

**SUPPORTING STATEMENT FOR REQUEST FOR OMB APPROVAL
UNDER THE PAPERWORK REDUCTION ACT OF 1995**

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SUPPORTING STATEMENT

APPLICATION FOR ALIEN EMPLOYMENT CERTIFICATION

A. Justification

A.1. Circumstances that make the collection of information necessary.

The information collection is required by section 212(a)(5)(A), section 214(c) and section 218 of the Immigration and Nationality Act (INA) (8 U.S.C. § 1182(a)(5)(A), § 1184(c) and § 1188). The INA mandates the Secretary of Labor to certify that any alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is not adversely affecting wages and working conditions of U.S. workers similarly employed and that there are not sufficient U.S. workers able, willing, and qualified to perform such skilled or unskilled labor. Before any employer may request any skilled or unskilled alien labor, it must submit a request for certification to the Secretary of Labor containing the elements prescribed by the INA or, in limited circumstances, apply for a waiver thereof with the Department of Homeland Security (DHS). The form can be found on-line at <http://www.foreignlaborcert.doleta.gov/pdf/eta750a.pdf> and <http://www.foreignlaborcert.doleta.gov/pdf/eta750b1.pdf>

The Form ETA 750, part A, is utilized to collect information that permits the Department to meet federal responsibilities for administering two nonimmigrant programs: the H-2A and H-2B temporary labor certification programs. The H-2A temporary agricultural program establishes a means for agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant aliens to the U.S. to perform agricultural labor or services of a temporary or seasonal nature as defined in 8 U.S.C. § 1101(a)(15)(H)(ii)(a) and explained in 8 CFR § 214.2(h)(5). The H-2B program establishes a means for employers to bring nonimmigrant aliens to the U.S. to perform nonagricultural work of a temporary or seasonal nature as defined in 8 U.S.C. § 1101 (a)(15)(H)(ii)(b) and explained in 8 CFR § 214.2(h)(6).

The Department has published regulations at 20 CFR Part 655 outlining in detail the process for seeking temporary labor certification for foreign workers to be employed in the U.S. The information contained in the Form ETA 750 Part A forms the basis for the Secretary's certification regarding U.S. worker availability and adverse effect on wages. The information contained in the Form ETA 750 Part B is used by an alien applying for the National Interest Waiver (NIW) or as a permanent professional athlete to provide detailed information about education and work history as required and explained in 8 CFR § 204.5(k)(4).

The Department has made minor changes to the form to request additional contact information such as email and fax numbers so that the Department can

contact the employers and/or agents more quickly and effectively. The Department has also updated the form to include the proper language for the Paperwork Reduction Act and a space was added for the Employer Identification Number. Finally, an emblem was added.

A.2. How, by whom, and for purpose the information is to be used.

In order to meet its statutory responsibilities under the INA, the Department of Labor (Department) needs to extend an existing collection of information pertaining to employers seeking to import foreign labor. The form used to collect the information is used not only by the Department, but also other federal agencies in furtherance of meeting the requirements of the INA. The Department uses the information collected to implement different nonimmigrant temporary worker programs including the H-2A and H-2B temporary work programs, and for both permanent and temporary programs for alien professional athletes. The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) utilizes the form for its National Interest Waiver program (NIW) for employment sponsored immigration.

Employers and individuals wishing to utilize one of the above-mentioned programs submit a completed form to the appropriate office – State Workforce Agency (SWA), the Department, or DHS. The H-2B program requires the employer to submit the application to the local SWA, which will then forward it to the appropriate National Processing Center (NPC) of the Department. The H-2A program requires the employer to submit the application to the local SWA and the NPC simultaneously. Employers wishing to hire professional athletes from abroad on a permanent basis must submit the form directly to the National Office of the Department. Individuals or employers applying for a national interest visa waiver of the job offer requirement must submit the form directly to DHS.

The initial receiving agency will review the application to assure that it is signed, completed, contains no obvious inaccuracies, and is not, on its face, inconsistent with the documentation submitted in support of the application. In addition, the reviewing agency will review applications to determine the correct prevailing wage to apply and whether all of the necessary supporting documentation has been submitted. The SWAs will begin recruitment of U.S. workers and conduct such other actions as are necessary under the relevant program. DHS utilizes the form to analyze the alien's background and experience for the NIW.

A.3. Extent to which collection is automated, reasons for automation, and considerations for reducing impact on burden.

In compliance with the Government Paperwork Elimination Act, this form is available via the Internet and is fillable on-line through ETA's home page at

<http://www.foreignlaborcert.doleta.gov/pdf/eta750a.pdf> or
<http://www.foreignlaborcert.doleta.gov/pdf/eta750b1.pdf>

A.4. Efforts to identify duplication – why similar information already available cannot be used for purpose described in A.2.

The procedures and documentation requirements are sufficiently specific to avoid duplication of activities.

A.5. Efforts to minimize burden on small businesses.

The information collection is required of small businesses who want to import foreign labor. However, the recordkeeping requirements largely involve information, which already exists in payroll and other records kept by most employers for other purposes.

A.6. Consequences to Federal program if collection not done or done less frequently and any technical or legal obstacles to reducing the burden.

The Department would be in direct violation of law and regulations if this information was not collected.

A.7. Special circumstances for conducting information collection.

