

## **SUPPORTING STATEMENT**

### **Immigrant Petition for Alien Workers**

#### **Form I-140**

**OMB No. 1615-0015**

#### **A. Justification.**

1. This form is used to petition to classify an alien under section 203(b)(1), 203(b)(2) or 203(b)(3) of the Immigration and Nationality Act (Act). A U.S. employer may file this petition to employ: (1) an outstanding professor or researcher who is recognized internationally as outstanding; (2) a qualified alien who seeks to enter the United States to continue to render services to the same employer or to a subsidiary or affiliate in a managerial or executive capacity; (3) a member of the professions holding an advanced degree or an alien with exceptional ability in the sciences, arts, or business who will substantially benefit the national economy, cultural or educational interests, or welfare of the United States; (4) a skilled worker; (5) a member of the professions with a baccalaureate degree; or (6) an unskilled worker to perform labor for which qualified United States workers are not available. In addition, any employer, person, or third party may file this petition for an alien of extraordinary ability or who seeks the granting of a national interest waiver for an alien who is a member of the professions holding an advanced degree or who is an alien with exceptional ability in the sciences, arts, or business.
2. The data on this form is used by U.S. Citizenship and Immigration Services (USCIS) to determine eligibility for the requested immigration benefit. The form serves the purpose of standardizing requests for the benefit, and ensuring that basic information required to

determine eligibility is provided by petitioners. This form is being revised (see table of changes).

3. The use of this form provides the most efficient means for collecting and processing the required data. This form can be e-filed at:  
<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f3fe194d3e88d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=9059d9808bcbd010VgnVCM100000d1f1d6a1RCRD>
4. A review of USCIS Forms Inventory Report revealed no duplication of effort, and there is no other similar information currently available nor accessible from other data bases which can be used for this purpose.
5. This collection of information does not have an impact on small businesses or other small entities.
6. In order for a person to be admitted to the United States under section 203(b)(1), 203(b)(2), or 203(b)(3) of the Act, he or she must apply using this information collection. This form asks questions necessary to the process of determining eligibility. Without the use of this information collection, a person cannot prove that certain eligibility requirements have been met.
7. The special circumstances contained in item 7 of the supporting statement are not applicable to this information collection.
8. On May 5, 2009, USCIS published a 60-day notice in the Federal Register at 74 FR 20722 requesting comments from the public. USCIS published a 30-day notice in the Federal Register on September 28, 2009, at 74 FR 49392. USCIS received comments from two

individuals and one association of immigration lawyers. The following is a discussion of those comments and our response.

First Commenter: The first commenter stated that “there is no difference between the employment-based third preference sub-categories for “professionals” and “skilled workers.” That is, other than the different definitions of these sub-categories, there is no other functional difference. They share a combined quota. It does not matter if a beneficiary falls into one sub-category or the other – the visa is charged against the same quota in either case.” The commenter further indicated that the separation of these two visa preference subcategories in Part 2 of the form would promote confusion and inadvertent mistakes.

USCIS respectfully disagrees with the commenter’s assessment. Although these two subcategories share a combined annual numerical limitation, the statutory and regulatory definitions and eligibility requirements for the third preference visa “professional” classification under INA section 203(b)(3)(A)(ii) and 8 CFR 204.5(l)(2); (3)(ii)(C) are substantially different from the definitions and eligibility requirements for the third preference visa “skilled worker” classification under INA section 203(b)(3)(A)(i) and 8 CFR 204.5(l)(2); (3)(ii)(B). As such, it is appropriate to treat these subcategories differently, as in the case of the three distinct first preference visa subcategories set forth in INA section 203(b)(1). While all employment-based first preference visa classifications share a combined annual numerical limitation, like the third preference visa classifications, the individual classifications also have substantially different statutory and regulatory requirements, and thus are separated in Part 2 of the Form I-140.

In short, USCIS plans to distinguish between the skilled worker and professional third preference visa categories in Part 2 of the Form I-140 in order to eliminate confusion, not create it.

