

SUPPORTING STATEMENT

Application for Waiver of the Foreign Residence Requirement of

Section 212(e) of the Immigration and Nationality Act

(Form I-612)

OMB No. 1615-0030

A. JUSTIFICATION:

1. 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. The data collected on this form will be used by the USCIS to determine eligibility for a waiver.
3. The use of this form currently provides the most efficient means for collecting and processing the required data. The information is entered in a database and made available to government agencies. This form is tentatively scheduled for e-filing June 2007.
4. A search of the USCIS automated forms tracking system was accomplished and revealed no duplication. There is no similar data collected.

5. This collection of information does not have an impact on small businesses or other small entities.
6. 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.
7. There are no special circumstances applicable to this information collection.
8. On February 27, 2007, USCIS published a 60 Day Notice at 72 FR 8763 allowing for public comments. USCIS received one comment. The following is the comment and USCIS' response:

Comment (as quoted directly from the commenter):

“A J-2 dependent is also subjected to the 2 years' home residence requirements. According to the Policy of the Department of State, A J-2 holder can apply for J waiver independently if he or she get divorced from J-1 principal or the J-1 principal is dead. On the Form I-612, most information is related to the J-1 holder's J program information. It is not suitable for a J-2 holder who apply for the Form I-612 waiver independently based on the Hardship or Prosecution. I would like to bring it to your attention and revise the form/or add a separate form for the J-2 holders who apply for the waiver independently.”

Response:

It is true that J-2s must independently satisfy the two year foreign residence requirement apart from the J-1 principal. If the J-1 principal receives a waiver, however, then J-2 dependents are also not subject to the foreign residency requirement. It is not true, however, that J-2s can apply independently for the waiver, absent exceptional circumstances. In any case, J-2s cannot apply for hardship or persecution waivers on their own; they can only benefit as derivatives of J-1s.

Under exceptional circumstances, the Department of State may act as an interested government agency (IGA) and for humanitarian reasons, request that the foreign residency requirement be waived on behalf of J-2s who are either divorced from their J-1 spouse, because their J-1 spouse has died, or on behalf of J-2 children who have married and/or turned 21. This, however, is an IGA waiver request from the Department of State and is forwarded to USCIS for final approval. (Please see Department of State Foreign Affairs Manual, Chapter 9, section 40.202 Certain Former Exchange Visitors for related statutory and regulatory provisions; and especially 40.202 Notes, note 3 at <http://foia.state.gov/masterdocs/09fam/0940202N.pdf>).

Because applicants who request IGA waivers do not fill out form I-612, there is no reason for the form to be modified. The recent corrections to Form I-612 clearly indicate that the form is to be used for applicants filing for persecution and hardship waivers. Those requesting IGA waivers are instructed to contact the interested agency directly.

9. The USCIS does not provide payment or gifts to respondents in exchange for a benefit sought.
10. There is no assurance of confidentiality.
11. There are no questions of a sensitive nature.

12. Annual Reporting Burden:

a.	Number of Respondents	1,300
b.	Number of Responses per Respondent	1
c.	Total Annual Responses	1,300
d.	Hours per Response	.333
e.	Total Annual Reporting Burden	433

Annual Reporting Burden

The number of respondents is estimated to be **1,300** for an annual burden hours of **433**, which is based on the stated responses at **.333** (20 minutes) per response. This is based on prior USCIS experience with the program.

- 13. There are no capital or start-up costs associated with this information collection. Any cost burdens to respondents as a result of this information collection are identified in Item

14. However, there is a \$265 fee charge associated with this information collection.

- 14. Annualized Cost Analysis:

a.	Printing Cost	\$	585
b.	Collection and Processing Cost	\$	343,915
c.	Total Cost to Program	\$	344,500
d.	Fee Charge	\$	344,500
e.	Total Cost to Government	\$	0

Government Cost

The estimated cost of the program to the Government is 344,500. This figure is calculated by using the estimated number of respondents (1,300) multiplied (x) by the suggested \$265 fee charge, (which includes the suggested average hourly rate for clerical, officer, and supervisory time with benefits, plus a percent for the estimated overhead cost for printing, stocking, distributing and processing of this form).

Public Cost

The estimated annual public cost is **\$348,829**. This is based on the number of respondents (1,300) x 20 minutes (.333) per response x \$10 (Average hourly rate) plus the number of respondents (1,300 x fee charge of \$265).

- 15. There has been no increase or decrease in the estimated burden hours previously reported for this information collection. There has been an increase in the fee amount.

16. USCIS does not intend to employ the use of statistics or the publication thereof for this information collection.
17. The USCIS is not seeking a waiver to display the expiration date of OMB approval of this information collection.
18. The 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.

Richard A. Sloan,
Chief,
Regulatory Management Division,
U.S. Citizenship and Immigration Services.

Date