

**SUPPORTING STATEMENT FOR REQUEST FOR OMB APPROVAL  
UNDER THE PAPERWORK REDUCTION ACT OF 1995**

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## SUPPORTING STATEMENT

### APPLICATION FOR ALIEN EMPLOYMENT CERTIFICATION

#### A. Justification

##### *A.1. Circumstances that make the collection of information necessary.*

The information collection is required by section 212(a)(5)(A)(iii) and section 214(c) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1182(a)(5)(A)(iii) and § 1184(c)) and 8 CFR 204.5(k)(4)(ii). The INA mandates the Secretary of Labor to certify that any alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is not adversely affecting wages and working conditions of U.S. workers similarly employed and that there are not sufficient U.S. workers able, willing, and qualified to perform such skilled or unskilled labor. Before any employer may request any skilled or unskilled alien labor, it must submit a request for certification to the Secretary of Labor containing the elements prescribed by the INA or, in limited circumstances, apply for a waiver thereof with the Department of Homeland Security (DHS). One of the forms used for this purpose is the Form ETA-750. The form can be found online at <http://www.foreignlaborcert.doleta.gov/pdf/eta750a.pdf> and <http://www.foreignlaborcert.doleta.gov/pdf/eta750b1.pdf>

The Form ETA 750, part A, is utilized to collect information that permits the Department of Labor (Department) to meet federal responsibilities for administering the professional athlete labor certification program for both temporary and permanent athletes. The H-2B program establishes a means for employers to bring nonimmigrant aliens to the U.S. to perform nonagricultural work of a temporary or seasonal nature as defined in 8 U.S.C. § 1101 (a)(15)(H)(ii)(b) and explained in 8 CFR § 214.2(h)(6). Professional athletes are included in the H-2B program. Section 212(a)(5)(A)(iii) of the INA deals specifically with professional athletes coming to the United States on a permanent basis.

The Form ETA 750 Part B is used by the Department to collect information about the professional athlete on whose behalf an application for permanent labor certification is filed. Part B is also required by the DHS for aliens applying for the National Interest Waiver (NIW) of the job offer requirement. Part B provides detailed information about an alien's education and work history as required and explained in 8 CFR § 204.5(k)(4)(ii).

##### *A.2. How, by whom, and for purpose the information is to be used.*

In order to meet its statutory responsibilities under the INA, the Department needs to extend an existing collection of information pertaining to employers seeking to import foreign labor. The form used to collect the information is used not only by the Department, but also other federal agencies in furtherance of meeting the requirements of the INA. The Department uses the information collected to implement its temporary and permanent professional athlete programs. The DHS' U.S. Citizenship and Immigration Services (USCIS) utilizes the form for its National Interest Waiver program (NIW) for employment based immigration.

Employers and individuals wishing to utilize one of the above-mentioned programs submit a completed form to the appropriate office of the Department or DHS. The H-2B program requires the employer to submit the application to the National Processing Center (NPC) of the Department in Chicago. Employers wishing to hire professional athletes from abroad on a permanent basis must submit the form to the National Processing Center (NPC) of the Department in Atlanta. Individuals or employers applying for a national interest visa waiver of the job offer requirement must submit the form directly to DHS' USCIS.

The receiving agency will review the application to assure that it is signed, completed, contains no obvious inaccuracies, and is not, on its face, inconsistent with the documentation submitted in support of the application. DHS utilizes the form to analyze the alien's background and experience for the NIW.

*A.3. Extent to which collection is automated, reasons for automation, and considerations for reducing impact on burden.*

This form is available via the Internet through ETA's home page at <http://www.foreignlaborcert.doleta.gov/pdf/eta750a.pdf> and <http://www.foreignlaborcert.doleta.gov/pdf/eta750b1.pdf>

*A.4. Efforts to identify duplication – why similar information already available cannot be used for purpose described in A.2.*

The procedures and documentation requirements are sufficiently specific to avoid duplication of activities.

*A.5. Efforts to minimize burden on small businesses.*

The information collection is required of small businesses who want to import foreign labor. However, the recordkeeping requirements largely involve information, which already exists in payroll and other records kept by most employers for other purposes.

*A.6. Consequences to Federal program if collection not done or done less frequently and any technical or legal obstacles to reducing the burden.*

The Department would be in direct violation of law and regulations if this information was not collected.

*A.7. Special circumstances for conducting information collection.*

There are no special circumstances that would require the information to be collected or kept in any manner other than those normally required under the Paperwork Reduction Act.

