

SUPPORTING STATEMENT

1125-0001 Application for Cancellation of Removal: Form EOIR-42A (Application for Cancellation of Removal for Certain Permanent Residents) and Form EOIR-42B (Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents)

Part A. **Justification**

1. Necessity of Information - Effective April 1, 1997, an individual who is removable from the United States may, pursuant to Section 240A of the Immigration and Nationality Act (Act), request that the Attorney General cancel his/her removal. To be granted such relief from removal, the applicant must prove that he/she meets all the statutory prerequisites for such relief and that he/she is entitled to a favorable exercise of discretion. The application for cancellation of removal is bifurcated into Form EOIR-42A, for Certain Permanent Residents, and Form EOIR-42B, Adjustment of Status for Certain Nonpermanent Residents, to reflect the two forms of relief now available as cancellation of removal. Each applicant for cancellation of removal will file one application based on the individual facts and circumstances in his/her case. The form contains information, such as identifying characteristics, residence and employment history, and family information, which is necessary for the Attorney General to decide whether or not to permit the applicant to remain in the United States.

Changes were made for clarification purposes, including the rewording and correction of some questions to more accurately describe the information sought. See question 23 in Form EOIR-42A and question 23 in Form EOIR-42B, where we corrected a block for explanation we had added in 2005, and corrected

typographical errors in the responses to question 57 in Form EOIR-42A and question 62 in Form EOIR-42B, and in addition, rephrased question 57 in Form EOIR-42A and question 62 in Form EOIR-42B to reflect the exact language in the applicable statutes. Finally, we added a cautionary sentence to the Instructions sections 1 of both Form EOIR-42A and EOIR-42B, and corrected a spacing typographical error in the Advice to Applicant, section 1 B of Form EOIR-42A.

2. Needs and Uses - The application for cancellation of removal (Form EOIR-42A or Form EOIR-42B) is filed and considered in the context of an immigration proceeding. Accordingly, information contained in the application is considered only to the extent necessary to process the application. The application is accepted into the official record of the immigration proceeding and is considered by an Immigration Judge, or the Board of Immigration Appeals if on appeal, in determining the applicant's request for cancellation of removal. The authority to adjudicate the application for cancellation of removal has been delegated to the EOIR by the Attorney General.

3. Use of Technology - The use of this form provides the most efficient means for collecting and processing the required data. The Form EOIR-42A and Form EOIR-42B are available on the EOIR's website for printing. Information can be typed into the online form which is then printed out for submission to the agency, or the individual has the option of printing the form in its entirety to complete by typing or printing legibly. Currently, the EOIR does not have the automated capability in place to accept electronic submission of forms. However, the EOIR

continues to explore the implementation of a number of electronic document initiatives, including electronic submission of EOIR forms.

4. Efforts to Identify Duplication - The only method for applying for cancellation of removal for an alien in immigration proceedings is to file the Form EOIR-42A or Form EOIR-42B. A review of the EOIR's forms revealed no duplication of effort, and there is no other similar information currently available which can be used for this purpose.

5. Impact on Small Businesses - This collection does not have an impact on small businesses or other small entities.

6. Consequences of Less Frequent Collection - Failure to collect this information would deprive the individual from establishing his or her eligibility for cancellation of removal.

7. Special Circumstances Influencing Collection - None of the eight special circumstances identified in OMB instruction number 7 apply to this collection. However, it should be noted that discretion to set the period of time an applicant is given to respond to this collection lies with the Immigration Judge presiding over the applicant's immigration proceedings. If an applicant feels that he/she does not have sufficient time in which to complete the application, he/she may request from the Immigration Judge an extension of time in which to file the

collection with a right to have the decision reviewed on appeal to the Board of Immigration Appeals.

8. Federal Register Publication and Consultation - A 60-day notice covering this collection was published in the Federal Register Volume 73, Number 179, page 53282 on September 15, 2008. A 30-day notice covering this collection was published in the Federal Register Volume 73, Number 226, page 70675 on November 21, 2008. No comments were received.

