

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

Online Application for Nonimmigrant Visa

**OMB Number 1405-0182
DS-160**

A. JUSTIFICATION

1. The Immigration and Nationality Act (“INA”), 8 U.S.C. 1101 et seq., statutorily mandates the application and eligibility requirements for aliens seeking to obtain nonimmigrant visas. INA Section 221(a) [8 U.S.C. § 1201] (Attachment 1) provides that a consular officer may issue a nonimmigrant visa to an alien who has made proper application therefor. INA Section 222(c) [8 U.S.C. § 1202] (Attachment 2) specifically requires that, “Every alien applying for a nonimmigrant visa and for alien registration shall make application therefor in such form and manner as shall be by regulations prescribed. In the application the alien shall state his full and true name, ...and such additional information necessary to the identification of the applicant, the determination of his eligibility for a nonimmigrant visa, and the enforcement of the immigration and nationality laws as may be by regulation prescribed.” The Department of State’s regulations pertaining to nonimmigrant visas under the INA are published at 22 CFR 41. The requirement pertaining to filing an application for a nonimmigrant visa is specifically provided for in 22 CFR 41.103 (Attachment 3).
2. Department of State consular officers will use the information provided to fulfill the legal requirements identified in item 1 above. The information requested on the form is limited to that which is necessary for consular officers to determine efficiently the eligibility and classification of an alien seeking a nonimmigrant visa. This determination would not be possible without collecting this information.
3. The Department has developed an application process that will allow respondents to electronically submit their applications to the Department. The applicant will go to an internet website, <https://ceac.state.gov/genniv/>, to begin the application process. The applicant will be asked to provide answers to a series of standardized questions. Depending on the applicant’s answers to these standard questions, the applicant will be asked specific questions concerning their application. For example, all applicants are asked “What is the purpose of your trip to the United States?” If the applicant answers, “fiancé” the applicant will then be directed to answer questions specific to nonimmigrants who are coming to the United States to marry a U.S. citizen. Or, if the applicant answers “student,” the applicant will be asked questions pertaining to his or her education plans. Once the application is completed and the applicant has verified the answers provided, the applicant will electronically sign and submit the application to the Department in electronic form. The applicant may print a copy of the application for record keeping purposes, but no paper copy of the application is submitted to the Department. The applicant will present to the Consular Officer in paper an application confirmation page which will contain a record locator in the form of a 2-D bar code. The consular officer will scan the bar code to electronically retrieve

the application from the computer database. The electronic form will ensure that consular officers have all the necessary information to process the application and will significantly reduce the need for additional paperwork during the applicant's interview. The electronic submission of the application to the Department will allow for the information to be reviewed before the time of an interview.

4. Information collected by the DS-160 is currently duplicative of data gathered from other collections, but, it is the intention of the Department to discontinue these other collections as this electronic submission option becomes fully integrated into the visa application process. Applicants who submit the DS-160 will not be required to submit the other forms that collect the same information.
5. This information collection does not involve small businesses or other small entities.
6. This information collection is essential for determining whether an applicant is eligible for a nonimmigrant visa. An applicant completes the form once per visa application. It is not possible to collect the information less frequently, as consular officers need up-to-date information to determine efficiently whether an applicant is eligible to receive a visa.
7. No such circumstances exist.
8. The Department of State (Visa Services Directorate, Bureau of Consular Affairs) has solicited public comments on this collection via Public Notice published in the *Federal Register*. Five comments were received.

Many of the comments received were technical in nature and unrelated to the information portion of the form. The majority of the technical comments received were addressed by a major technological upgrade to the form released on November 1. Many comments addressed the issue of lost information after session time outs and the inability to retrieve a saved application. With the recently released version, applicants now have the ability to save a partially completed application and retrieve it by entering the application ID and providing identification information. In addition, the DS-160 can now be recovered after a session error. Applicants who lose the connection with their DS-160 can recover their partially completed applications from the database by entering the application ID and providing identification information. Furthermore, applicants will now be able to retrieve a submitted application to print the confirmation page. Applicants who have submitted their applications will be able to reprint their confirmation page by clicking on the "Retrieve Incomplete Application" button on the "getting started" page.

