

**SUPPORTING STATEMENT FOR  
PAPERWORK REDUCTION ACT SUBMISSION**

**Nonimmigrant Treaty Trader/Investor Application  
OMB Number 1405-0101  
DS-156E**

**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] 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] 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 regulations prescribed.”

22 CFR 41.103(b)(2) provides that the consular officer may require submission of additional necessary information on any relevant matter whenever the consular officer believes that the information provided in Form DS-160 (Online Nonimmigrant Visa Application) or, alternatively, Form DS-156 (Nonimmigrant Visa Application) is inadequate to permit a determination of the alien’s eligibility to receive a nonimmigrant visa.

22 CFR 41.105(a)(1) authorizes the consular officer to require documents considered necessary to establish an alien’s eligibility to receive a nonimmigrant visa.

INA section 101(a)(15)(E) [8 U.S.C. § 1101] includes within the definition of nonimmigrant alien: “(E) an alien entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national, and the spouse and children of any such alien if accompanying or following to join him: (i) solely to carry on substantial trade, including trade in services or technology, principally between the United States and the foreign state of which he is a national; (ii) solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital.”

Department of State regulations pertaining to nonimmigrant visas under the INA are published at 22 CFR 41. The regulations pertaining in particular to treaty trader and treaty investor nonimmigrant visas (“E1” and “E2” visas) are specifically provided for in 22 CFR 41.51.

2. Department of State consular officers use Form DS-156E (Nonimmigrant Treaty Trader/Investor Application), in conjunction with Form DS-160 or Form DS-156, to fulfill the legal requirements for nonimmigrant visas. The information requested on the form is limited to that which is necessary for consular officers to determine the eligibility of an alien applicant for a nonimmigrant treaty trader/investor visa. Applicants provide information on the nature of the business or investment in the U.S., including percentage of trade with the United States, value of the assets, and their own qualifications to direct the enterprise. A consular officer is unable to approve a treaty trader/investor visa without collecting this information. Consular officers currently use the form as an indispensable part of adjudicating approximately 41,752 treaty trader/investor visa cases per year, most of which are approved. An applicant for an E2 visa who is a treaty investor coming to the United States to develop and direct the operations of an enterprise in which he or she has invested, or is actively in the process of investing, need only complete a DS-160. Currently, all applicants for an E1 visa, and those applicants for an E2 visa who are employees of a treaty investor coming to the United States to engage in duties of an executive or supervisory character or who have special qualifications that make the services to be rendered essential to the efficient operation of the enterprise, must submit both the DS-160 and DS-156E. Any applicant for an E1 or E2 visa who uses the DS-156 must also submit a DS-156E.

3. The DS-156E is available to download from the Internet at <http://travel.state.gov>. The form is not e-fileable at this time. However, the Department hopes to develop a future development of the DS-160 in time for the next collection renewal which will fully integrate the DS-156-E into the online application form.

4. The Form DS-156E is a supplement to the DS-160 and DS-156, one of which is required by regulation for all nonimmigrant visa applicants. Except for basic identifying biographic information collected by the DS-156 and DS-160, information collected by the DS-156E is not duplicative of information maintained elsewhere or otherwise available. As indicated in paragraph (2), for those categories of E2 cases for which adequate information is requested in the DS-160, completion of the DS-156E is not required.

5. The information collection does involve obtaining information from small business or other small entities however the impact on these entities is minimal. The minimal impact would involve a small adjustment to customary business practices and procedures.

6. This information collection is essential for determining whether an applicant is eligible for a nonimmigrant treaty trader/investor visa. An applicant fills out the form when seeking a Treaty Trader or Treaty Investor visa for the first time. Individuals seeking to renew Treaty Trader or

Treaty Investor visas may occasionally be asked to complete all or part of the DS-156E so that consular officers have the most up to date information. It is not possible to collect the information less frequently since consular officers need up to date information to determine efficiently whether an applicant is eligible to receive a visa.

