

**SUPPORTING STATEMENT FOR
APPLICATION FOR EMPLOYMENT AUTHORIZATION
OMB Control No.: 1615-0040
COLLECTION INSTRUMENT(S): FORM I-765**

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

This document is submitted in support of a request for a revision to a currently approved information collection.

An alien who seeks to be employed in the United States must apply to U.S. Citizenship and Immigration Services (USCIS) for a document evidencing such employment authorization. Aliens authorized to work in the United States must file an Application for Employment Authorization, Form I-765, to request an Employment Authorization Document (EAD), under 8 CFR 274a.13. Employers are required to verify a person's identity and authorization to work in the United States, and the employee is required to provide evidence of his or her authorization to work in the United States. See 8 U.S.C. 1324a(a)(1)(B); 8 CFR 274a.2(b)(1). This evidence, the EAD (Form I-766), establishes identity and employment authorization.

Any individual may be required to submit biometric information if the regulations or form instructions require such information or if requested in accordance with 8 CFR 103.2(b)(9). DHS may collect and store for present or future use, by electronic or other means, the biometric information submitted by an individual. DHS may use this biometric information to conduct background and security checks, adjudicate immigration and naturalization benefits, and perform other functions related to administering and enforcing the immigration and naturalization laws. See 8 CFR 103.16; 8 U.S.C. 1103. Individuals requesting consideration for deferred action under childhood arrival are required to file a Consideration for Deferred Action for Childhood Arrival (DACA), Form I-821D and a Form I-765. These individuals must submit a biometric services fee (\$85) as set forth in the instructions to the Form I-765 and appear at application support centers to provide biometrics.

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

U.S. Citizenship and Immigration Services (USCIS) uses Form I-765 to collect the

information that is necessary to determine if an alien is eligible for an initial EAD, a new EAD, or an interim EAD. Aliens in many immigration statuses are required to possess an EAD as evidence of work authorization. To be authorized for employment, an alien must be lawfully admitted for permanent residence or authorized to be so employed by the Immigration and Nationality Act (INA) or under regulations issued by DHS. Pursuant to statutory or regulatory authorization, certain classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes. USCIS may determine the validity period assigned to any document issued evidencing an alien's authorization to work in the United States. These classes are listed in 8 CFR 274a.12. DACA recipients may apply for employment authorization if they can demonstrate economic necessity.

USCIS will consider deferring action in cases involving individuals who were brought to the United States as young children and meet the following guidelines:

1. Were under the age of 31 as of June 15, 2012;
 2. Came to the United States before reaching their 16th birthday;
 3. Have continuously resided in the United States since June 15, 2007, up to the present time;
 4. Were present in the United States on June 15, 2012, and at the time of making their request for consideration of deferred action with USCIS;
 5. Entered without inspection before June 15, 2012, or their lawful immigration status expired as of June 15, 2012;
 6. Are currently in school, has graduated or obtained a certificate of completion from high school, have obtained a general education development certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
 7. Have not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

These individuals will be considered for relief from removal from the country or from being placed into removal proceedings for a period of two years subject to renewal, and, if DHS defers action, they may apply for an employment authorization document.

USCIS also collects biometric information from certain EAD applicants, from whom USCIS has not previously collected biometrics in connection with an underlying application or petition, to verify the applicant's identity, check or update their background information, and produce the EAD card.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

Form I-765 may be submitted electronically by the majority of EAD applicants. USCIS will not allow electronic filing for applicants who are eligible due to approval of a request for consideration of deferred action for childhood arrivals because those individuals must submit this form concurrently with the request for deferred action under childhood arrivals.