Two outstanding technical comments related to problems that the Department had already identified and is currently working to resolve. The first is that the DS-160 form doesn't work well in the Firefox browser. The Department is aware the form does not work well with internet platforms other than Internet Explorer and is working to remedy this. Until this problem is resolved, however, applicants should try to use the Internet Explorer browser as indicated in the technical instructions. The other technical issue raised in several comments was the problem with the photo upload component of the form. The Department is aware of the issues that applicants have with the photo upload component, and is striving to make this component more streamlined.

There were also many comments that pertained to the non-technical aspects of the form. Several comments suggested an 'approximate date of travel' check box so that applicants

will not have to indicate a precise date of travel. However, there is already text on the form indicating that approximate dates are acceptable.

Another comment suggested that the Department provide an example of the confirmation page, as applicants routinely produce the wrong document. However, with the latest version of the DS-160 applicants will be able to go back and print the confirmation page if they discover that they have printed the wrong page. The Department hopes that this will remedy the problem.

Several comments suggested that the Department increase the burden time for the DS-160. While the Department acknowledges that the DS-160 will take some applicants take more than 75 minutes to complete, we still estimate that it takes the **average** applicant 75 minutes.

Many comments also requested that the Department allow lawyers to submit the DS-160 on their client's behalf. Unfortunately, the Department is not able to accommodate this request. By regulation, the Department is required to capture the "signature" of an applicant to evidence their familiarity with the contents of the application and their intent to be bound by the statements, deemed to be current, accurate and true by the applicant at the point closest in time to the actual issuance or refusal of a visa. The Department has determined that applicants themselves must review and attest to responses attorneys or other third party representatives have drafted in response to questions on the application.

Two comments suggested that every applicant be able to see all of the questions before beginning the application or that applicants be allowed to move through the form on a page-by-page basis. Due to the dynamic and user-guided nature of the DS-160, this is impossible. Many pages have fields that appear based on the responses from the previous page. This is also why applicants cannot print all the questions that they will need to answer prior to having arrived at that page in the application. However, the new version of the form includes a link on the "getting started" portion of the form that explains which documents applicants should have on hand in order to complete the DS-160. The Department hopes this will help users prepare to complete the application without needing to see the questions on the form.

One comment suggested that the DS-160 be compatible with the case management systems used by immigration lawyers and that the Department offer technical support 24 hours a day, 7 days a week. While the Department recognizes the value of compatibility with case management systems and technical support, it is unable to dedicate the necessary resources at this point in time.

One comment suggested that the Department establish easily-accessible kiosks where applicants would be able to apply for the DS-160. Unfortunately, the costs associated with such a scheme would be prohibitive.

Another comment suggested that that lack of the H4 category confused some applicants. The Department agrees that the lack of the H4 category can be confusing, and in the next version of the DS-160 there will be a drop down menu where each applicant indicates his or her own status. However, in the current version, applicants are asked if they are the principal applicant, and if not, in which visa class the principal applicant has applied. The current format allows applicants to indicate their dependent status.

Two comments noted a perceived rigidity in character and number limitations on some of the fields on the DS-160. For the vast majority of applicants, the fields are sufficient, and limiting the types and numbers of characters that can be entered in any given space ensures facility for consular officers.

One comment suggested that it would be easier for applicants not to have to list the companions with whom they are travelling. While the Department understands that some applicants may find it easier not to list travel companions, this is information the Department deems necessary to collect.

In an effort to reduce the time burden of the DS-160, the new version of the form will include specific instructions about how applicants can save an application and reload it into the system at a later date.

The DS-160 solicits information necessary to carry out the nonimmigrant visa program. Visa Services meets regularly with immigration experts of the Department of Homeland Security to coordinate policy. It also meets with student groups, business groups, immigration attorneys and other interested groups to discuss their opinions and suggestions regarding visas procedures and operations.

