

SUPPORTING STATEMENT

**1125-0001 Application for Cancellation of Removal:
Form EOIR-42A (Application for Cancellation of Removal for Certain Permanent
Residents) and Form EOIR-42B (Application for Cancellation of Removal and
Adjustment of Status for Certain Nonpermanent Residents)**

Part A. Justification

1. Necessity of Information - Effective April 1, 1997, an individual who is removable from the United States may, pursuant to Section 240A of the Immigration and Nationality Act (Act), request that the Attorney General cancel his/her removal. To be granted such relief from removal, 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. The application for cancellation of removal is bifurcated into Form EOIR-42A, for Certain Permanent Residents, and Form EOIR-42B, Adjustment of Status for Certain Nonpermanent Residents, to reflect the two forms of relief now available as cancellation of removal. Form E-42B contains two separate forms of relief. In addition to cancellation of removal for nonpermanent residents, this form also contains a relief called Special Rule for Battered Spouse or Child ("special rule cancellation") developed under the Violence Against Women Act. Each applicant for cancellation of removal will file one application 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 to

permit the applicant to remain in the United States. Changes were made to both forms.

EOIR made changes to both forms in order to clarify the eligibility requirements for this form of relief. Both forms contain general informational sections that describe the eligibility standards. EOIR renamed this section, found at pages 1-2 of both forms, "Information for Applicant" from "Advice to Applicant."

EOIR amended this general information section on Form E-42A in two additional ways. First, EOIR revised section (I)(C) to add that the term "aggravated felony" is defined under the Immigration and Nationality Act (INA). Second, EOIR added a section (I)(D) to include the eligibility requirement that an applicant demonstrate that he or she warrants a favorable exercise of discretion. As this new section was added, it was necessary to move a semicolon and the word "and" to demonstrate that all elements are required. EOIR changed this general information section on Form E-42B in four ways. First, section (I)(A)(3) was revised to separate the two distinct eligibility criteria into two sections.

Accordingly, EOIR moved "you are deserving of a favorable exercise of discretion" from (I)(A)(3) to a new section (I)(A)(4). As this new section was added, it was necessary to move a semicolon and the word "and" to demonstrate that all elements are required. Second, section (I)(B)(2) was amended in order to reflect the proper legal standard for physical presence for Special Rule Cancellation. EOIR deleted the existing language and added a new section

(I)(B)(2). Third, EOIR added a new section (I)(B)(3) in order to reflect the proper legal standard for establishing the good moral character requirement and to highlight the particular exceptions to this requirement. As a new section was added, the remaining numbers were renumbered accordingly. Fourth, an “or” was inserted to section (II)(F) to correct a typographical error.

Both Form E-42A and E-42B contain an instructional section. EOIR inserted a Privacy Act Notice in both forms to comply with that Act’s provisions.

Additionally, EOIR changed Form E-42B by inserting instructional information to applicants about the different hardship standards they must establish for cancellation of removal and for special rule cancellation of removal, and which relatives would qualify under those hardship standards.

EOIR made changes to both Form E-42A and E-42B. A number of companion changes were made to each form. EOIR amended question 10 of both forms from a compound question to one with two subparts to ensure that applicants answer both items. On page 1 of both forms, two inches were provided at the bottom margin to ensure enough space for court stamps. EOIR added subpart letters at question 21 of both forms to distinguish among the three separate questions within that question. A subpart “c)” was added to question 24 of both forms to account for another mode by which an applicant may have departed the United States. EOIR added subpart letters at question 25 of both forms and a subpart “c)” was added to denote whether an applicant has a common-law spouse. EOIR

added subpart letters at question 33 of both forms to distinguish among the four questions within that question. The word “first” was inserted by EOIR to companion questions 37 and 38 on E-42A and E-42B to provide clarification. EOIR inserted a phrase instructing how real estate values should be calculated into companion questions 39 and 40/51 on E-42A and E-42B. Additional forms of public assistance were added to companion questions 40/44 and 41/46 of E-42A and E-42B. EOIR added a new column at companion questions 42 and 43 of E-42A and E-42B to provide the sex of an applicant’s children. A new question 45 was added to Form E-42B to allow applicants to provide details about hardships their qualifying relatives may face if the applicant is removed from the U.S. Because this new question was added, the remaining questions on Form E-42B were renumbered accordingly. All subsequent reference to question numbers on Form E-42B will refer to this new numbering. EOIR corrected typographical errors on companion questions 42 and 43 and questions 45 and 47 on the E-42A and E-42B. EOIR added subpart letters to companion questions 43 and 44 of E-42A and E-42B to distinguish among the three questions asked within that question. Subpart letters were added to companion questions 56 and 62 at E-42A and E-42B to distinguish among the three questions asked within that question. Subpart letters were added to companion questions 57 and 63 to distinguish among the eleven questions asked within that question.