*A.8. Summary of public comments.*

In accordance with the Paperwork Reduction Act of 1995, the public was given 60 days to comment by way of a *Federal Register* Notice August 20, 2010 (Vol 75, Page 51484). The Department received no comments.

*A.9. Explanation of decision to provide any payment or gift to respondents.*

No payments or gifts will be made to respondents.

*A.10. Assurance of confidentiality provided to respondents.*

The information collected is not exempt from disclosure under the Freedom of Information Act.

*A.11. Justification for any sensitive questions.*

The information collections do not involve sensitive matters.

*A.12. Estimated hourly burden.*

The Department estimates approximately 2,035 submissions/responses a year will be submitted either to the Department or to the Department of Homeland Security (DHS). The Department estimates that approximately 35 applications will be submitted per year to ETA and approximately 2,000 will be submitted to DHS for their National Interest Waiver program. The ETA figure includes one H-2B application, and 34 permanent athlete applications. This is a decrease of

36,600 submissions/responses over ETA's previous estimate. This change is due to a different form now being used for the temporary certification process (OMB control number 1205-0466).

The public reporting burden for the collection of information is estimated to average: (1) permanent applications (both parts A and B) - 2.8 hours per response; (2) H-2B applications (part A only) - 1 hour per response; and NIW applications (part B only) – 1.8 hours per response. These estimates include the time for reviewing instructions, searching existing information/data sources, gathering and maintaining information, completing and reviewing the application, and providing notice of the filing.

The overall hours needed for each respondent to produce the required information:

Permanent, Athletes	34	x	2.8 hour	=	95
Permanent, NIW	2,000	x	1.8 hour	=	3,600
Temporary H-2B	1	x	1 hour	=	1
					=====
Total Hours					3,696

Therefore, for the reasons stated above, the average hourly burden distributed among all programs for completing the forms is 1.8 hours.

It is difficult to estimate the costs involved in completing the ETA-750. The Department believes that in most companies a Human Resources Manager will perform this activity. In estimating employer staff time costs, the Department used the hourly wage rate for a Human Resources Manager (\$39.31), as published by the U.S. Department of Labor's Occupational Employment Statistics OnLine,<sup>1</sup> and increased by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of \$56.21.

Total annual respondent hourly reporting costs for the ETA-750 are 3,696 hours x \$56.21 = \$207,752

*A.13. Estimated cost burden to respondents.*

- a) Start-up/capital costs: There are no start-up costs. There is no obligation to own a computer to participate in the program. Anyone without computer access can request the form from OFLC.

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<sup>1</sup> Source: Bureau of Labor Statistics 2010 OES wage data.

b) Annual costs: There are no annual costs involved with operation and maintenance because ETA will be responsible for the annual maintenance costs for the free downloadable forms.

*A.14. Estimated cost burden to the Federal government.*

The average Federal Government cost for the year of operation is estimated at \$225,173 calculated as follows:

Estimated Hours and Cost - Data Entry/Review

<u>Staff Cost Per Application</u>		
Professional (14 level, step 2)		
\$38.52 x 2½ hour	=	\$ 96.30
Clerical (6 level, step 3)	+	
\$ 14.35 x 1 hour	=	<u>\$ 14.35</u>
		\$110.65
<u>Estimated Total Cost</u>		
Staff \$110.65 x 2,035		= \$225,173

*A.15. Reasons for any program changes reported in Items 13 or 14 of the OMB Form 83-1.*

The annual burden for these information collections decreased from 56,426 to 3,696 hours resulting in a decrease of 52,730 hours over ETA's previous estimate. This change is due to new regulations by the Department for its temporary labor certification programs, which now use ETA Form 9142 (OMB 1205-0466). The ETA Form 750 parts A and B are used for certifications for professional athletes at the Department of Labor and the National Interest Waiver program at USCIS. The burden for the programs that use the forms has been accounted for above and the decreased burden due to the temporary labor certification programs has been shifted to the information collection under that control number.

*A.16. Method for publishing results.*

No collection of information will be published.

*A.17. If seeking approval not to display the expiration date for OMB approval, explain why display would be inappropriate.*

The Department will display the expiration date for OMB approval on both Part A and Part B.

*A.18. Explanation of each exception in the certification statement identified in Item 19 "Certification for Paperwork Reduction Act Submissions" on OMB Form 83-1.*

The Department is not seeking any exception to the certification requirements.

**B. Collection of Information Employing Statistical Methods**

No statistical methods are employed.