

SUPPORTING STATEMENT

OMB No. 1125-0009

Application for Suspension of Deportation Form EOIR-40

Part A. Justification

1. Necessity of Information Collection - Certain individuals who are deportable from the United States may be eligible to request that the Attorney General suspend their deportation. See 8 C.F.R. ' 1240.56 (2008). To be granted such relief from deportation, 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. Each applicant for suspension of deportation will file one application (Form EOIR-40) 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. The authority to adjudicate the application for suspension of deportation has been delegated to immigration judges by the Attorney General.

Only two changes are being made since the application was last renewed in 2006. One change is merely a correction to a typographical error. Page 1, Section 1: "eligible" needs to be capitalized in the heading "Aliens eligible for Suspension of Deportation". In addition a sentence stating "This relief may not be available to individuals in removal

proceedings” is being inserted as a new item E in Page 1, Section II “Aliens Not Eligible for Suspension of Deportation” for clarification, due to subsequent case law.

2. Needs and Uses - The application for suspension of deportation (Form EOIR-40) 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 suspension of deportation. The authority to adjudicate the application for suspension of deportation has been delegated to 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-40 is available on 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, EOIR does not have the automated capability in place to accept electronic submission of forms. However, 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 suspension of deportation for an alien in immigration proceedings is to file the Form EOIR-40. A review of EOIR=s forms revealed no duplication of effort, and there is no 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 suspension of deportation.

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. A 30-day notice covering this collection was published in the Federal Register. No public comments were received.

9. Payment or Gift to Claimants - EOIR does not provide any payment or gifts to individuals in exchange for the information provided in Form EOIR-40.

10. Assurance of Confidentiality - The original application is maintained by 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-40 is protected by 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 suspension of deportation and to determine his/her legal right to remain in the United States. See number 10, above.

12. Estimate of Hour Burden

a. Number of Respondents

200

b. Number of Responses per Respondent

1 each

c. Total Annual responses

200

d. Hours per response

5 hours, 45

minutes

e. Total annual hourly reporting burden

1,150

The total annual reporting burden is derived by multiplying the number of respondents (200) by the frequency of response (1) by the number of hours per response (5 hours, 45 minutes or 5.75):

200 respondents x 1 response per respondent x 5 hours, 45 minutes per respondent = 1,150 burden hours.

The respondents are aliens who have been physically present in the United States for a continuous period of not less than seven (7) years before filing the suspension of deportation application, have been a person of good moral character, and the deportation would result in extreme hardship to the alien or the alien's United States citizen or lawful permanent resident spouse, parent, or unmarried child under 21 years of age.

13. Estimate of Cost Burden - There are no capital or start-up costs associated with this information collection. The estimated total public cost is \$77,500. This estimate is derived by multiplying the burden hours of 1,150 by the estimated practitioner cost of \$50.00/hour, plus a filing fee of \$100 per respondent.

1,150 burden hours x \$50/hr. (estimated practitioner cost) = \$57,500

$\$100 \text{ filing fee} \times 200 \text{ respondents} = \$20,000$

$\$57,500 + \$20,000 = \$77,500$

EOIR recognizes that a certain portion of the respondents may not retain an attorney to assist them in filling out the form. Moreover, EOIR has no way to accurately determine either the number of respondents who choose to retain representation or the total fee charged by those practitioners employed by the respondents. The number is not quantifiable. However, the total cost burden resulting from filing fees is quantifiable. Accordingly, EOIR presents in item number 14 on the 83-I worksheet the quantifiable filing fee figure (\$20,000), and, in this supporting statement item 13, both the filing fee and attorney fee figures as supplemental information ($\$20,000 + \$57,500 = \$77,500$).

14. Estimated Cost to Federal Government - It is estimated that the annual cost for printing, distributing, stocking, processing, and maintaining the Form EOIR-40 is \$240.00 (derived by multiplying the 12 pages of the form by an estimated \$0.10 per copy by the estimated 200 respondents per year).

15. Reason for Change in Burden -The difference in hour burden in the present ICR is due to an agency adjustment, specifically a decrease in the number of respondents. Previously, EOIR estimated 685 respondents annually. At present, there are approximately 200 respondents annually. As the number of hours per response remained the same (5 hours, 45 minutes), the total burden hours decreased from 3,939 to 1,150 burden hours, for a difference of 2,789 burden hours. Because of the lower number of

respondents, the cost burden similarly decreased to reflect the adjustment for the number of applicants.

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

17. Approval to Not Display the Expiration Date - The presently approved information collection has OMB approval to not display the expiration date. EOIR is seeking continued OMB approval to not display the expiration date for this collection instrument. The display of the expiration date would require 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 the outdated expiration date. It will also be very costly to destroy useable forms and then reprint them. Therefore, EOIR requests that the display of the expiration date be waived.

18. Exceptions to Certification Statement - 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