Finally, EOIR changed the revision date on both forms to note that the most recent revision is 2011, not 2008.

2. Needs and Uses - The application for cancellation of removal (Form EOIR-42A or Form EOIR-42B) 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 cancellation of removal. The authority to adjudicate the application for cancellation of removal has been delegated to the 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-42A and Form EOIR-42B are available on the 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, the EOIR does not have the automated capability in place to accept electronic submission of forms. However, the 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 cancellation of removal for an alien in immigration proceedings is to file the Form EOIR-42A

or Form EOIR-42B. A review of the EOIR's forms revealed no duplication of effort, and there is no other 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 of establishing his or her eligibility for cancellation of removal.

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 will be published in the Federal Register. A 30-day notice covering

this collection will be published in the Federal Register. Copies of these notices are attached. If comments are received, they will be considered and incorporated where appropriate.

9. Payment or Gift to Claimants - The EOIR does not provide any payment or gifts to parties in immigration proceedings.

10. Assurance of Confidentiality - The original application is maintained by the 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-42A and Form EOIR-42B is protected by the 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 cancellation of removal and to determine his/her legal right to remain in the United States. See number 10 immediately above.

12. Estimate of Hour Burden

a. Number of Respondents	25,627
b. Number of Responses per Respondent	1 each

c. Total Annual responses	25,627
d. Hours per response	5 hours, 50 minutes
e. Total annual hourly reporting burden	149,405

The total annual reporting burden is derived by multiplying the number of respondents (25,627) by the frequency of response (1) by the number of hours per response (5 hours, 50 minutes or 5.83):

25,627 respondents x 1 response per respondent x 5.83 hours per respondent = 149,405 burden hours.

13. Estimate of Cost Burden

There are no capital or start-up costs associated with this information collection.

The estimated total public cost is a maximum of \$10,661,945. This estimate is derived by multiplying the burden hours of 149,405 by the estimated practitioner cost of \$54.21/hr., plus a filing fee of \$100 per respondent.

149,405 burden hours x \$54.21/hr. (estimated practitioner cost) = \$8,099,245

\$100 filing fee x 25,627 respondents = \$2,562,700

\$8,099,245 + \$2,562,700 = \$10,661,945

These costs are estimates with respect to the burden on the public and may vary greatly depending on whether a respondent uses a practitioner for assistance in completing the form, the level of detail a respondent includes in the form and whether the respondent seeks a waiver of the filing fee. The amount of \$10,661,945 represents the maximum estimate of cost burden. The EOIR recognizes that a certain portion of the respondents will not retain a practitioner to

assist them in filling out the form; accordingly, not every respondent will incur the practitioner's fees. The practitioner fee represents the median hourly wage for lawyers, as reported by the Bureau of Labor Statistics. For those individuals who proceed without a practitioner, there is an estimated cost of \$10 per hour for completing the form (the individuals' time and supplies) in lieu of the practitioner cost. This amount to the individual is not included as it is less than the estimated practitioner cost and would not add to the maximum estimate of \$10,661,945. Additionally, respondents may seek to have the \$100 filing fee waived by requesting a waiver from an Immigration Judge or submitting form E-26A.

14. Estimated Cost to the Federal Government - It is estimated that the annual cost for printing, distributing, stocking, processing, and maintaining the Form EOIR-42A and Form EOIR-42B is \$33,315.10 (derived by multiplying the 13 pages of the form by an estimated \$0.10 per copy by the estimated 25,627 applicants per year). We note that the Form EOIR-42A has 12 pages while the Form EOIR-42B has 13 pages; the calculations were based on the larger number as a comprehensive estimate.

15. Reasons for Change in Burden - There is an approximate 114% increase in total burden hours, to an estimated 149,405 burden hours, due to both an increase in the number of applicants and a change in EOIR's database program. Under EOIR's new system, the number of applications is more accurately recorded. The annual response number of 25,627 was reached by averaging the total number of

forms received during the past three fiscal years. There is no change in burden hours per form at this time due to the agency-initiated program change. The present burden hours are 69,960.

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

17. Exceptions to the Certification Statement- The 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.