9. No payment or gift is provided to respondents.
10. In accordance with Section 222(f) of the INA (Attachment 4), information obtained from applicants in the nonimmigrant process is considered confidential and is to be used for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States.
11. The questions in the collection are designed to solicit the information necessary to determine whether an applicant is eligible for a nonimmigrant visa under Section 101(a)(15) of the INA. Consular officers may not issue a visa to aliens who are ineligible under Section 212(a) of the INA unless, where authorized under the INA, the Department of Homeland Security grants a waiver. In order to enforce this provision of the law, the application form specifically asks for information on a variety of issues, including information concerning the alien's health, criminal offenses, narcotics addiction, political affiliation with subversive organizations and participation in genocide or terrorist activities. In addition, questions concerning the applicant's marital status, employment and financial support are necessary to identify the applicant and to assist in determining eligibility for a nonimmigrant visa. As noted in 10 above, such information is considered confidential under Section 222(f) of the INA.
12. The Department expects that approximately 6.5 million aliens will complete the form each fiscal year. Finding the necessary background information and filling out the entire form is estimated to take the average applicant one hour and fifteen minutes. Therefore, the annual hour burden to respondents is estimated to be 8,125,000 hours.
13. The Department of State charges an application processing fee of \$140 per application for the vast majority of nonimmigrant visa applicants. Therefore, we estimate that the total cost burden for the collection to be \$ 910,000,000.
14. Section 140(a) of the Foreign Relations Authorization Act for Fiscal Years 1994 and 1995, Public Law 103-236 (Attachment 5) authorizes the Department to collect a visa fee from nonimmigrant visa applicants. The fee was established to cover the cost of processing

nonimmigrant visa applications. The Department estimates that the costs to the Federal Government of processing a single nonimmigrant visa application are \$136.93. The estimated annual cost to the Federal Government is therefore \$890,045,000 (\$136.93 x 6,500,000 applications). Both direct and indirect costs are included in the calculation. Direct costs include salaries and expenses and indirect costs consisting of a broad range of support costs related to consular services.

15. The collection has been revised to include questions specific to K visa applicants, previous spouse information, domestic partner information, A and G visa questions regarding the applicant's mission, human trafficking ineligibility questions, and background questions for Iraqi and Afghani applicants. Since burden time is based on our average B1/B2 applicant and the additions to the application do not affect these applicants, the burden time remains the same. Due to a decreased demand for nonimmigrant visas, the Department anticipates fewer DS-160 applications than in the past. The decrease in burden cost is due to the decreased number of applicants, despite an increase in the cost of each individual application.
16. A quantitative summary of all Department of State visa activities is published in the annual Report of the Visa Office.
17. The Department will display the expiration date for OMB approval of the information collection.
18. The Department is not requesting any exception to the certification statement.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

Attachment 1:

INA Section 221(a) [8 U.S.C. § 1201]

(a)

- (1) Under the conditions hereinafter prescribed and subject to the limitations prescribed in this Act or regulations issued thereunder, a consular officer may issue (A) to an immigrant who has made proper application therefor, an immigrant visa which shall consist of the application provided for in section 222, visaed by such consular officer, and shall specify the foreign state, if any, to which the immigrant is charged, the immigrant's particular status under such foreign state, the preference, immediate relative, or special immigrant classification to which the alien is charged, the date on which the validity of the visa shall expire, and such additional information as may be required; and (B) to a nonimmigrant who has made proper application therefor, a nonimmigrant visa, which shall specify the classification under section 101(a)(15) of the nonimmigrant, the period during which the nonimmigrant visa shall be valid, and such additional information as may be required.
- (2) The Secretary of State shall provide to the Service an electronic version of the visa file of each alien who has been issued a visa to ensure that the data in that visa file is available to immigration inspectors at the United States ports of entry before the arrival of the alien at such a port of entry.

Attachment 2:

Section 222(c) [8 U.S.C. § 1202]

(c) Every alien applying for a nonimmigrant visa and for alien registration shall make application therefor in such form and manner as shall be by regulations prescribed. In the application the alien shall state his full and true name, the date and place of birth, his nationality, the purpose and length of his intended stay in the United States; his marital status; and such additional information necessary to the identification of the applicant, the determination of his eligibility for a nonimmigrant visa, and the enforcement of the immigration and nationality laws as may be by regulations prescribed. The alien shall provide complete and accurate information in response to any request for information contained in the application. At the discretion of the Secretary of State, application forms for the various classes of nonimmigrant admissions described in section 101(a)(15) may vary according to the class of visa being requested.

Attachment 3:

CFR § 41.103 Filing an application.

