SUPPORTING STATEMENT

Petition for Alien Fiance(e)

(Form I-129F)

OMB No. 1615-0001

A. Justification.

1. Section 214 of the Immigration and Nationality Act (INA) prohibits the issuance of a nonimmigrant visa under section 101(a)(15) of the Act until the consular officer abroad has received a petition filed in the United States by a U.S. citizen on behalf of his/her spouse or fiancé(e) and approved by the Attorney General. Likewise, 8 CFR 214.2(k) sets forth procedures which must be followed by a citizen of the United States who wishes to bring his/her spouse or fiancé(e) to the United States. This includes the requirement that a completed I-129F must be filed with the U.S. Citizenship and Immigration Services (USCIS) in order to petition for an alien spouse or fiancé (e).

   In December 2000, Congress passed the Legal Immigration Family Equity Act (LIFE), Public Law 106-553. Section 1103(a) of LIFE established the new nonimmigrant classification for spouses and children of U.S. citizens under section 101(a)(15)(K) of the Immigration and Nationality Act. LIFE requires a petition

to be filed with USCIS in the United States by the alien's spouse in order to be eligible for this benefit. The Form I-129F captures the necessary information in order to make a sound adjudication.

This form is also used to collect criminal background information from petitioners pursuant to section 214(d) of the INA as amended by section 832 of the International Marriage Broker Regulation Act of 2005 (IMBRA), Public Law 109-162. IMBRA requires a petitioner to submit criminal history to USCIS in connection with a petition for a fiancé(e) or under LIFE. USCIS is required by IMBRA to notify the Department of State of any adverse criminal history so that the information may be disclosed to the beneficiary to provide him or her with full disclosure of the petitioner's criminal history. See table of changes for the revision to the form.

2. This information is used by USCIS to determine eligibility for the requested immigration benefit. The form serves the purpose of standardizing requests for the benefit, and ensuring that basic information required to assess eligibility is provided by petitioners.

3. The use of this form currently provides the most efficient means for collecting and processing the required data. In this case USCIS does not employ the use of information

technology in collecting and processing information. This form has been designated for e-filing under the Business Transformation Project.

4. A review of the USCIS Forms Inventory Report revealed no duplication of effort, and there is no other similar information currently available that can be used for this purpose.

5. This collection of information does not have an impact on small businesses or other small entities.

6. If this information is not collected and presented to USCIS there is no mechanism for USCIS to determine whether satisfactory evidence has been submitted by the U.S. citizen to establish that the parties are married, in the case of a citizen seeking to obtain a nonimmigrant visa for their spouse. In the case of a citizen seeking to obtain a nonimmigrant visa for their fiancée, if this information is not collected and presented to USCIS there is no mechanism for USCIS to determine whether satisfactory evidence has been submitted by the U.S. citizen to determine that the citizen and alien have previously met in person within two years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage within ninety days after the alien's arrival in the United States. Finally, if this information is not collected from the petitioner and presented to USCIS, both parties will be in violation of section 214(d) of the Act, as amended by IMBRA.

7. The special circumstances contained in item 7 of the supporting statement are not applicable to this information collection.

8. By notice in the **Federal Register** on May 26, 2006, at 71 FR 30434, USCIS notified the public that it was requesting comments on this information collection. The notice allowed for a 60-day public comment period. USCIS received 13 comments in response to this information collection. Those comments are addressed below.

One commenter submitted two comments wherein it was suggested that the law should be changed to allow a resident alien to bring family members in on an L nonimmigrant visa to allow them to stay together as a family. USCIS notes that the L nonimmigrant visa program is separate from the K visa programs, and therefore this comment is not applicable to this information collection.

Seven commenters expressed concern about delays in issuing the new form and adjudicating the pending cases under the new law. Four of these seven suggested That USCIS should allow those with pending cases to e-file the new form and the new required additional evidence. This suggestion has not been adopted as USCIS does not currently have the automated capability in place to accept electronic submissions of this petition.

One commenter stated that the Form I-129F instructions omit mention of the two

exceptions to the definition of an international marriage broker contained in section 833(e)(4) of IMBRA. USCIS agrees that these exceptions were inadvertently omitted and should be contained in the definition. The definition has been amended to include the exceptions.

