (commenter) submit that *J-2 dependents are not exchange visitors, and are therefore, not subject to INA §212(e).*"

USCIS' response: The Department of Homeland Security's interpretation at 8 CFR § 212.7(c)(4) is consistent with that of the Department of State's interpretation at 22 CFR § 41.62(c)(4), which states:

If an alien is subject to the 2-year foreign residence requirement of INA 212(e), the spouse or child of that alien, accompanying or following to join the alien, is also subject to that requirement if admitted to the United States pursuant to INA 101(a) (15) (J) or if status is acquired pursuant to that section after admission.

Moreover, this interpretation, when challenged, has repeatedly withstood administrative and judicial scrutiny. *See*, e.g., *Matter of Gatilao*, 11 I. & N. Dec. 893 (BIA 1966); *Matter of Tabcum*, 14 I. & N. Dec. 113 (Reg. Comm'r 1972); *Sheku-Kamara v. Karn*, 581 F. Supp. 582 (E.D. Pa. 1984). Consequently, the referenced Form I-612 instruction correctly reflects both 8 CFR § 212.7(c)(4) and 22 CFR § 41.62(c)(4), which state that if a J-1 nonimmigrant is subject to the 2-year foreign residence requirement, his or her J-2 spouse and are also subject to the requirement.

On December 9, 2014, USCIS published a 30-day notice in the Federal Register at 79 FR 73092. USCIS did not receive comments.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

USCIS does not provide any payment for benefit sought.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation or agency policy.

There is no assurance of confidentiality provided to respondents. The information collected is covered under the Privacy Impact Assessment USCIS Benefits Processing of Applicants other than Petitions for Naturalization, Refugee Status, and Asylum dated September 8, 2008, and also by the System of Records Notice titled United States Citizenship and Immigration Services Benefits Information System published in the Federal Register September 29, 2008.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
- If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.
- Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.

| Type of Respondent | Form Name / Form Number | No. of Respondents | No. of Responses per Respondent | Avg. Burden per Response (in hours) | Total Annual Burden (in hours) | Avg. Hourly Wage Rate* | Total Annual Respondent Cost |
|---------------------------|--|--------------------|---------------------------------|-------------------------------------|--------------------------------|------------------------|------------------------------|
| Individuals or households | I-612 / Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act | 1,300 | 1 | .333 | 433 | \$74.41 | \$32,220 |
| Total | | 1,300 | | | 433 | | \$32,220 |

* The above Average Hourly Wage Rate is the [May 2013 Bureau of Labor Statistics](#) average wage for

All Occupations of \$53.15 times the wage rate benefit multiplier of 1.4 (to account for benefits provided) equaling \$74.41. The selection of "All Occupations" was chosen as the expected respondents for this collection could be expected to be from any occupation.

- 13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).**
- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
 - **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
 - **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995; (2) to achieve regulatory compliance with requirements not associated with the information collection; (3) for reasons other than to provide information or keep records for the government; or, (4) as part of customary and usual business or private practices.**

USCIS estimates that the respondent cost for postage and to obtain copies of documents (and have translated, if necessary) in support of this application would be \$159,250 and is estimated by multiplying 1,300 respondents x an estimated rate of \$122.50. For informational purposes, there is a fee of \$585 that each respondent must submit with the application.

- 14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this**

collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

The estimated cost to the government is established by multiplying the fee charged per application times the number of respondents: $\$585 \times 1,300 = \$760,500$.

15. Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.

| Data collection Activity/Instrument | Program Change (hours currently on OMB Inventory) | Program Change (New) | Difference | Adjustment (hours currently on OMB Inventory) | Adjustment (New) | Difference |
|-------------------------------------|---|----------------------|------------|---|------------------|------------|
| I-612 | | | | 488 | 488 | 0 |
| | | | | | | |
| Total(s) | | | | | | |

There is no change to the total hour burden per response for the form I-612. There were changes made to the information collection but there was no overall change to the burden estimate.

| Data collection Activity/Instrument | Program Change (cost currently on OMB Inventory) | Program Change (New) | Difference | Adjustment (cost currently on OMB Inventory) | Adjustment (New) | Difference |
|-------------------------------------|--|----------------------|------------|--|------------------|------------|
| I-612 | \$708,500 | \$760,500 | \$52,000 | | | |
| | | | | | | |
| Total(s) | | | | | | |

There is a change in the estimated cost burden to the respondents of \$58,000 that is due to USCIS' effort to better estimate the cost burden that respondents incur in responding to collections of information.

16. For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and

ending dates of the collection of information, completion of report, publication dates, and other actions.

This information collection will not be published for statistical purposes.

- 17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

USCIS will display the expiration date for OMB approval of this information collection.

- 18. Explain each exception to the certification statement identified in Item 19, “Certification for Paperwork Reduction Act Submission,” of OMB 83-I.**

USCIS does not request an exception to the certification of this information collection.

B. Collections of Information Employing Statistical Methods.

There is no statistical methodology involved with this collection.