

**SUPPORTING STATEMENT FOR  
Notice of Appeal or Motion  
OMB Control No.: 1615-0095  
COLLECTION INSTRUMENT(S): Form I-290B**

**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.**

When certain nonimmigrant or immigrant visa petitions or applications are denied or revoked by U.S. Citizenship and Immigration Services (USCIS), an affected party may appeal that decision to the Administrative Appeals Office (AAO) or move to reopen or reconsider the denial to the service center or district office. Additionally, an affected party may move to reopen or reconsider an adverse decision issued by AAO subsequent to the service center or district office decision. The information collection required on the Form I-290B is necessary in order for USCIS to make a determination that the appeal or motion to reopen or reconsider meets eligibility requirements, and for the AAO to adjudicate the merits of the appeal or motion to reopen or reconsider.

**Authority:** 8 CFR 103.2, 103.3, 103.5

- 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.**

The form serves the purpose of standardizing requests for motions and appeals and ensures that basic information required to assess eligibility is provided by petitioners, applicants, or their attorneys or representatives. USCIS uses the data collected on Form I-290B to determine whether an applicant or petitioner has standing to file an appeal or motion and whether the requirements of an appeal or motion have been met.

- 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.**

The use of Form I-290B provides the most efficient means for collecting and processing the required data. Form I-290B is available at <http://www.uscis.gov/i-290b> and it can be accessed, completed and saved electronically. During this revision cycle, USCIS is

including this request into USCIS ELIS so certain I-290B respondents, those with Temporary Protected Status, can not only electronically access and complete the form but also submit it to USCIS. Making this request available in USCIS ELIS and allowing for its electronic filing establishes USCIS compliance with GPEA mandates and improves our customer services by allowing the public this additional option for submitting this type of request.

**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.**

A review of USCIS's Forms Inventory Report revealed no duplication of effort and there is no other similar information currently available which can be used for this purpose.

There is no similar data collected. USCIS has investigated its internal processes, files, and data as well as those of other Federal agencies that may service the same population. USCIS was not able to find any other means by which the information necessary for this process could be obtained except for the use of the form submitted for approval in this request. USCIS will continue to examine ways in which information may be obtained from other sources and any identified duplications can be minimized or removed.

**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 information collection impacts small business or other small entities and USCIS estimates that approximately 11,429 I-290B filers would be considered small entities.

Small entities might complete and file this type of information collection with USCIS; however, their burden is no different from that of other respondents such as individuals or households that submit this type of request.

USCIS has minimized the amount of information collected from the affected small businesses so as to reduce the burden placed upon them. USCIS has also provided for partial electronic submission of the information, and it is now making the electronic filing of this request possible, as indicated in Question 3 above.

**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 through Form I-290B, USCIS will not be able to establish whether the affected party filing the appeal or motion meets the requirements set forth in the regulation and the affected party will not be able to establish eligibility to file the appeal or motion in question.

**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.**

This information collection is conducted in a manner consistent with the guidelines in 5 CFR 1320.5(d)(2) and does not require or result in any of the circumstances above.

**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.**

On March 22, 2013, USCIS published a 60-day notice in the Federal Register at 78 FR 17701. USCIS received comments after publishing that notice. The comments and USCIS response are discussed immediately below.

A commenter made statements regarding the fee for this form as well as comments on immigration policy which have no specific applicability to Form I-290B. USCIS deems these comments, therefore, outside of the scope of this information collection.

Another commenter provided several suggestions and recommendations to both the form and instructions, some of which were minor changes, while others were more substantive.

In regard to this commenter's recommendations for minor changes to the language contained in the form instructions and the form, such as the removal of the word "the" in two instances, changing the word "status" to "classification," and adding the words "if electronically filed" after a reference to the USCIS Electronic Immigration System (ELIS) Account Identifier Number, USCIS has accepted these recommendations and made the changes. The substantive comments are discussed below.

The commenter suggested that the alien registration number (A-number) be required on the second page of the form, in addition to the requirement on the first page of the form as a safeguard if the pages become separated. USCIS appreciates the commenter's concerns but declines to make this change. The revisions that USCIS is proposing to make to this collection provide for a more efficient and streamlined process. Requiring the petitioner/applicant to provide duplicative information increases the time burden on the public and reduces efficiency.

A suggestion was made to provide further instruction on the form indicating that if a box for an appeal is checked, USCIS will review the matter prior to forwarding to the AAO for adjudication of the appeal. USCIS declines to make this change to the form as the form instructions under Part 3 already contain this language.

The commenter further recommended that the language on the form and in the form's instructions regarding a statement in support of the appeal should be amended to mirror that of the current regulation. This suggestion has been accepted and the language modified accordingly.