Second Commenter: The commenter stated that “degree equivalency issues have been a problem in I-140 adjudications. Merely separating the skilled workers from professionals on the I-140 does not address the issue. The Service has established a “policy” that requires those applicants seeking I-140 approval as a “professional” to provide evidence ONLY in the form of a U.S. Baccalaureate degree or a foreign ‘four year single source bachelor’s degree.” The commenter further asserted that “applicants should not see this language for the first time on a Notice of Denial but should see it for the first time on the I-140.”

USCIS respectfully disagrees that the requirement that a third preference alien beneficiary must possess a singular U.S. baccalaureate degree or a foreign “four year single source bachelor’s degree” to qualify as a “professional” is inconsistent with existing regulations. Rather, the definition of “professional” in 8 CFR 204.5(1)(2) clearly states in pertinent part that a “professional means a qualified alien who holds ***at least a*** United States baccalaureate degree or ***a*** foreign equivalent degree”. (emphasis added.) The regulations are clear that a petitioner must submit, in the case of persons who do not have a U.S. baccalaureate degree, at least one degree (from a foreign institution) that is the equivalent of a U.S. bachelor’s degree; under the regulations, USCIS may not accept a combination of lower U.S. or foreign degrees and/or education as an equivalent to bachelor’s degree. .

For classification as a member of the professions, the regulation at 8 CFR 204.5(l)(3)(ii) (C) requires the submission of “an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.”

Third Commenter: The third commenter was an association of immigration lawyers which provided thirteen (13) distinct comments, each of which are presented and separately addressed below:

Comment #1: Provide further explanation regarding the expiration of labor certifications and when labor certifications must be submitted in support of the filing of a Form I-140 petition. USCIS is incorporating the association’s suggested language on this topic into the Form I-140 instructions.

Comment #2: Modify the paragraph in the form instructions which describes the alien beneficiaries for whom a first preference petition under INA section 203(b)(1)(C) may be filed. USCIS is incorporating the association’s modified language on this topic into the Form I-140 instructions.

Comment #3: Expand the language in the form instructions regarding the ability of petitioners to pay the proffered wage to clarify that the petitioner must establish the ability to pay the wage from the time the priority date is established up until the time an immigrant visa is issued to the alien beneficiary. USCIS is adopting the association’s suggestion.

Comment #4: Modify the paragraph in the form instructions “Processing Information Note”, clarifying which officers and employees of the petitioning entity may sign the petition. USCIS is adopting the suggested change.

Comment #5: Retain the “concurrent filing checkbox” in the “For USCIS Use Only” section of the Form I-140. USCIS is eliminating this checkbox as the checkbox is rarely used by Immigration Service Officers (ISOs). Form I-485s may be subsequently filed while the Form I-140 petition is pending and are still considered to be concurrently filed with the I-140 petition. So, whether the checkbox has been filled in is not indicative of whether the petition has been concurrently filed.

Comment #6: Retain the “To be Completed by” section which has been removed from the first page of the form. This checkbox is being eliminated as it is not informative because it is very rarely used. Note: Immigration Service Officers (ISOs) will only recognize a representative for the petitioner in an I-140 petition if a Form G-28 has been properly executed in the original and is present in the file.

Comment #7: Clarify why the amended petition checkbox has been added to Part 2 of the proposed form, where a petitioner may note that the petition being filed is an amended petition and provide the previous petition receipt number. The association expressed concerns that this section may be construed as a requirement to file an amended petition in all instances where information in a previously filed petition must be corrected. As the association notes, USCIS’s published guidance identifies when and if an amended petition must be filed. The purpose of this new section of the form is to prevent the improper rejection of amended petitions that are filed with copies of labor certifications instead of the original labor certification, where the original has already been submitted with a previous petition filing. In addition, the information collected in this section will assist in the identification of the previously filed petition for case matching purposes, if required.

Nonetheless, a clarifying note regarding this section has been added to the proposed form instructions, which explains the purpose of this section.

Comment #8: Modify the amended petition section in Part 2 of the form to reflect that the petition being filed is an amended petition of an “approved” petition. USCIS is not adopting this suggestion as there are instances where a petition is still pending but the petitioner wishes to file an amended petition before the pending petition is approved.

