

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

## **1405-0135, J-1 visa Waiver Recommendation Application Form DS-3035**

### **A. JUSTIFICATION**

1. The Immigration and Nationality Act (“INA”), 8 U.S.C. 1101 *et seq.*, statutorily mandates the application and eligibility requirements for aliens seeking to obtain nonimmigrant visas. INA Section 212(e) (Attachment 1) provides that a person admitted under Section 101(a)(15)(J) (Attachment 2) or acquiring such status after admission:

(i) Whose participation in the program for which s/he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the United States Government or by the government of the country of his/her nationality or of his/her last legal permanent residence;

(ii) Who at the time of admission or acquisition of status under 101(a)(15)(J) was a national or resident of a country which the Director of the United States Information Agency, pursuant to regulations prescribed by him/her, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged; or

(iii) Who came to the United States or acquired such status in order to receive graduate medical education or training,

shall not be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his/her nationality or his/her last legal permanent residence for an aggregate of at least two years following departure from the United States.

INA Section 212(e) also provides for a waiver of the two-year foreign residence requirement if the Secretary of State recommends a waiver to the Attorney General in the public interest or if the return of the alien to his or her country of nationality would result in exceptional hardship or probable persecution on account of race, religion, or political opinion. INA section 214(l) (Attachment 3) also provides for a waiver of the 212(e) residence requirement if the alien is a health care professional who agrees to practice medicine for at least 3 years in a geographic area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals.

Department of State regulations pertaining to the waiver of the 2-year residence requirement are published at 22 CFR 41.63 (Attachment 4).

2. The J-1 visa Waiver Recommendation Application, DS-3035, is used to record the information required by 22 CFR 41.63 for a waiver request filed with the Secretary of State. The information requested on the form is limited to that which is necessary to enable the Waiver Review Division of the Visa Office of the Department of State (CA/VO/L/W) to act on the request. Applicants provide biographic data and details of their periods of stay on J-1 visas in the United States. The Department is unable to approve a nonimmigrant visa without collecting this information.
3. The Department has developed a process to automate the entry of the J-1 visa Waiver Recommendation Application data into consular systems and to provide forms on the Department of State websites that afford an electronic option consistent with requirements of both homeland security and the Government Paperwork Elimination Act. The Department makes available an on-line J-1 visa Waiver Recommendation Application that prints three 2-D bar codes eliminating significant data entry burdens. (When the form is completed on-line, the data is incorporated into three 2-D barcodes and printed on an additional sheet that accompanies the form. When the Waiver Review Division receives the form, the data entry clerk scans the barcodes and all relevant fields of information are thereby downloaded into the Department's computer system for electronic storage and retrieval.) Applicants may still complete and submit the paper form if they choose.
4. Except for basic identifying biographic information, the information collected on the DS-3035 is unique to each waiver review application and is not duplicative of information maintained elsewhere or otherwise available.
5. The information collection does not involve small businesses or other small entities.
6. This information collection is essential for determining whether applicants are recommended for 212(e) waivers. The Department of State could not carry out its statutorily mandated requirement to recommend applicants for waivers without obtaining the information on this form. An applicant fills out the form one time per application; thus, it is not possible to collect the information less frequently.
7. Not applicable; no such circumstances exist.
8. The Department of State (Office of Visa Services, Bureau of Consular Affairs) has solicited public comments on this collection via Public Notice published in the *Federal Register*. No comments were received. The Office of Visa Services also meets regularly with immigration experts of the Department of Homeland Security to coordinate policy. The Office of Visa Services also meets with student groups, business groups, the American Immigration Lawyers Association and other interested groups to discuss their opinions and suggestions regarding visas procedures and operations.
9. No payment or gift is provided to respondents.
10. In accordance with Section 222(f) of the INA (Attachment 5), information obtained from applicants in the nonimmigrant visa 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.

11. The DS-3035 does not ask any questions of a sensitive nature.

12. CA/VO/L/W estimates 10,000 J-visa recipients will annually apply for waivers annually. The estimated amount of time it takes for a respondent to complete the form is 1 hour. The estimated annual hour burden is 10,000 hours.

13. Application for a waiver of the 212(e) foreign residence requirement is required to obtain a benefit. The information required by the form is generally already known to the alien and does not require any special effort to assemble. The Department of State charges an application fee of \$215 per application, giving an estimated total annual cost burden of \$2,150,000.

14. The fee was established to cover the cost of processing waiver applications. Based on a recent cost of service study performed by IBM Business Consulting Service, the Department of State estimates that the cost to the Federal Government for processing a single J-1 visa waiver recommendation application is \$215. (The current fee of \$230 will be adjusted and a \$215 fee for this service will become part of a newly revised Schedule of Fees for Consular Services that goes into effect later this year.) In the past few years the Waiver Review Division processed approximately 10,000 applications per year. Thus, the estimated annual cost to the Federal Government is \$2,150,000 ( $\$215 \times 10,000$  applications). The study to determine the cost of all consular services, including this particular service, was based on Activity Based Costing (ABC) Methodology. ABC is a business management tool that provides insight into the relationship between inputs (resources) and outputs (products and services) by quantifying how work is performed in an organization (activities). Direct and indirect costs are included in the calculation. Direct costs included salaries and expenses and indirect costs consist of a broad range of indirect and support costs related to consular services.

15. No program change or adjustment is associated with this reauthorization.

16. A quantitative summary of all Department of State visa activities is published in the annual Report of the Visa Office.

