

SUPPORTING STATEMENT

Notice of Appeal to the Office of

Administrative Appeals (AAO)

Form No. I-290B

OMB No. 1615 - 0095

A. JUSTIFICATION.

1. When certain non-immigrant or immigrant visa petitions or applications are denied or revoked by USCIS, an affected party may appeal that decision to the Administrative Appeals Office (AAO), or move to reopen or reconsider the service center denial to the service center or district office. Additionally, an affected party may move to reopen or reconsider an adverse decision issued by the AAO subsequent to the service center or district office decision. The information collection required on the Form I-290B is necessary in order for USCIS to make a determination that the appeal or motion to reopen or reconsider meets eligibility requirements, and for the AAO to adjudicate the merits of the appeal or motion to reopen or reconsider.
2. The data collected on Form I-290B is used by USCIS and the AAO 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 assess eligibility is provided by petitioners, applicants, or beneficiaries, or their attorneys or representatives.

Authority: 8 CFR 103.5

3. The use of Form I-290B provides the most efficient means for collecting and processing the required data. Currently USCIS does not employ the use of information technology in collecting and processing information. However, this form has been designated for e-filing under the Business Transformation Project.
4. A review of USCIS' Forms Inventory Report revealed no duplication of effort, and there is no other similar information currently available which can be used for this purpose.
5. The collection of information does not have an impact on small businesses or other small entities.
6. If the information is not collected on Form I-290B USCIS will not be able to establish whether the person filing the appeal or motion meets the requirements set forth in the regulation.
7. There are no special circumstances associated with this information collection.
8. On September 29, 2009, USCIS published a 60-day notice in the Federal Register at 74 FR 49886. USCIS received comments from one commenter on the 60-day notice. The following is a discussion of the comments and USCIS's response. On December 29, 2009, USCIS published a 30-day notice in the Federal Register at 74 FR 68854.

Proposed Revisions to Instructions

(1) Under the heading "When Should I Use Form I-290B?" the commenter recommends that the instructions be amended to clearly indicate all types of petitions and applications that are permitted to be appealed.

Response: If USCIS included a summary of its appellate jurisdiction on the Form I-290B, the agency would be required to update the form any time a new petition or application is introduced or if such jurisdiction shifted to another component. Accordingly, USCIS will not amend the instructions or the form to list the types of petitions and applications that may currently be appealed. However, USCIS does concur that this information should be accessible to the public, and the agency is in the process of publishing and maintaining a current summary of its appellate jurisdiction on the USCIS Web site.

(2)(a) Under the heading "General Instructions" the commenter recommends the following amendments: under the heading, "**A-Number**" on page 2, the language: "This is your client's USCIS (INS) file number" **be amended to** "This is the USCIS (INS) file number, in the event the appeal is filed pro se and an A-Number has been assigned."

Response: USCIS will include the suggested edit in the next revision to the form and instructions.

(b) Under the heading "Appeals" on page 2, the language: "Or you may send these materials to the AAO within 30 days of the date you sign this form" be amended to "Or you may send these materials to the AAO within 30 days of filing the appeal."

Response: USCIS will include the suggested edit in the next revision to the form and instructions.

(3) Under the heading "What Is the Filing Fee?" the commenter recommends that the USCIS include language describing how an appellant may request a fee waiver based on inability to pay or a fee refund for clear service error. In addition, the commenter recommended that the instructions provide the link to USCIS general fee waiver guidance for additional information on determining what constitutes clear service error at:

<http://www.uscis.gov/feewaiver>. Some clarifications and questions related to requesting and processing fee waivers and fee refunds (if the USCIS determines there was clear Service error) include:

(a) If the appellant is seeking a fee waiver due to an inability to pay, the request is made at the time the Appeal and/or Motion is submitted. If the USCIS does not agree that a fee waiver is justified, please provide instructions on the manner and timeline within which the appellant may pay the fee to preserve timely filing of the Appeal and/or Motion to Reopen.

(ii) If the appellant prevails on the appeal and/or motion and believes that the prior result was due to clear Service error, the request is made after the decision is made. Please provide instructions regarding the USCIS's fee refund procedures, including the timeline within which to request the refund.

(b) How is a fee refund obtained if the USCIS, sua sponte, either on the motion or the appeal, determines there was clear service error?

(c) Currently, the instructions state that "The fee will not be refunded." This should be amended to alert appellants that the fees will be refunded in the event of Service error, e.g., "The fee will not be refunded unless there is clear Service error."

Response: USCIS will not amend the form or instructions to include specific language describing the fee waiver process or list the specific link to this guidance on the USCIS Web site. In addition, recommendations/clarification requests for changes to current USCIS fee waiver and fee processing guidance will not be made as part of this information collection. However, while USCIS will not include the specific recommendations in the next revision to the form and instructions, USCIS will amend the instructions in the next revision to generally refer filers to the USCIS home page to find additional information on fee waivers and fee refunds.

(4) Under the heading "Where to File?" the commenter recommends that the instructions be amended to direct the appellant to the USCIS Web site for current information on where to file.

Response: USCIS will include the suggested edit in the next revision to the form and instructions.