Comment #9: Eliminate “Question 3” in Part 4 of the form, (writing the beneficiary’s name and address in their native alphabet), stating that *“it is burdensome to the petitioner since the beneficiary does not sign the Form I-140 and often does not review it. Often the beneficiary lives abroad. USCIS can and does collect this information elsewhere from the Form G-325A when the beneficiary files an application to adjust status.”*

USCIS may need this information in certain instances in order to validate the facts presented in the petition and supporting documentation, particularly as Form G-325A is not generally submitted in support of the Form I-140 petition. This provision is not considered to be burdensome when other supporting evidence specifically relating to the alien beneficiary must also be provided, to include a labor certification signed in the original by the alien beneficiary in the majority of Form I-140 petitions filed with USCIS.

Comment #10: Modify “Question 8” in Part 4 of the form from *“Is the petition being filed without an original labor certification because the original labor certification is lost?”*, to *“If the petition is being filed without an original labor certification, are you requesting that USCIS request a duplicate labor certification from the Department of Labor?”* USCIS is adopting the association’s modification.

Comment #11: Add a section in Part 5, “Question 2” of the form soliciting for the expiration date of the labor certification. USCIS is adopting the association’s modification.

Comment #12: Modify “Question 8” in Part 6 of the form from “Is this a new position?”, to “Is this a newly created position?” USCIS is adopting the association’s modification.

Comment #13: Elimination of the questions in Part 7 of the form which ask whether the dependents of the alien beneficiary are planning to adjust status or apply for an immigrant visa abroad. USCIS has expanded this part of the form in order to be able to capture data regarding aggregate visa demand for employment based visas. The ability to better assess the number of dependents that will be accompanying the alien beneficiary as employment-based immigrants at the point of filing of the I-140 petition will provide better data in determining pent up demand for employment-based visas and prospective Form I-485 adjustment application filings, based on visa preference classification and country of chargeability. USCIS recognizes that not all I-140 petitions will ultimately be approved and that some aliens may change their minds regarding whether they will file for adjustment of status or apply for a visa abroad. However, over time USCIS will be able to develop and apply algorithms that address these variances in its data analysis in order to produce better data on this topic. Therefore, USCIS is not adopting the association’s recommendation, but will add a clarifying note to the form instructions explaining why the information is being collected.

9. USCIS does not provide payments 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	96,000
b. Number of responses per each Respondent	1
c. Total Annual Responses	96,000
d. Hours per Response	1
e. Total Annual Reporting Burden	96,000

**Annual Reporting Burden**

**The total annual reporting burden hours are 96,000.** This figure was derived by multiplying the number of respondents (96,000) x frequency of response (1) x 1 hour per response.

13. There are no capital or start-up costs associated with this information collection. Any cost burdens to respondents as a result of this collection are identified in item 14. Additionally, there is a \$475 fee charge for this information collection.

14. Annualized Cost Analysis:

a. Printing Cost	\$ 60,480
b. Collection and Processing Cost	\$ 45,539,520
c. Total Cost to Program	\$ 45,600,000
d. Fee Charge	\$ 45,600,000
e. Total Cost to Government	\$ 0

**Government Cost**

The estimated cost of the program to the Government is calculated by using the estimated number of respondents (96,000) x \$475 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, and distributing and processing of this form).

**Public Cost**

**The estimated annual public (fee) cost is \$ 45,600,000.** This estimate is based on the number of respondents (96,000) x (\$475) fee charge.

**The estimated annual burden cost is \$960,000.** This estimate is based on the number of respondents (96,000) x one (1) hour per response x \$10 (Average hourly rate),

15. There has been no increase or decrease in the estimated burden hours previously reported for this collection of information.
16. USCIS does not intend to employ the use of statistics or the publication thereof for this collection of information.
17. USCIS will display the expiration date for OMB approval for this information collection.
18. 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.

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**Stephen Tarragon,**

**Date**

Deputy Chief,

Regulatory Products Division,

U.S. Citizenship and Immigration Services.