9. Payment or Gift to Claimants - The EOIR does not provide any payment or gifts to parties in immigration proceedings.

10. Assurance of Confidentiality - The original application is maintained by the EOIR in the official court record of proceeding (ROP) and is accessed by those staff members processing the ROP. The confidentiality of the contents of the Form EOIR-42A and Form EOIR-42B is protected by the EOIR, as are all the documents in the ROP, to the extent permitted by the law, including the Privacy Act and the Freedom of Information Act.

11. Justification for Sensitive Questions - Any question that inquires into matters commonly considered as private is necessary for the Immigration Judge to consider an applicant's statutory and discretionary eligibility for cancellation of

removal and to determine his/her legal right to remain in the United States. See number 10 immediately above.

12. Estimate of Hour Burden

a. Number of Respondents	12,000
b. Number of Responses per Respondent	1 each
c. Total Annual responses	12,000
d. Hours per response	5 hours, 50 minutes
e. Total annual hourly reporting burden	69,960

The total annual reporting burden is derived by multiplying the number of respondents (12,000) by the frequency of response (1) by the number of hours per response (5 hours, 50 minutes or 5.83):

12,000 respondents x 1 response per respondent x 5.83 hours per respondent = 69,960 burden hours.

13. Estimate of Cost Burden

There are no capital or start-up costs associated with this information collection.

The estimated total public cost is \$4,698,000. This estimate is derived by multiplying the burden hours of 69,960 by the estimated practitioner cost of \$50/hr., plus a filing fee of \$100 per respondent.

69,960 burden hours x \$50/hr. (estimated practitioner cost) = \$3, 498,000

\$100 filing fee x 12,000 respondents = \$1,200,000

\$3,498,000+ \$1,200,000= \$4,698,000

The EOIR recognizes that a certain portion of the respondents will not retain a practitioner to assist them in filling out the form. These costs are estimates with respect to the burden on the public and may vary greatly depending on whether a respondent uses a practitioner for assistance in completing the form and the level of detail a respondent includes in the form.

14. Estimated Cost to the Federal Government - It is estimated that the annual cost for printing, distributing, stocking, processing, and maintaining the Form EOIR-42A and Form EOIR-42B is \$15,600 (derived by multiplying the 13 pages of the form by an estimated \$0.10 per copy by the estimated 12,000 applicants per year). We note that the Form EOIR-42A has 12 pages while the Form EOIR-42B has 13 pages; the calculations were based on the larger number as a comprehensive estimate.

15. Reasons for Change in Burden - There is an 8 % increase in total burden hours, to an estimated 69,960 burden hours, due to an estimated 8 % increase in the number of applicants for this relief since 2005, and no change in burden hours per form at this time due to agency-initiated program change. The present burden hours are 64,130.

16. Plans for Publication - The EOIR does not intend to employ the use of statistics or the publication thereof for this collection of information.

17. Expiration Date Approval - The EOIR is seeking approval to not display the expiration date for OMB approval of this collection instrument. The display of the expiration date would require the EOIR to pull and destroy current forms in its inventory (e.g., headquarters, field offices), which could still be used by the public except for outdated expiration dates. It will also be very costly to destroy useable forms and then reprint them. Therefore, the EOIR requests that the display of the expiration date be waived.

18. Exceptions to the Certification Statement- The EOIR does not request an exception to the certification of this information collection.

Section B. Collection of Information Employing Statistical Methods

This collection does not employ statistical methods.

PAPERWORK CERTIFICATION

In submitting this request for Office of Management and Budget (OMB) approval, I certify that the requirements of the Privacy Act and OMB directives have been complied with, including paperwork regulations, any applicable statistical standards or directives, and any other information policy directives promulgated under 5 C.F.R. § 1320.

John N. Blum
Acting General Counsel
Executive Office for Immigration Review

Date