

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

## **Supplemental Questions for Visa Applicants OMB Number 1405-XXXX DS-5535**

### **A. JUSTIFICATION**

1. The Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 et seq., mandates application and eligibility requirements for aliens seeking to obtain nonimmigrant and immigrant visas. Grounds for the ineligibility of certain individuals to receive a visa or to be admitted to the United States are detailed in INA section 212(a) [8 U.S.C. § 1182(a)], INA section 208(d)(6) [8 U.S.C. § 1158(d)(6)], and other statutes. Among the grounds of ineligibility are those involving security and related grounds, INA section 212(a)(3), [8 U.S.C. § 1182(a)(3)], including terrorist activities, INA section 212(a)(3)(B), [8 U.S.C. § 1182(a)(3)(B)].

INA section 221(a) [8 U.S.C. § 1201(a)] provides that a consular officer may issue an immigrant or nonimmigrant visa to an individual who has made a proper application, subject to applicable conditions and limitations in the INA and related regulations. Under Section 222(c) of the INA, [8 U.S.C. § 1202(c)] every alien applying for a nonimmigrant visa must provide certain identifying particulars – name, date of birth and birthplace, nationality, purpose and length of intended stay in the United States, 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.” Similar requirements apply to applicants for immigrant visas pursuant to INA section 222(a), [8 U.S.C. § 1201(a)]. Under regulations set out in Title 22 of the Code of Federal Regulations, visa applications must be made on a standard form and adjudicating consular officers “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 the application is inadequate to permit a determination of the alien’s ineligibility to receive a nonimmigrant visa.” 22 C.F.R. 41.103; see also 22 C.F.R. 42.63 (immigrant visas).

In a Memorandum for the Secretary of State, the Attorney General and the Secretary of Homeland Security, issued March 6, 2017 (“Presidential Memorandum”), the President stated that “[t]o avert the entry into the United States of foreign nationals who may aid, support, or commit violent, criminal or terrorist acts, it is critical that the executive branch enhance the screening and vetting protocols and procedures for granting visas, admission to the United States, or other benefits under the INA.” To that end, the recipient Cabinet officials were directed, as permitted by law, to:

implement protocols and procedures as soon as practicable that in their judgment will enhance the screening and vetting of applications for visas and all other immigration benefits, so as to increase the safety and security of the

American people. These additional protocols and procedures should focus on:

- (a) preventing the entry into the United States of foreign nationals who may aid, support, or commit violent, criminal, or terrorist acts; and
- (b) ensuring the proper collection of all information necessary to rigorously evaluate all grounds of inadmissibility or deportability, or grounds for the denial of other immigration benefits.

Consistent with the authorities listed above, and particularly with regard to the directive to more rigorously evaluate the security and related visa ineligibilities under INA section 212(a)(3) [8 U.S.C. § 1182(a)(3)], the Department of State requests this collection to supplement the DS-160, DS-260, DS-156, and DS-230 forms by asking the following questions of a subset of nonimmigrant and immigrant visa applicants:

- The applicant's travel history over the last 15 years;
- The full names and dates of birth of any siblings/children/former spouses/domestic partners not recorded in the applicant's visa application form;
- The applicant's addresses during the last 15 years, if different from the applicant's current address;
- The applicant's prior passport numbers;
- The applicant's prior occupation(s) and employers (plus a brief description, if applicable) looking back 15 years;
- All phone numbers used by the applicant in the last five years; and
- All email addresses and social media identifiers, also known as handles, with associated platforms, used by the applicant in the last five years.

Regarding travel history, an applicant may be requested to provide details of their international or domestic (within their country of nationality) travel, if it appears to the consular officer that the applicant has been in an area while the area was under the operational control of a terrorist organization as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(3)(B)(vi). Applicants may be asked to recount or explain the details of their travel, and when possible, provide supporting documentation.

The information collected from individual visa applicants, when assessed in the context of existing U.S. government holdings of information and responsible agencies' knowledge and understanding of the identity of applicants and existing and evolving threats to national security, enables more rigorous evaluation of applications and serves to implement and advance the goals of the aforementioned authorities and directives.

2. If a Department of State consular officer at a visa-adjudicating post worldwide determines that the circumstances of a visa applicant, a review of a visa application, or responses in a visa interview indicate a need for greater scrutiny, the officer must collect the proposed additional information. The additional information will be used to resolve the applicant's identity or to vet for terrorism or other national security related visa ineligibilities. Consular posts worldwide regularly engage with law enforcement and intelligence

community partners to identify sets of post applicant populations warranting increased scrutiny. The additional information collected will facilitate consular officer efforts to immediately apply more rigorous evaluation of these applicants for potential visa ineligibilities. In accordance with existing authorities, visas may not be denied on the basis of race, religion, ethnicity, national origin, political views, gender, or sexual orientation. The request for social media identifiers and associated platforms is new for the Department of State although is already collected by the Department of Homeland Security (DHS) for certain individuals; one rationale is that terrorist groups, including ISIS, al-Qa'ida, and al-Qa'ida's affiliates, actively use social media to disseminate official messaging, recruit potential members, and convince potential supporters to mobilize to violence. Department of State consular officers will use the information collected in the visa adjudication process with partner U.S. government agencies to determine certain applicants' eligibility for a visa under existing statutory grounds of inadmissibility, so as to more rigorously evaluate the security and related visa ineligibilities under INA section 212(a)(3) [8 U.S.C. § 1182(a)(3)] as directed by the Presidential Memorandum.

3. We are seeking approval, on an emergency basis, for consular officers to ask these questions of a subset of nonimmigrant and immigrant visa applicants either orally or by providing a copy of the questions electronically or in writing. The objectives could not all be achieved solely by electronic collection, because an interview may be required to determine who should be asked the questions.