This form resides on the USCIS Web site at www.uscis.gov/i-765/ and can be completed and filed electronically by accessing the following link <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3325b75d8e5e6310VgnVCM100000082ca60aRCRD&vgnnextchannel=9059d9808bcbd010VgnVCM100000d1f1d6a1RCRD>. The url that the public will need to access to submit the application electronically, when that is permitted, is <http://www.uscis.gov/e-filing>.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

USCIS programs impose no duplication of efforts because no other instrument, form or program can be used to determine employment authorization. USCIS requires applicants under this control number to provide passport-style photographs. In some instances they are also required to appear at a USCIS Application Support Center (ASC) to provide an electronic photograph and fingerprints. The passport photographs are also used to expedite the creation of the EAD in emergent situations. As USCIS improves its methods and tools for collection of biometrics, it will determine whether or not the requirement for passport-style photographs can be eliminated. . USCIS has sought public comment on this requirement and received no responses. We will continue to seek public input on this issue and address it in future submissions.

USCIS has also investigated the information that may be obtained from other Federal programs and agencies and has determined that the information necessary to determine if the alien is eligible to work in the United States is not available through other Federal sources.

- 5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.**

This collection of information does not have an impact on small businesses or other small entities.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If the information is not collected, USCIS will not be able to fulfill its core mission of providing effective immigration and information services while ensuring the integrity of the immigration system. The adjudicating officer will not be able to determine whether the applicant is eligible for employment authorization. In addition, if the information is not collected, USCIS will have no basis for issuing a secure identity document to applicants who request EADs. The information provided on this form is not available by any other means. This form collects data that makes the adjudication of a request for an EAD possible. EADs provide recipients with secure identification documents, allow them to work legally, and facilitate an employer's verification of employment eligibility.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **Requiring respondents to report information to the agency more often than quarterly;**
- **Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **Requiring respondents to submit more than an original and two copies of any document;**
- **Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**

- **Requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no special circumstances applicable to this information collection. This information collection is conducted in a manner consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. **If applicable, provide a copy and identify the data and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

On August 14, 2012, the Office of Management and Budget approved an emergency request for approval of an information collection, submitted by USCIS requesting expedited approval of changes to Form I-765 and its instructions. The emergency request arose out of the memorandum issued by the Secretary of Homeland Security on June 15th, 2012, stating DHS's decision to defer action for childhood arrivals on cases that meet the criteria identified above in the response to question 2. That emergency request also included DHS' request for approval of form I-765WS, a work sheet that will accompany Form I-765 when DACA recipients request employment authorization based on economic necessity. OMB approved the changes made to Form I-765 and the newly added I-765WS for use until February 28, 2013.

On August 17, 2012, USCIS published a 30-day emergency submission information collection notice (77 FR 49453) informing the public about the above referenced emergency request. In addition, through that notice, USCIS requested comments from the public regarding the changes it made to the form based on the then newly issued guidance related to requests for consideration of deferred action for childhood arrivals. USCIS received comments in response to that publication. An appendix to this

supporting statement summarizes and discusses the nature of those comments and USCIS's responses to those comments. USCIS is making some changes to the form as a result of some of the comments raised by some commenters.

On December 17, 2012, 2012, USCIS published a 60-day information collection notice in the Federal Register at 77 FR 74687. USCIS received two public comment submissions in response to that publication. USCIS's responses can be found on the appendixes attached to this supporting statement.

On February 27, 2013, USCIS published a 30-day information collection notice in the Federal Register at 78 FR 13368. USCIS has received a comment in connection with that publication to date. The comment and USCIS's response to it are included in an appendix attached to this supporting statement.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

USCIS does not provide payments or gifts to respondents related to this information collection.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

There is no assurance of confidentiality. The System of Record Notices associated with this information collection are Privacy Act of 1974; United States Citizenship and Immigration Services Benefits Information System (DHS/USCIS-001), published September 29, 2008 at 73 FR 56596; Privacy Act of 1974; U.S. Citizenship and Immigration Services, Immigration and Customs Enforcement, Customs and Border Protection—001, Alien File, Index, and National File Tracking System of Records, published at 76 FR 34323 on June 13, 2011. The privacy impact assessment associated with this information collection is USCIS Benefits Processing of Applicants other than Petitions for Naturalization, Refugee Status, and Asylum (CLAIMS 3), September 5, 2008.

Applicants are informed that USCIS may provide this information to other government agencies and failure to provide this information, and any requested evidence, may delay a final decision or result in denial of their request.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to person's from whom the information is requested, and any steps to be taken to obtain their consent.