Two commenters suggested that USCIS has substantially changed the wording and congressional intent of IMBRA in Item 4 of the Form I-129F instructions regarding numerical limitations applicable to petitioners. The commenters suggest that the first sentence be edited so that the word “and” is replaced with the word “or.” USCIS declines to adopt this suggestion. USCIS believes its interpretation of the statutory language is reasonable. Under this interpretation, there are two items the adjudicating officer needs to verify in order to be able to approve a petition: (1) the petitioner has not previously petitioned under K-1 for two or more aliens; **and** (2) no K-1 petition has been approved for the petitioner in the last two years. USCIS believes they are separate requirements.

One commenter suggested inserting the definition of “domestic violence” contained in section 3 of the Violence Against Women Reauthorization Act of 2005. USCIS has adopted this suggestion.

One commenter suggested that the Form I-129F instructions incompletely/incorrectly advise the petitioner that only information regarding his or her criminal convictions will

be provided to the beneficiary of the petition. The commenter suggests that the statutory language requires that the entire petition be provided to the beneficiary, as well as any criminal background information USCIS possesses. The commenter suggested that Item 9A of the instructions and the second paragraph of "Your Certification" above the signature block of the form be amended to reflect the correct statutory requirements. USCIS has adopted this suggestion.

One commenter suggested that the Form I-129F and its instructions should indicate that a petitioner with a history of violent offenses who is requesting a waiver of the filing limitations is entitled to present any credible evidence that is relevant to the request for such a waiver. USCIS has adopted this suggestion.

One commenter suggested that the Form I-129F instructions be revised to suggest other possible bases to obtain a waiver of the filing limitations in the case of a petitioner with no history of violent offenses. The commenter suggests that the example provided, "the death of an alien approved for a prior K visa" is not sufficient. USCIS does not believe that the instructions must contain more than one example. Many different situations may give rise to a waiver approval, and USCIS believes that placing numerous examples or detailed guidelines regarding such a waiver is not appropriate in a form's instructions. More examples and guidelines are included in guidance regarding IMBRA that is available to the public on the USCIS website at http://www.uscis.gov.

One commenter suggested that the Form I-129F instructions be amended to indicate that a petitioner with a history of violent offenses seeking a waiver of filing limitations is entitled to present "any credible evidence that is relevant to the application" for such a waiver. USCIS has adopted this suggestion. The commenter also suggests that the form instructions incorrectly imply that a waiver is only available to a petitioner who was not the primary perpetrator of the violence, who was either acting in self-defense; violated a protection order intended for his or her own protection; or committed an offense that did not result in serious bodily injury and that was connected to the battery or extreme cruelty he or she suffered. The commenter suggests that the statute leaves open the possibility that other situations may qualify as "extraordinary circumstances" justifying a waiver. The commenter suggests that the instructions be revised to suggest other possible bases for a waiver in the case of a petitioner who has committed a violent offense than solely that the petitioner was being battered or subjected to extreme cruelty at the time he or she committed the violent offense(s). USCIS declines to adopt this suggestion. USCIS believes the statutory language limits the availability of a waiver of the filing limitation in such circumstances only to the circumstances listed on the form.

One commenter suggested that petitioners be required to disclose any instance in which they have been "convicted of, pled 'guilty' or 'no contest' to, or ordered by a court to complete batterer intervention, substance abuse treatment, or anger management programs as a result of, any of the following crimes…" and change referrals to "conviction(s)" to read "conviction(s), plea bargain(s), or court-ordered programs".

USCIS declines to adopt this suggestion as the statutory language is quite clear requiring disclosure of "information on any criminal convictions of the petitioner for any specified crime."

One commenter suggested amending the Form I-129F instructions to inform petitioners that under IMBRA, the name and contact information of any person who was granted a protection or restraining order against the petitioner, or of any victim of a crime of violence perpetrated by the petitioner, will remain confidential, but that the relationship of the petitioner to such person or victim (i.e., spouse, child, etc.) will be disclosed. USCIS has adopted this suggestion.

One commenter suggested amending the Form I-129F instructions to state that USCIS will send the beneficiary of a K petition an information pamphlet in all cases. USCIS declines to adopt this suggestion because it is not required by the statute and would require significant operational changes that would possibly result in delayed processing.