7. No special circumstances exist.

8. The Department of State (Bureau of Consular Affairs, Visa Services) published a 60 Day Notice on the reauthorization of Form DS-156E in the Federal Register (78 FR 24780, April 26, 2013), as required by 5 CFR 1320.8(d). Visa Services meets regularly with immigration experts of the Department of Homeland Security to coordinate policy, and also holds meetings with immigration lawyers, during which their opinions and suggestions regarding visa procedures and operations are discussed. During the 60 Day commenting period, a comment was submitted through [PRA\\_BurdenComments@state.gov](mailto:PRA_BurdenComments@state.gov). It was suggested that it would be helpful for future applicants to have the ability to copy and paste their information from their own set of documents, such as resumes and job descriptions, onto the application online. Also the respondent also suggested that there should be a place for an email address for correspondence/contact with the company.

Visa Services responded back to the commenter and thanked them for their suggestion and is currently looking at ways to make the DS-156E more streamlined. The Visa Office is considering implementing the above stated suggestions before the next collection renewal.

9. No payment or gift is provided to respondents.

10. In accordance with section 222(f) of the INA, information obtained from applicants in the immigrant visa process is considered confidential and is to be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States.

11. The questions on the collection are designed to solicit the information necessary to determine whether an applicant is eligible for a visa under Section 101(a)(15)(E) of the INA. The collection does not ask any questions of a sensitive nature.

12. For the fiscal year 2012, approximately 41,752 aliens completed the form. Finding the necessary background information and completing the form is estimated to require four hours. Therefore the annual hour burden to respondents is estimated to be 167,008 hours (41,752 x 4 hours). Based on an average hourly wage of \$21, the weighted wage hour cost burden for this collection is \$4,910,035.20. This calculation is based on \$21 (average hourly wage) x 1.4 (weighted wage multiplier) x 167,008 hours= \$4,910,035.20.

13. Many respondents employ attorneys to help complete the form and assemble the supporting documentation, or rely on their company's human resources staff to prepare the application package. Thus, the cost to prepare the form and assemble the supporting documentation varies widely. For applications prepared by a company's human resources office, the cost to photocopy and assemble relevant documentation is minimal. For those applications prepared by an immigration attorney is employed, the cost may be significantly higher. Based on this analysis and input from the American Immigration Lawyers Association, the Department estimates the average cost of completing a Form DS-156E is approximately \$1,000. We therefore estimate that the total cost burden for the collection is \$41,752,000 (41,752 applicants x \$1,000).

14. This collection is a supplement to the Form DS-156 (OMB # 1405-0018) and is processed with that application and the electronic version of that application, Form DS-160. All E category applicants will use the DS-160.

However, if the applicant is considered an E2, Treaty Investor, that applicant will only fill out the DS-160 and not the DS-156E.

The DS-160 is capable of holding all E Treaty Trader/Treaty Investor Applications. But due to business sensitive information that is on the applications, E category applicants deemed "essential employees" will need to fill out the DS-156E.

The DS-156E does not impose any additional cost burden on the Federal Government beyond which was reported in the justification for the DS-156 and DS-160. The cost of service model (CoSM) used to establish the cost burden of collecting and processing the DS-160 included the cost associated with processing the DS-156E.

The CoSM is the cost to the government to process each individual visa form. On average it takes consular staff approximately 15 minutes to review the DS-160. By multiplying CoSM of \$231 by the average time to review the form (15 minutes) it cost the federal government \$58.21 to review the DS-160. 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. As stated previously, the DS-156E does not impose any additional cost burden on the Federal Government beyond what was reported in the justification of the DS-156 and DS-160.

15. There are adjustments in this collection due to a more accurate calculation of number of respondents. From fiscal year 2010 to fiscal year 2012, the Department of State saw an increase in applicants. For fiscal year 2010, there were 34,673 applicants. For fiscal year 2011, the number of applicants increased to 37,350. For fiscal year 2012, there were 41,752 applicants.

16. A quantitative summary of all Department of State visa activities is published in the annual Report of the Visa Office. The Report of the Visa Office is an annual report providing statistical

information on immigrant and non-immigrant visa issuances by consular offices, as well as information on the use of visa numbers in numerically limited categories. The Visa Office currently has annual reports available from 2000 to 2012. The link to the site is:

[http://travel.state.gov/visa/statistics/statistics\\_1476.html](http://travel.state.gov/visa/statistics/statistics_1476.html).

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. STATISTICAL METHODS**

This collection does not employ statistical methods.