There are questions of a sensitive nature because deferred action also makes an individual eligible to receive employment authorization for the period of deferred action, provided he or she is able to demonstrate economic necessity. Therefore, the newly created "Form I-765 Worksheet, Form I-765WS," requires an applicant seeking employment authorization under eligibility (c)(14), Deferred Action or (c)(33), Consideration of Deferred Action for Childhood Arrivals, to provide financial information such as current annual income, expenses and value of assets.

The specific sensitive collections and their need are as follows:

My current annual income is:

My current annual expenses are:

The current value of my assets is:

Need: DHS regulations at 8 CFR 274a.12(c)(14) provide that an alien who has had his or her case deferred, which is an act of administrative convenience to the government which gives some cases lower priority, may be granted employment authorization only if the alien establishes an economic necessity for employment. USCIS must determine whether or not an alien applicant for work authorization has the economic necessity to work in the United States. USCIS will analyze whether the economic need exists by reviewing the responses to these questions.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this**

cost should be included in Item 14.

Type of Respondent	Form Name / Form Number	No. of Projected Respondents	Responses per Respondent	Avg. Burden per Response (in hours)	Total Annual Burden (in hours)	Avg. Hourly Wage Rate ***	Total Annual Respondent Cost
Individuals or Households	Application for Employment Authorization, Form I-765	1,420,000*	1	3.42 hours ~	4,856,400	\$30.44	\$147,828,816
Individuals or Households	Biometric processing	1,043,992**	1	1.17 hours ~	1,221,471	\$30.44	\$37,181,566
Individuals or Households	Form I-765WS	706,057*****	1	.50 hours	353,029	\$30.44	\$10,746,188
Individuals or Households	Passport-Style Photographs	1,420,000†	1	.50 hours	710,000	\$30.44	\$21,612,400
Total		1,420,000			7,140,900		\$217,368,970

* During the emergency request, USCIS projected that the number of respondents for the form I-765 included 720,000 filers previously estimated for this collection plus 1,041,300 additional filers projected as a result the Secretary of the Department of Homeland Security's Memorandum (Secretary's Memorandum) issued June 15, 2012, entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children." USCIS now projects that in addition to the previously projected 720,000 I-765 filers, an estimated average of 700,000 individuals will also request employment authorization documents based on DACA.

** Not all Form I-765 respondents must provide biometrics at each submission. Respondents who complete Form I-765 for Deferred Action for Childhood Arrivals (DACA requestors) - 635,000 filers – must always submit biometrics with Form I-765 (category c(33)). Applicants requesting EADs under the following categories are also always required to provide biometrics: a(6);a(9); a(10); a(11); a(17); a(18); c(3)(A); c(3)(B); c(3)(C); c(3)(i); c(3)(ii); c(3)(iii); c(3)(iv); c(5); c(6); c(11); c(14); c(15);c(16); c(18); c(21); and c(24). The categories subject to biometrics, the process for submitting

biometrics, and the biometrics services fee are detailed in the Form I-765 form instructions.

***The above Average Hourly Wage Rate is calculated from the [May 2011 Bureau of Labor Statistics](#) average wage for “All Occupations” of \$21.74 times the wage rate benefit multiplier of 1.4 equaling \$30.44.

**** All 635,000 potential DACA requestors plus an estimated 6,057 individuals whose cases are deferred and who are not childhood arrivals (based on number deferred in 2011) will complete form I-765WS.

~ USCIS has estimated the average time required to complete an EAD application as 3 hours and 25 minutes. This time includes researching the regulations and requirements for an EAD, reading the form instructions, completing and signing the form, and submitting the form and any associated evidence required.

~~ USCIS has estimated the average burden for biometrics to be approximately 1.17 hours (1 hour and 10 minutes) based upon the time it takes to fingerprint and photograph the applicant and visit the ASC.

†All applicants are currently required to provide passport-style photographs. USCIS estimates that obtaining these photographs takes approximately .50 hours (30 minutes).