In addition, regarding page 5, Part 4 of the instructions, the commenter was concerned that USCIS removed the space provided on the current form for applicants/petitioners to provide a statement setting forth the basis for the appeal or motion. The commenter suggested the inclusion of a box that the applicant/petitioner must check to acknowledge that a separate sheet has been provided or that USCIS add a page to the form, similar to the Form I-129, where the applicant/petitioner can provide a statement. USCIS appreciates the commenters concerns but is unable to modify its electronic systems at this time in order to accommodate a separate page. Therefore, although USCIS intends to incorporate the supplemental page in a future revision of the form, at this time petitioners/applicants must use a separate sheet of paper in order to provide the basis of

the appeal or motion. Additionally, USCIS declines to add a check box to the form for the petitioner/applicant to acknowledge the submission of a separate sheet of paper. The petitioner/applicant may misconstrue the purpose of the box and think that if he or she does not check the box, he or she is therefore not required to submit a separate sheet of paper. The instructions and the form, as written, make clear that a separate statement must be submitted in support of the appeal or motion.

The commenter requested that USCIS include a reference to faxes and electronic mailings on page 1 of the instructions regarding calculating the number of days in which the Form I-290B must be filed after service of a decision. USCIS declines to adopt this suggestion. The current regulation does not include faxes or electronic mail as “service.”

The commenter further recommended that a citation to the regulation at 8 CFR 103.5(a) be included in this part of the instructions but USCIS also declines this suggestion as this suggested cite relates to motions and not to service of decisions.

Regarding late filed appeals and motions, the commenter suggested that USCIS provide language clarifying acceptance of late filed motions. USCIS has adopted this suggestion and clarified the language. The new language incorporates the language of the regulations which provides for different procedures for late filed motions to reopen and late filed motions to reconsider. Specifically, the regulation at 8 CFR 103.5(a)(1)(i) indicates that motions to reopen and motions to reconsider must be filed within 30 days of the decision that the motion seeks to reopen or reconsider. Although the regulation further provides that a late motion to reopen may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and beyond the applicant’s control, there is no similar provision for a motion to reconsider.

The commenter provided several suggestions related to the instructions for signing the I-290B. First, the commenter recommended that USCIS add further language to page 1 of the instructions under the section related to when the Form I-290B should be used. USCIS declines to make this change as there is a separate section of the instructions that pertain to signatures; specifically page 5, Part 5. Regarding this section, the commenter suggested that USCIS retain the language that is currently used on the Form I-290B. USCIS adopts this second recommendation regarding signatures and has retained the language from the current form with only a minor modification.

The commenter also requested that the instructions on page 1 be amended to include a reference to a specific page of the USCIS website and to the regulation applicable to appeals. USCIS declines to add the reference to the webpage suggested. The instructions at the top of page 1 already contain a reference to the USCIS website where information regarding appeals and eligibility by form type can be located. Although USCIS also declines to add the reference to 8 CFR 103.3 on page 1, it has added it on page 4, in Part 3.

Regarding page 2 of the instructions relating to the evidence required for motions, the commenter suggested that USCIS add language to clarify that the motion must establish eligibility at the time of filing “the initial petition or application.” USCIS has adopted this suggestion and made the change.

The commenter also suggested clarifying the language in the instructions regarding when an appeal brief should be submitted directly to the AAO. USCIS has accepted this suggestion and amended the language to indicate that any brief not submitted at the time of filing the appeal should be submitted directly to the AAO.

In the instructions on page 4, Information about the Appeal or Motion, the commenter recommended that USCIS add references to the appeal and revocation sections of the regulations. This part of the instructions requests the petitioner or applicant to indicate whether an appeal or motion is being filed. The proposed instructions already contain a reference to motions and therefore the commenters suggestion regarding adding a reference to appeals under 8 CFR 103.3 will be adopted. However, USCIS declines to add a reference to the revocation regulation at 8 CFR 205.2 as the instructions here specifically relate to the appeal or motion process, not revocations.

The commenter also stated that USCIS should clearly explain the term “reviewing office.” USCIS has changed the instructions on page 4, part 3 to further explain the term “reviewing office.”

Finally, the commenter suggests that USCIS identify Form AR-11 as the form used to file a change of address on page 6 relating to address changes. USCIS has made the suggested change and added a reference to the Form AR-11 in two places in this section.

On September 12, 2013, USCIS published a 30-day notice in the Federal Register at 78 FR 56241. USCIS received one comment to the date in connection with that publication.

The commenter recommended that USCIS make this request available for electronic submission. USCIS appreciates the commenter’s recommendation and affirms that the agency is, as announced through notices posted in the Federal Register and the documents it made available for public comments, moving toward allowing for the electronic submission of requests such as that filed through form I-290B. This form is currently available at <http://www.uscis.gov/i-290b> and it can be accessed, completed and saved electronically. During this revision cycle, USCIS is also including this form in USCIS ELIS so that the requestors will not only be able to electronically access and complete the form, but also electronically submit it via USCIS ELIS.

**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 petitioners or applicants in exchange for a benefit sought.

**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 notice associated with this information collection is USCIS Benefits Information System, which was published in the Federal Register on September 29, 2008 at 73 FR 56596. The privacy impact assessment associated with this information collection is USCIS Benefits Processing of Applicants other than Petitions for Naturalization, Refugee Status, and Asylum dated September 5, 2008. This request will also be covered under Electronic Immigration System-2 Account and Case Management System of Records, which was published in the Federal Register on April 5, 2013 at 78 FR 20673 and the USCIS ELIS-2 Account and Case Management dated May 16, 2012.