One commenter suggested that the Form I-129F instructions incorrectly state the notification process under IMBRA. USCIS declines to adopt the language suggested by the commenter, but has adopted the commenter's suggestion by changing the fourth sentence of Item 11 to better reflect the statutory requirements.

One commenter suggested that more space should be provided to allow the petitioner to

supply the requested information regarding any beneficiary on whose behalf he or she has filed Form I-129F in the past. The commenter suggests that the petitioner be directed to "Attach additional pages if necessary." This comment has been adopted. The commenter further suggests that each type of information requested (i.e. name of alien; place of filing; date of filing; A#; and result) should be assigned its own distinct field to facilitate data collection. USCIS declines to adopt this suggestion as the fields currently found on the form are sufficient for data collection purposes.

One commenter suggested edits to Question 18 and 19 in Part B of Form I-129F to request further explanation regarding the circumstances surrounding the use of the international marriage broker and to request contact information for the international marriage broker. Those suggestions have been adopted. Further, the commenter suggests deleting the direction on Question 19 to attach additional sheets of paper if necessary because it is not clear why this would ever be necessary. USCIS declines to adopt this suggestion as there may be a situation where the petitioner needs to attach additional sheets if his or her handwriting is very large (if the form is not electronically completed).

Two commenters suggested that Item 2 in Part C of the form is confusing in that it asks a question, but has no question mark at the end of the sentence and provides no box to mark a yes or no answer. USCIS has adopted this suggestion and corrected this question

so that a question mark appears and a yes or no checkbox is provided.

9. USCIS does not provide payments or gifts to respondents in exchange for a benefit sought.

10. There is no assurance of confidentiality. In fact, IMBRA requires USCIS to disclose information submitted by the petitioner relating to his or her criminal convictions to the Department of State so the information may be disclosed to a beneficiary during a consular interview prior to visa issuance.

11. There are no questions of a sensitive nature.

12. Annual Reporting Burden:

a.	Number of Respondents	200,000
b.	Number of Responses per each request	1
c.	Total Annual Responses	200,000
d.	Hours per Response	1.50
e.	Total Annual Reporting Burden	300,000

Annual Reporting Burden

Total annual reporting burden is 300,000. This figure was derived by multiplying the number of respondents (200,000) x frequency of response (1) x 90 minutes (1.5 hours)

per response. The projected hours per response for this collection of information were based on previous USCIS experience.

13. There are no capital or start-up costs associated with this information collection. Any cost burdens to respondents as a result of this collection are identified in item 14. (*There is a $170 fee charge associated with the filing of this information collection.)*

14. Annualized Cost Analysis:

Printing Cost	$	48,000
Collecting and Processing	$	33,952,000
Total Cost to Program	$	34,000,000
Fee Charge	$	34,000,000
Total Annual Cost to Government	$	0

Government Cost

The estimated cost of the program to the Government is calculated by using the estimated number of respondents (200,000) multiplied (x) by the suggested $170 fee charge (which includes the average hourly rate for clerical, officer, and managerial time with benefits). In addition, this figure includes the estimated overhead cost $48,000 for printing, stocking, distributing and processing of this form.

Annual Public Cost

The estimated annual public cost is $37,000,000. This estimate is based on the number of respondents (200,000) x 90 minutes (1.5) hours per response x $10 (average hourly rate), plus the number of respondents (200,000) x $170 fee charge.

15. There has been a decrease of 1,660 annual burden hours for this information collection. During the summer of 2006, USCIS requested approval to issue a memo to 10,000 respondents requesting additional information in order to adjudicate their petitions. Accordingly this backlog has been cleared up.

16. USCIS does not intend to employ the use of statistics or the publication thereof for this collection of information.

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

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

B. Collection of Information Employing Statistical Methods.

Not Applicable.

C. Certification and Signature.

PAPERWORK CERTIFICATION

In submitting this request for OMB approval, I certify that the requirements of the Privacy Act and OMB directives have been complied with including paperwork regulations, statistical standards or directives, and any other information policy directives promulgated under 5 CFR 1320.

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Richard A. Sloan, **Date**

Director,

Regulatory Management Division

U.S. Citizenship and Immigration Services.