NOTES on burden:

USCIS requested public comment on the time burden incurred for the preparation and submission of this form and supporting evidence for the items below that are currently not included in the estimated burden. No comments were received. USCIS will again request public comments on these topics. If no comments are received, USCIS will perform its own analysis and include the results of that analysis in the next submission for this form on the following topics:

(1) Translation: This information collection requires that supporting documents must be in English or translated. Thus, there may be a time burden associated with providing translations of foreign documents or documents prepared or issued in foreign languages imposed by this collection.

(2) Preparers: Many Form I-765 respondents obtain assistance in preparing their application from third parties. USCIS requires a preparer to sign the form as preparer.

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The**

estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government or (4) as part of customary and usual business or private practices.**

There is a \$380 fee associated with the request submitted under this information collection, as well as an \$85 biometrics services fee. In addition, USCIS estimates that respondents must pay \$10 fee to obtain the required passport-style photographs. Consequently, in addition to the time burden of this collection described in question 12 above, total out of pocket costs for the estimated 1,420,000 annual respondents is \$14,200,000 (1,420,000 respondents x \$10 per photo) to obtain passport photos.

There may also be a cost burden to respondents for responding to this information collection associated with hiring or obtaining assistance in completing the necessary paperwork. USCIS is currently evaluating the estimated cost associated with activities necessary to complete this form and provide supporting evidence. USCIS requested comments on how long these require and received no germane comments. USCIS will perform its own analysis and provide estimates in its next submission to OMB based on the results of a new request for public comments and information that can be found from other resources. USCIS is gathering information on the amount of those costs as follows:

1. Translations. Respondents might incur expenses for translations of foreign documents or documents prepared or issued in foreign languages.

2. Preparers. Many Form I-765 respondents hire third parties to assist with form completion so there may be costs for an applicant for an EAD to hire a preparer to assist in the process.

- 14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.**

Annualized Cost Analysis:

- a. Printing Cost: \$5,293.75
- b. Collection and Processing Cost: \$628,334,026.25
- c. Total Cost to Government (funded by USCIS user fee collections): \$628,339,320

Government Cost

The estimated cost to the government, which is funded by USCIS user fee collections, is calculated by multiplying the estimated number of respondents (1,420,000) x the fee charge for the collection and (\$380) and 1,043,992 x \$85 biometric fee). The total cost includes the suggested hourly rate for clerical, officer and managerial time with benefits, plus a percent for the estimated overhead cost for printing, stocking and distributing and processing of this form. The total cost includes all Form I-765 respondents, including those submitting Form I-765 in conjunction with a request for consideration of deferred action for childhood arrivals (Form I-821D) and those who are submitting only Form I-765. Under USCIS's authority to collect user fees, for Form I-765 submissions made in conjunction with the submission of Form I-821D, the total estimated cost of this collection includes the costs of processing those Form I-821D submissions, which is projected to be recovered by the \$380 fee for this collection and the \$85 biometric services fee.

USCIS is analyzing a more detailed breakdown of the costs to USCIS of this information collection and will provide more cost data in our next submission to OMB.

- 15. Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.**

There has been a decrease on the burden hours associated with this collection since the last request USCIS submitted to OMB. USCIS last submitted an emergency request to OMB seeking the approval of a total of 9,048,767 burden hours in connection with this information collection. With this submission, USCIS is seeking the approval of only

7,140,900 burden hours. The decrease in burden hours is due to the agency's better estimates with regard to the number of respondents. The table provided under question 12 contains more information on this topic.

USCIS continues to consider the time burden and costs described above under questions 12 and 13; it will provide a more detailed accounting of the effects on the total burden of this information collection resulting from these activities in its next information collection request to OMB. USCIS has made some changes to the information contained in the form and its instructions as a result of public comments received in connection with the 30-day emergency submission and 60-day information collection notices.

- 16. For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

USCIS does not intend to employ the use of statistics or the publication thereof for this collection of information.

- 17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

USCIS will display the expiration date on this form in accordance with OMB's regulations.

- 18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.**

USCIS does not request an exception to the certification of this information collection.