**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 persons from whom the information is requested, and any steps to be taken to obtain their consent.**

There are no questions of a sensitive nature.

**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 Respondents	No. of Responses per Respondent	Avg. Burden per Response (in hours)	Total Annual Burden (in hours)	Avg. Hourly Wage Rate*	Total Annual Respondent Cost
Individual or Households/Employers	Notice of Appeal or Motion	18,844	1	1.5	28,266	\$30.81	\$870,875.46
Individual or Households/Employers	Electronic filing	6,621	1	1.33	8,806	\$30.81	\$271,312.86
Total		25,465			37,072		\$1,142,188.3

\* The above Average Hourly Wage Rate is derived from the [May 2012 Bureau of Labor Statistics](#) Mean Hourly Wage for “All Occupations”. The wage rate of \$30.81 is calculated from the base average wage rate of \$22.01 times the wage rate benefit multiplier of 1.4. The selection of “All Occupations” represent the possibility that a respondents can be employed in any type of work; the collection is not targeting any specific category of employment.

**NOTES ON HOUR BURDEN:**

*USCIS has sought comments in conjunction with other information collection requests on how the burden of the following information collection requirements affects respondents. USCIS will revise its burden estimates based on the public comments received, its own expert analysis, and informational resources.*

1. *Affidavits.* *This information collection also provides that a motion must state new facts and must be supported by, among others, affidavits. An affidavit may require research and preparation by a third party as well as payment for the third party’s effort.*

2. *Preparers.* *Some respondents may hire third parties for form completion so there may be a burden for a preparer to assist in the form completion process.*

3. *Records.* *Respondents might need to provide documentary evidence demonstrating eligibility at the time the underlying petition or application was filed. There may be a burden associated with having to gather the required documentation*

**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 no capital, start-up, operational, or maintenance cost associated with this collection of information. There is, however, a fee charge of \$630 per submission.

**NOTES ON COST BURDEN:**

*This information collection may impose some out-of-pocket costs on respondents in addition to the time burden for the form's preparation. USCIS has sought and continues to seek public comments on these subjects in connection with USCIS collections and will provide estimates in future submissions to OMB based on the results of public comments received and information that can be found from other resources on these costs:*

*Translations. Respondents might incur expenses for translations of foreign documents or documents prepared or issued in foreign languages. USCIS is currently evaluating the*

*estimated cost associated with this activity in connection with other information collections.*

*Preparers. Some respondents may hire third parties to assist in the request process and may incur costs to hire paid preparers for the preparation and submission of this request. USCIS is currently evaluating the estimated cost associated with this activity in connection with other information collections.*

- 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**

<b>a.</b>	Printing Cost	\$	930
<b>b.</b>	Collection and Processing Cost	\$	16,042,020
<b>c.</b>	<b>Total Annual Cost to Government</b>	<b>\$</b>	<b>16,042,950</b>

**The Total Cost to the Government is \$16,042,950.**

USCIS establishes its fees using an activity-based costing model to assign costs to an adjudication based on its relative adjudication burden and use of USCIS resources. Fees are established at an amount that is necessary to recover these assigned costs, plus an amount to recover unassigned overhead (which includes the clerical, officer, and managerial time with benefits) and immigration benefits provided for free. As a consequence of USCIS immigration fees being based on resource expenditures related to the benefit in question, USCIS uses the fee associated with an information collection as a reasonable measure of the collection's costs to USCIS. USCIS has established the fee for Form I-290B at \$630.

The estimated cost of the program to the government is calculated by multiplying the estimated number of respondents 25,465 x \$630 the fee charge, (which 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).

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

There is a decrease in the annual burden hours previously reported for this information collection. This change is due to an adjustment in agency's estimates for the number of respondents associated with this collection and the time associated with preparing and

filing this request. USCIS previously reported 38,926 as the estimated number of respondents but it is now reporting 25,465 as the estimated number of respondents. USCIS previously requested approval for 58,389, while it is now seeking approval of 37,072. As a result, the annual burden hours have decreased by 21,317 burden hours.

USCIS is also reporting the new burden breakdown that reflects the number of respondents it estimates will file this request electronically, as well as the time burden associated with these filings. USCIS estimates that of those 25,465 responses it estimates it will receive, 6,621 will be submitted electronically and the time burden associated with such responses is 1.33 hours.

USCIS is revising form I-290B and its instructions' overall format. The revised form includes the 2 column format which USCIS anticipates will expedite the processing of the request. The revised form also incorporates standard language in the instructions, makes the form clearer, more concise, and reduces the rate of errors in filings. USCIS is further adding field 2 under section 1 of the form to allow an appellant business or organization to insert its name.

Furthermore, the public will be able to file this request, electronically, via USCIS ELIS (OMB Control Number 1615-0122).

- 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.**

This information collection will not be published for statistical purposes.

- 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 for OMB approval of this information collection.

- 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.