17. Not applicable. The Department will display the expiration date for OMB approval of the information collection.

18. The Department is not requesting any exception to the certification statement identified in item 19 of OMB Form 83-I.

## B. STATISTICAL METHODS

19. This collection does not employ statistical methods.

## **Attachment 1**

### **INA Section 212(e)**

No person admitted under section 101(a)(15)(J) or acquiring such status after admission (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence, (ii) who at the time of admission or acquisition of status under section 101(a)(15)(J) was a national or resident of a country which the Director of the United States Information Agency pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or (iii) who came to the United States or acquired such status in order to receive graduate medical education or training, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of a least two years following departure from the United States: Provided, That upon the favorable recommendation of the Director, pursuant to the request of an interested United States Government agency (or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent), or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, or in the case of a waiver requested by an interested United States government agency on behalf of an alien described in clause (iii), the waiver shall be subject to the requirements of section 214(k): And provided further, That, except in the case of an alien described in clause (iii), the Attorney General may, upon the favorable recommendation of the Director, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Director a statement in writing that it has no objection to such waiver in the case of such alien.

## **Attachment 2**

### **INA Section 101(a)(15)(J)**

(J) an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 212(j), and the alien spouse and minor children of any such alien if accompanying him or following to join him;

### **Attachment 3**

#### **INA Section 214(l)**

(l) (1) In the case of a request by an interested State agency, or by an interested Federal agency, for a waiver of the 2-year foreign residence requirement under section 212(e) on behalf of an alien described in clause (iii) of such section, the Attorney General shall not grant such waiver unless-

(A) in the case of an alien who is otherwise contractually obligated to return to a foreign country, the government of such country furnishes the Director of the United States Information Agency with a statement in writing that it has no objection to such waiver; and

(B) in the case of a request by an interested State agency, the grant of such waiver would not cause the number of waivers allotted for that State for that fiscal year to exceed 30;

(C) in the case of a request by an interested Federal agency or by an interested State agency-

(i) the alien demonstrates a bona fide offer of full-time employment, agrees to begin employment with the health facility or health care organization, which employment has been determined by the Attorney General to be in the public interest; and

(ii) the alien agrees to begin employment with the health facility or health care organization within 90 days of receiving such waiver, and agrees to continue to work for a total of not less than 3 years (unless the Attorney General determines that extenuating circumstances exist, such as closure of the facility or hardship to the alien, which would justify a lesser period of employment at such health facility or health care organization, in which case the alien must demonstrate another bona fide offer of employment at a health facility or health care organization for the remainder of such 3-year period); and

(D) in the case of a request by an interested Federal agency (other than a request by an interested Federal agency to employ the alien full-time in medical research or training) or by an interested State agency, the alien agrees to practice medicine in accordance with paragraph (2) for a total of not less than 3 years only in the geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals, except that, in the case of a request by the Department of Veterans Affairs, the alien shall not be required to practice medicine in a geographic area designated by the Secretary.

(2)(A) Notwithstanding section 248(2), the Attorney General may change the status of an alien that qualifies under this subsection and section 212(e) to that of an alien described in section 101(a)(15)(H)(i)(b).

(B) No person who has obtained a change of status under subparagraph (A) and who has failed to fulfill the terms of the contract with the health facility or health care organization named in the waiver application shall be eligible to apply for an immigrant visa, for permanent residence, or for any other change of nonimmigrant status until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least 2 years following departure from the United States.

(3) Notwithstanding any other provisions of this subsection, the 2-year foreign residence requirement under section 212(e) shall apply with respect to an alien in clause (iii) of such section, who has not otherwise been accorded status under section 101(a)(27)(H), if-

(A) at any time the alien ceases to comply with any agreement entered into under subparagraph (C) or (D) or paragraph (1); or

(B) the alien's employment ceases to benefit the public interest at any time during the 3-year period described in paragraph (1)(C).

## **Attachment 4**

### **22 CFR 41.63**

(3) Except in the case of an alien who is a graduate of a medical school pursuing a program in graduate medical education or training, the Attorney General, upon the favorable recommendation of the Secretary of State of the Department of State, may also waive such two-year foreign residency requirement in any case in which the foreign country of the alien's nationality or last legal permanent residence has furnished the Secretary of State of the Department of State a statement in writing that it has no objection to such waiver in the case of such alien. Notwithstanding the foregoing, an alien who is a graduate of a medical school pursuing a program in medical education or training may obtain a waiver of such two-year foreign residence requirements if said alien meets the requirements of section 214(k) of the Immigration and Nationality Act (8 U.S.C. 1184) and paragraphs (a) (2) and (e) of this section.



## **Attachment 5**

### **INA Section 222(f)**

(f) The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States, except that--

(1) in the discretion of the Secretary of State certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interest of the ends of justice in a case pending before the court.

(2) the Secretary of State, in the Secretary's discretion and on the basis of reciprocity, may provide to a foreign government information in the Department of State's computerized visa lookout database and, when necessary and appropriate, other records covered by this section related to information in the database--

(A) with regard to individual aliens, at any time on a case-by-case basis for the purpose of preventing, investigating, or punishing acts that would constitute a crime in the United States, including, but not limited to, terrorism or trafficking in controlled substances, persons, or illicit weapons; or

(B) with regard to any or all aliens in the database, pursuant to such conditions as the Secretary of State shall establish in an agreement with the foreign government in which that government agrees to use such information and records for the purposes described in subparagraph (A) or to deny visas to persons who would be inadmissible to the United States.