(a) *Filing an application*—

- (1) *Filing of application required.* Every alien seeking a nonimmigrant visa must make an electronic application on Form DS-160 or, as directed by a consular officer, an application on Form DS-156. The Form DS-160 must be signed electronically by clicking the box designated “Sign Application” in the certification section of the application.
- (2) *Filing of an electronic application (Form DS-160) or Form DS-156 by alien under 16 or physically incapable.* The application for an alien under 16 years of age or one physically incapable of completing an application may be completed and executed by the alien's parent or guardian, or, if the alien has no parent or guardian, by any person having legal custody of, or a legitimate interest in, the alien.
- (3) *Waiver of filing of application when personal appearance is waived.* Even if personal appearance of a visa applicant is waived pursuant to 22 CFR 41.102, the requirement for filing an application is not waived.

(b) **Application.**

- (1) *Preparation of Electronic Nonimmigrant Visa Application (Form DS-160), or, alternatively, Form DS-156.* The consular officer shall ensure that the application is fully and properly completed in accordance with the applicable regulations and instructions.
- (2) *Additional requirements and information as part of application.* Applicants who are required to appear for a personal interview must provide a biometric, which will serve to authenticate identify and additionally verify the accuracy and truthfulness of the statements in the application at the time of interview. The consular officer may require the submission of additional necessary information or question an alien on any relevant matter whenever the consular officer believes that the information provided is inadequate to permit a determination of the alien's eligibility to receive a nonimmigrant visa. Additional statements made by the alien become a part of the visa application. All documents required by the consular officer under the authority of §41.105(a) are considered papers submitted with the alien's application within the meaning of INA 221(g)(1).
- (3) *Signature.* The Form DS-160 shall be signed electronically by clicking the box designated “Sign Application” in the certification section of the application. This electronic signature attests to the applicant’s familiarity with and intent to be bound by the statements in the NIV application under penalty of perjury. Alternatively, except as provided in paragraph (a)(2) of this section, the Form DS-156 shall be signed by the applicant, with intent to be bound by all statement in the NIV application under penalty of perjury.
- (4) *Registration.* The Form DS-160, or the Form DS-156, when duly executed, constitutes the alien's registration record for the purposes of INA 221(b).

Attachment 4:

INA Section 222(f) [8 U.S.C. 1202]

- (f) The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States, except that—
- (1) in the discretion of the Secretary of State certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interest of the ends of justice in a case pending before the court.
 - (2) the Secretary of State, in the Secretary's discretion and on the basis of reciprocity, may provide to a foreign government information in the Department of State's computerized visa lookout database and, when necessary and appropriate, other records covered by this section related to information in the database--
 - (A) with regard to individual aliens, at any time on a case-by-case basis for the purpose of preventing, investigating, or punishing acts that would constitute a crime in the United States, including, but not limited to, terrorism or trafficking in controlled substances, persons, or illicit weapons; or
 - (B) with regard to any or all aliens in the database, pursuant to such conditions as the Secretary of State shall establish in an agreement with the foreign government in which that government agrees to use such information and records for the purposes described in subparagraph (A) or to deny visas to persons who would be inadmissible to the United States.

Attachement 5:

Section 140(a) of the Foreign Relations Authorization Act for Fiscal Years 1994 and 1995,
Public Law 103-236

(a) SURCHARGE FOR PROCESSING CERTAIN VISAS—

- (1) Notwithstanding any other provision of law, the Secretary of State is authorized to charge a fee or surcharge for processing machine readable nonimmigrant visas and machine readable combined border crossing identification cards and nonimmigrant visas.
- (2) Fees collected under the authority of subsection (a) shall be deposited as an offsetting collection to any Department of State appropriation, to recover the costs of providing consular services. Such fees shall remain available for obligation until expended.
- (3) For fiscal years 1994 and 1995, fees deposited under the authority of paragraph (2) may not exceed a total of \$107,500,000. For subsequent fiscal years, fees may be collected under the authority of paragraph (1) only in such amounts as shall be prescribed in subsequent authorization Acts.
- (4) The provisions of the Act of August 18, 1856 (Revised Statutes 1726-28; 22 U.S.C. 4212-14), concerning accounting for consular fees shall not apply to fees collected under this subsection.
- (5) No fee or surcharge authorized under paragraph (1) may be charged to a citizen of a country that is a signatory as of the date of enactment of this Act to the North American Free Trade Agreement, except that the Secretary of State may charge such fee or surcharge to a citizen of such a country if the Secretary determines that such country charges a visa application or issuance fee to citizens of the United States.