

SUPPORTING STATEMENT

OMB No. 1125-0009

Application for Suspension of Deportation Form EOIR-40

Part A. Justification

1. Necessity of Information Collection - Certain individuals who are deportable from the United States may be eligible to request that the Attorney General suspend their deportation and adjust their status under former section 244 of the Immigration and Nationality Act (INA). *See also* 8 C.F.R. § 1240.55 (2011). To be granted such relief from deportation, the applicant must prove that s/he meets all the statutory prerequisites for such relief and that s/he is entitled to a favorable exercise of discretion. Each applicant for suspension of deportation will file one application (Form EOIR-40) based on the individual facts and circumstances in his/her case. The form contains information, such as identifying characteristics, residence, 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. The authority to adjudicate the application for suspension of deportation has been delegated to immigration judges by the Attorney General.

EOIR made changes to the form in order to clarify the eligibility requirements for this form of relief. The form contains a general informational section that describes the eligibility standards. EOIR renamed this section, found at page 1 of the form, "Information for Applicant" from "Advice to Applicant."

EOIR amended this general information section in four additional ways. First, EOIR added a phrase at the end of the first sentence of (I) to indicate that an applicant's deportation proceedings must have commenced prior to April 1, 1997, for the applicant to be eligible for suspension of deportation. Second, the first "Note" provision following (I)(A) was amended to reflect the proper eligibility requirements for applicants and/or their children who have been battered or subjected to extreme cruelty. Third, EOIR added a section (I)(D) to include the eligibility requirement that an applicant demonstrate that s/he 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. And, finally, "U.S. Citizenship and Immigration Services" was added before "USCIS," and parentheses were placed around "USCIS."

The following changes were made to the Form E-40's instructional section: EOIR inserted a Privacy Act Notice to comply with the Privacy Act; EOIR inserted instructional information to applicants about the different hardship standards they must establish for suspension of deportation, which relatives would qualify under those hardship standards, and information specific to applicants and/or their children who have been battered or subjected to extreme cruelty; and EOIR made some minor language edits.

EOIR made changes to the substantive portions of the Form E-40. EOIR amended question 10 from a compound question to one with two subparts to ensure that applicants

answer both items. On page 1 of the form, two inches were provided at the bottom margin to ensure enough space for court stamps. EOIR added subpart letters at question 21 to distinguish among the three separate questions within that question. A subpart “c)” was added to question 24 to account for another mode by which an applicant may have departed the United States. EOIR added subpart letters at question 25 and a subpart “c)” was added to denote whether an applicant has a common-law spouse. EOIR added subpart letters at question 33 to distinguish among the four questions within that question. The word “spouse’s” was added in two places in question 34: before “place(s)” and “employer.” In question 36, EOIR inserted “spouse was” after “If,” and “spouse’s” after “name of” in the first box. The word “first” was inserted by EOIR to question 38 to provide clarification. EOIR inserted a phrase into questions 40 and new question 51 instructing how real estate values should be calculated. Additional forms of public assistance were added to questions 41 and 45. EOIR added a new column at question 43 to capture the sex of an applicant’s children, and corrected a typographical error in that question. Subparts were added to the questions contained within question 44. A new question 45 was added to allow applicants to provide details about hardships their qualifying relatives may face if the applicant is deported from the U.S. Because this new question was added, the remaining questions were renumbered accordingly. All subsequent reference to question numbers will refer to this new numbering. EOIR corrected a typographical error at question 47. EOIR added subpart letters to question 61 to distinguish among the three questions asked within that question. Subpart letters were added to question 62 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 2012, not 2008.

2. Needs and Uses - The application for suspension of deportation (Form EOIR-40) 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 suspension of deportation. The authority to adjudicate the application for suspension of deportation has been delegated to 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-40 is available on 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 for completion by typing or printing legibly. Currently, EOIR does not have the automated capability in place to accept electronic submission of forms. However, EOIR is exploring a number of electronic document initiatives, including electronic submission of EOIR forms.

4. Efforts to Identify Duplication - The only method for applying for suspension of deportation for an alien in immigration proceedings is to file the Form EOIR-40. A review of EOIR's forms revealed no duplication of effort, and there is no similar information currently being collected 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 from establishing his or her eligibility for suspension of deportation.

7. Special Circumstances Influencing Collection - None of the eight special circumstances identified in OMB instruction number 7 apply to this collection.

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 - EOIR does not provide any payment or gifts to individuals in exchange for the information provided in Form EOIR-40.

10. Assurance of Confidentiality - The original application is maintained by 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-40 is protected by 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 suspension of deportation and to determine his/her legal right to remain in the United States. *See* number 2, above.

12. Estimate of Hour Burden

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|---|---------------------|
| a. Number of Respondents | 178 |
| b. Number of Responses per Respondent | 1 each |
| c. Total Annual responses | 178 |
| d. Hours per response | 5 hours, 45 minutes |
| e. Total annual hourly reporting burden | 1,023.50 |

The total annual reporting burden is derived by multiplying the number of respondents (178) by the frequency of response (1) by the number of hours per response (5 hours, 45 minutes or 5.75):

178 respondents x 1 response per respondent x 5 hours, 45 minutes per respondent = 1,023.50 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 \$73,284. This estimate is derived by multiplying the burden hours of 1,023.50 by the estimated practitioner cost of \$54.21/hour, plus a filing fee of \$100 per respondent.

$$1,023.50 \text{ burden hours} \times \$54.21/\text{hr. (estimated practitioner cost)} = \$55,484$$

$$\$100 \text{ filing fee} \times 178 \text{ respondents} = \$17,800$$

$$\$55,484 + \$17,800 = \$73,284$$

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 \$73,284 represents the maximum estimate of cost burden. 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 \$73,284. 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 Federal Government - It is estimated that the annual cost for printing, distributing, stocking, processing, and maintaining the Form EOIR-40 is \$213.60 (derived by multiplying the 12 pages of the form by an estimated \$0.10 per copy by the estimated 178 respondents per year).

15. Reason for Change in Burden -The difference in hour burden in the present ICR is due to an agency adjustment, specifically a decrease in the number of respondents. Previously, EOIR estimated 200 respondents annually. At present, there are approximately 178 respondents annually. As the number of hours per response remained the same (5 hours, 45 minutes), the total burden hours decreased from 1,150 to 1,023.50 burden hours, for a difference of 126.5 burden hours. Because of the lower number of respondents, the cost burden similarly decreased to reflect the adjustment for the number of applicants.

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

17. Exceptions to Certification Statement - 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.