Proposed Revisions to form

(1) Under the heading Part 1. Information About You, the commenter recommends the instructions following the parenthetical "(Individual/Business/Organization filing appeal or motion)" be amended to

(Individual/Business/Organization/Attorney/Representative filing appeal or motion)."

Response: USCIS will include the suggested edit in the next revision to the form and instructions.

(2) Under the heading Part 2. Information About the Appeal or Motion, the commenter recommends the boxes be restructured as follows:

A. ___ I am filing an appeal, and

(i) ___ My brief and/or additional evidence is attached;

(ii) ___ My brief and/or additional evidence will be submitted to the AAO within 30 days; OR

(iii) ___ No supplemental brief and/or additional evidence will be submitted.

B. ___ I am filing a motion to reopen and/or reconsider a decision, and

(i) ___ My brief and/or additional evidence is attached; OR

(ii) ___ No supplemental brief and/or additional evidence will be submitted.

Additionally, it would be helpful to note under Part 2, that if Form I-290B is filed as an appeal, the appeal will first be considered by the USCIS office that made the unfavorable decision as a motion to reopen/reconsider, but if Form I-290B is filed as a motion to reopen/reconsider the motion will not be sent to the Administrative Appeals Office following a decision not to reopen/reconsider a matter. A clarification of the difference between a motion to reopen and motion to reconsider would also be helpful.

Response: USCIS will not amend the form to include the suggested edit regarding restructuring the form. Additionally, USCIS will not add a clarification about the difference between motions to reopen and reconsider on the form. The current instructions on the form contain a reference to 8 CFR 103.5 which lists the requirements for each motion type. However, in the next revision to the form and instructions, USCIS will include the suggested language noting that appeals are first considered as motions prior to being sent to the Administrative Appeals Office.

9. USCIS does not provide payments or gifts to petitioners or applicants 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 Appeals	30,000
b.	Number of Responses	1
c.	Hours per Response	1.50
d.	Total Annual Reporting Burden	45,000

Annual Reporting

Total annual reporting burden hours is 45,000. This figure was derived by multiplying the number of respondents (30,000) x frequency of response (1) x 1.5 hours (90 minutes) per response.

13. There are no capital or start up costs associated with this information collection. However, there is a fee charge of \$585.

14. **Annualized Cost Analysis:**

a.	Printing Cost	\$	16,200
b.	Collection and Processing Cost	\$	17,533,800
c.	Total Cost to Program	\$	17,550,000
d.	Fee Charge	\$	17,550,000
e.	Total Cost to Government	\$	0

Government Cost

The estimated cost of the program to the Government is calculated by multiplying the estimated number of respondents (30,000) multiplied (x) \$585 fee charge. In addition this figure includes the estimated overhead cost of \$16,200 for printing, stocking, distributing and processing of this form.

Public Cost

The estimated annual public fee cost is \$17,550,000. The estimated cost of the program to the public is calculated by multiplying the estimated number of respondents (30,000) multiplied (x) \$585 fee charge.

The estimated annual public burden cost is \$450,000. This estimate is calculated by multiplying the number of respondents 30,000, x number of responses (1) x 1.5 hours (90 minutes) per response x \$10 (average rate).

15. There is an increase of 30,000 annual burden hours previously reported for this information collection. USCIS has mistakenly reported that it takes 30 minutes to complete this form while it actually takes 90 minutes.

16. USCIS does not intend to employ the use of statistics or the publication thereof for this collection of information.
17. DHS will not display the expiration date for this information collection on the form.
 - a. Displaying the expiration date serves no useful purpose for USCIS information collections, confuses the public, and requires USCIS to expend scarce fee revenue to re-program automated systems in order to change the expiration date.
 - b. At any given time there are numerous forms on the USCIS Web site that have dates on them that indicate that the form has “expired.”
 - c. The public, which is mostly unfamiliar with the Paperwork Reduction Act, does not know what that date means. Our experience indicates that much of the public interprets that date as meaning that the form has actually expired and thus there must be a current version available elsewhere.
 - d. USCIS call centers receive numerous unnecessary inquiries about the “new” form when the version on the Web site has “expired” while USCIS awaits OMB approval of a revision or extension of the currently approved information collection.
 - e. USCIS has recently posted a notice on its Web site informing the public that a form on that site that indicates that it has expired is still valid and accepted, which renders the expiration date meaningless.
 - f. In the case of a request for an extension of an approved information collection, many of which USCIS must provide annually, the only change

on the form may be the expiration date. In that case, the USCIS centralized Lockbox intake facility still must re-program its software to update it for the current version of the form at a cost of \$1,000. More extensive changes are more costly.

- g. Not displaying the expiration date on the form would allow USCIS to forego reprogramming costs in the case of a simple extension.

Accordingly, USCIS requests permission to not display the expiration date of this information collection because displaying the expiration date confuses the public, serves no purpose, and may require inefficient expenditure of fee revenue collected from those who have requested immigration benefits.

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.

Sunday Aigbe,

Date

Chief,

Regulatory Products Division,

Department of Homeland Security.