There are no special circumstances that would require the information to be collected or kept in any manner other than those normally required under the Paperwork Reduction Act except the regulatory requirement that agricultural employers retain the records and supporting documents used to fill in the form for at least three years.

A.8. Summary of public comments.

The Department received one comment. The commenter made no substantive comments about the information collection, but rather observed that Congress should not fund the program associated with this information collection. As Congress has chosen to fund the programs associated with the information collection at issue, the Department is without authority to implement this commenter's suggestion.

A.9. Explanation of decision to provide any payment or gift to respondents.

No payments or gifts will be made to respondents.

A.10. Assurance of confidentiality provided to respondents.

The information collected is not exempt from disclosure under the Freedom of Information Act.

A.11. Justification for any sensitive questions.

The information collections do not involve sensitive matters.

A.12. Estimated hourly burden.

The Department estimates approximately 38,635 submissions a year will be submitted either to the Department or to the Department of Homeland Security (DHS). The Department estimates that approximately 25,635 applications will be submitted per year to ETA and approximately 13,000 will be submitted to DHS for their National Interest Waiver program. The ETA figure includes 7,335 H-2A applications, 18,000 H-2B applications, and 300 other applications, both permanent and temporary. This is a decrease of 73,565 over ETA's previous estimate. This change is due to a different form now being used for the permanent certification process.

The public reporting burden for the collection of information is estimated to average: (1) permanent applications (both parts A and B) - 2.8 hours per response; (2) H-2A applications (part A only) - 1 hour per response; H-2B applications (part A only) - 1.4 hours per response; and NIW applications (part B only) – 1.8 hours per response. These estimates include the time for reviewing instructions, searching existing information/data sources, gathering and maintaining information, completing and reviewing the application, and providing notice of the filing.

The overall hours needed for each respondent to produce the required information:

Permanent, Athletes	50	x	2.8 hour	=	140
Permanent, NIW	13,000	x	1.8 hour	=	23,400
Temporary H-2A	7,335	x	1 hour	=	7,335
Temporary H-2B	18,000	x	1.4 hour	=	25,200
Temporary, other	250	x	1.4 hour	=	<u>350</u>
Total Hours				=	56,425

Therefore, for the reasons stated above, the average hourly burden distributed among all programs for completing the forms is 1.5 hours.

It is difficult to estimate the costs involved in completing and maintaining the attestation form. Each individual employer that files an attestation may have a salary range that could be from several hundred dollars to several hundred thousand dollars for a CEO of a business. Therefore, the hourly salaries of an employer preparing an application could be as high as \$300 per hour. We estimate an average of \$25 per hour. The estimated total cost of \$25 x 56,425 total hours to respond = \$1,410,625.

A.13. Estimated cost burden to respondents.

In the majority of cases, respondents will not be required to pay any filing fees or other out-of-pocket costs in order to submit their applications. However, the regulations for the H-2A program require agricultural employees to pay a \$100 filing fee per certified application and an additional \$10 per certified alien employee being requested under this program. The average number of aliens sponsored by one employee is 9. Program experience shows that three percent of the applications received are not certified and eight percent of the aliens requested are not certified. Therefore, the cost burden to agricultural employers is estimated to be [(7,335 appl. x 98%) x \$100] + [(7,335 appl. x 9 aliens x 92%) x \$10] = \$1,318,838.

The majority of programs utilizing Form ETA 750 also require recruitment, including newspaper advertising. However, it is the position of the Department that these are expenses normally incurred in finding workers and therefore, are not an added burden due to this collection.

A.14. Estimated cost burden to the Federal government.

The average Federal Government cost for the year of operation is estimated at \$4,307,833, calculated as follows:

Estimated Hours - Data Entry/Review

<u>Staff Cost Per Application</u>		= \$110.65
Professional (14 level, step 2)		
\$38.52 x 2½ hour	= \$ 96.30	
Clerical (6 level, step 3)	+	
\$ 14.35 x 1 hour	= \$ 14.35	
	<u>\$110.65</u>	
<u>Estimated Total Cost</u>		
Staff \$110.65 x 38,635		= \$4,274,963
Equipment (computer hardware)		= \$ 50,000
Printing		= \$ 5,000
		<u>\$4,329,963</u>

A.15. Reasons for any program changes reported in Items 13 or 14 of the OMB Form 83-1.

The annual burden for these information collections decreased from 295,200 to 56,425 hours resulting in a decrease of 238,755 hours over ETA's previous estimate. This change is due to new regulations by the Department for the permanent labor certification program, which now uses ETA Form 9089 (OMB 1205-0451). The ETA Form 750 parts A and B are used by the temporary programs and certifications for professional athletes at the Department of Labor and the National Interest Waiver program at USCIS. The burden for the programs that use the forms has been accounted for above and the decreased burden due to the permanent labor certification program has been shifted to the information collection under that control number. Finally, the cost burden for filing fees, \$1,318,838, was added; it was inadvertently omitted from the previous submission.

A.16. Method for publishing results.

No collection of information will be published.

A.17. If seeking approval not to display the expiration date for OMB approval, explain why display would be inappropriate.

The Department will display the expiration date for OMB approval on both Part A and Part B.

A.18. Explanation of each exception in the certification statement identified in Item 19 "Certification for Paperwork Reduction Act Submissions" on OMB Form 83-1.

The Department is not seeking any exception to the certification requirements.

B. Collection of Information Employing Statistical Methods

No statistical methods are employed.