4. To our knowledge, this collection is not duplicative of another existing collection. To the extent any questions are covered in OMB Control Number 1405-0182 (Online Application for Nonimmigrant Visa (DS-160)), OMB Control Number 1405-0018 (Nonimmigrant Visa Application(DS-156)), OMB Control Number 1405-0185 (Electronic Application for Immigration Visa and Alien Registration(DS-260)), and OMB Control Number 1405-0015 (Application for Immigrant Visa and Alien Registration (DS-230)), applicants will be instructed to provide the information only if they have not provided it in one of these forms during the current application. This collection is intended to supplement the existing collections.

5. This information collection does not involve small businesses or other small entities.

6. This information collection is responsive to the directive in the Presidential Memorandum to "ensur[e] the proper collection of all information necessary to rigorously evaluate all grounds of inadmissibility" on the part of individuals applying for a nonimmigrant or immigrant visas. Failure to collect the information would impede such rigorous evaluation and the national-security purposes for which it was directed when the circumstances of an individual applicant, a review of a visa application, or responses in a visa interview indicate a need for additional information to resolve the applicant's identity or to vet for terrorism or other national security related visa ineligibilities. For any individual applicant, failure to provide requested information will not necessarily result in visa denial, if the consular officer determines the applicant has provided a credible explanation why he or she cannot answer a question or has provided requested supporting documentation, such that the consular officer is able to conclude that the applicant has provided adequate information to determine the alien's eligibility to receive the visa. 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 and the responses to the questions will change for an applicant over time.

7. No special circumstances exist.

8. An Emergency Notice was published in the *Federal Register* 82 FR 20956 on May 4, 2017. The Department of State appreciates the comments received during the comment period. Key issues raised by commenters included privacy implications, freedom of expression, the definition of social media, the proposal's efficacy, utility, and the burden on affected applicants. Many commenters expressed a concern that the proposal was a pretext for discrimination. The Department of State has been mindful of such issues in developing this proposal, and if this request is approved on an emergency basis, will further address these comments if the Department of State seeks to continue collecting the information beyond 180 days. As previously stated, visas may not be denied on the basis of race, religion, ethnicity, national origin, political views, gender, or sexual orientation.

9. No payment or gift is provided to respondents.

10. In accordance with INA section 222(f) [8 U.S.C. § 1202(f)], information obtained from applicants in the nonimmigrant or immigrant visa application process is considered confidential and is to be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States, except that, in the discretion of the Secretary of State, it may be made available to a court or provided to a foreign government if the relevant requirements stated in INA section 222(f) are satisfied.

11. Proposed additional questions covering prior passports, phone and e-mail contact information, and additional travel, address and employment history are similar in nature to questions currently on the immigrant and nonimmigrant visa application forms and thus do not for the most part present new or unusual sensitivities; they simply cover a longer time period. The requests for names and dates of birth of siblings and, for some applicants, children are new but do not implicate particular sensitivities, especially in light of the confidentiality of visa records pursuant to Section 222(f) of the INA. As noted above, the standardized collection of social media identifiers, if approved, will be new for the Department of State. The Department of State currently requests historical information for a period of five years from all visa applicants. For example, visa applicants are asked to provide travel, employment, and address history for the prior five years. Using the same time period for social media use is a reasonable period that should be generally ascertainable for visa applicants. Consular officers are already directed not to engage or interact with individuals on or through social media; not to violate or attempt to violate individual privacy settings; and not to use social media or assess an individual's social media presence beyond established Department guidance. The same safeguards that protect a visa applicant's personal information will remain in effect for social media identifiers. The collection of social media platforms and identifiers will not be used to deny visas based on applicants' race, religion, ethnicity, national origin, political views, gender, or sexual orientation. Consular officers will not request user passwords and will not attempt to subvert any privacy controls the applicants may have implemented on these platforms. As noted in paragraph 10 above, such information is confidential under section 222(f) of the INA, [8 U.S.C. § 1202(f)].

12. Relevant State Department officials estimate that 0.5% of U.S. visa applicants worldwide, or in the range of 65,000 individuals per annum, will present a threat profile,

based on individual circumstances and information they provide, that will lead U.S. consular officers at posts around the world to conclude the applicant warrants enhanced screening that takes into account the information that is proposed to be collected. The estimate will be updated in the next request to continue collecting the information based on experience reported by overseas posts.

Therefore, the Department of State estimates that the annual hour burden to visa applicants posed by the additional questions is 65,000 hours (65,000 applicants x 1 hour). Based on an average hourly wage of \$23.23, the weighted wage hour cost burden for this collection is \$2,113,930. This is based on the calculation of \$23.23 (average hourly wage) x 1.4 (weighted wage multiplier) x 65,000 hours = \$ 2,113,930.

13. There are no anticipated monetary burdens associated with the additional questions posed as part of this information collection.

14. The Department of State estimates that the annual hour burden to consular service officers posed by the additional questions is 32,500 hours (65,000 applicants x .5 hour). Based on the consular hourly wage of \$135, the cost burden for this collection is \$4,387,500 (32,500 hours x \$135).

The Department conducts a biannual review of consular fees using its Cost of Service Model. Consular fees are generally set based on the policy of full cost recovery, and the Model is updated annually to take into account all costs to the U.S. government of providing consular services. The model will be updated to include costs associated with processing this information, and those costs will be reflected in any future adjustments to the relevant visa fees.

15. This is a new information collection.

16. The information gathered by this collection will not be published.

17. The Department of State will display the expiration date for OMB approval on the information collection.

18. The Department of State is not requesting any exceptions to the certification statement requirements.

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

This collection does not employ statistical methods.