

SUPPORTING STATEMENT
Petition for Nonimmigrant Worker
(Form I-129)
OMB Control No. 1615-0009

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.**

USCIS needs the information collected through this form and accompanying supplements to determine whether the foreign national beneficiary (ies) is(are) eligible for the nonimmigrant status being sought and that the petitioning employer is eligible to hire the foreign worker. The statutory authority is section 214(c)(1) of the Immigration and Nationality Act (Act) and the regulatory authority is 8 CFR 214.2 (h)(2)(i)(A), (l)(2)(i), (o)(2)(i), (p)(2)(i), (q)(2)(i), and (r)(3). A U.S. employer, or their agent, in some instances, may file a petition for nonimmigrant worker to employ foreign nationals under the following nonimmigrant classifications: H-1B, H-2A, H-2B, H-3, L-1, O-1, O-2, P-1, P-2, P-3, P-1S, P-2S, P-3S, Q-1, or R-1 nonimmigrant worker.

The collection of this information is also required from a U.S. employer on a petition for an extension of stay or change of status for E-1, E-2, E-3, Free Trade H-1B1 Chile/Singapore nonimmigrants and TN (NAFTA workers) who are in the United States. A Form I-129 is not required to apply for an E-1 or E-2 nonimmigrant visa or admission as a TN nonimmigrant. A petition is only required to apply for a change to one of these classifications. The statutory authority for collecting information for the E-3s and H-1B1 classifications can be found in section 101(a)(15)(E)(iii) and (H)(i)(b1) of the Act. The additional regulatory authority for collection of this information for E-1s, E-2s, and TNs is found in 8 CFR 214.2(e)(1) and 8 CFR 214.6.

In addition to this collection serving as the tool to collect data on the form and the supplements themselves, it also provides the avenue through which employers or agents submit documentary evidence to establish eligibility for the nonimmigrant classification being sought.

Biometric information is required to be collected from a beneficiary in the Commonwealth of the Northern Mariana Islands (CNMI) 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 the nonimmigrant petition, and perform other functions related to administering and enforcing the immigrant and nationality laws.

Authority: See section 214 of the Act and 8 CFR 214.2.

- 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.**

USCIS uses the data collected on this form to determine eligibility for the requested nonimmigrant petition and/or requests to extend or change nonimmigrant status. (See USCIS response to Question 1 of this supporting statement, above). An employer uses this form to petition USCIS for an alien to temporarily enter as a nonimmigrant. An employer also uses this form to request an extension of stay or change of status on behalf of the alien worker. The form serves the purpose of standardizing requests for nonimmigrant workers, and ensuring that basic information required for assessing eligibility is provided by U.S. employers while seeking that beneficiaries be classified under certain nonimmigrant employment categories. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classifications.

- 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 the Form I-129 provides the most efficient means for collecting and processing the required data. This form and its instructions reside on the USCIS Web site at <http://www.uscis.gov/i-129>. The form and the instructions can be downloaded, completed and saved electronically. USCIS has the automated capability in place to accept and store certain forms for adjudication electronically; however, the Form I-129 is not currently eligible for electronic filing because new upgraded templates have to be developed to match the current version on the form.

- 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 the Forms Inventory Report revealed no duplication of effort and there is no other similar information currently available that can be used for this purpose. 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. 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.**

USCIS has minimized the amount of information collected from the affected small businesses so as to reduce the burden placed upon them. USCIS requests only that information which is need by officers to determine the employer's and beneficiary's

eligibility. This includes information that will reduce the likelihood that USCIS may need to issue a request for evidence (RFE) to the petitioner upon review of the petition and initial evidence submission. USCIS has included information to the instructions of the Form I-129, including the H-2B section, to provide additional guidance to assist small businesses with the completion of the form as well as guidance for filing multiple petitions.

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.

The form is only submitted, collected, and used on an as-needed basis. Employers submit petitions for a foreign national to be classified as a nonimmigrant worker under section 214 of the Act, when they have the need for the employee. This form asks questions necessary to determine eligibility. The technical and legal obstacles to reducing the burden are that no unnecessary information is obtained or questions asked that can be removed.

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 his 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 July 5, 2013 USCIS published a 60-day notice in the Federal Register at 78 FR 40490. In response to that notice, USCIS received multiple comments from six members of the public including individuals and organizations providing comments on behalf of others.

USCIS thanks all commenters for providing comments in response to the 60-day notice published in the Federal Register. An appendix attached to this supporting statement discusses all comments and contains USCIS's responses to these comments.

On October 24, 2013, USCIS published a 30-day notice in the Federal Register at 78 FR 63487. USCIS has received a comment in connection with that publication. The commenter requested that DHS suspend temporary employment-based immigration in order to preserve jobs for U.S. citizen workers. The 30-day information collection notice requested further comments on whether the proposed changes to this information collection is necessary for the proper performance of the functions of the agency; on the accuracy of the agency's estimate of the burden of the proposed collection of information; on enhancing the quality, utility, and clarity of the information to be collected; and on minimizing the burden of the collection of information on the public. This comment is beyond the scope of this information collection. Since this commenter does not request any changes to the I-129 collection, USCIS will not be making any changes as a result of this comment.

- 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 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 United States Citizenship and Immigration Services Benefits

Information System (DHS/USCIS-007) 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 Benefits Processing of Applicants other than Petitions for Naturalization, Refugee Status, and Asylum (CLAIMS 3, DHS/USCIS/PIA-016).

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.

The only information collection of a sensitive nature is the Social Security Number (SSN) of the alien worker, if one exists. The SSN is required to ensure proper identification of the alien worker. The SSN is pertinent for I-129 adjudication as it assists in making positive identifications of individuals. For example, there may be multiple individuals with the same/similar name and date of birth. In that instance, SSN may be beneficial in determining whether this is one and the same person. Since we currently do not collect fingerprints for most I-129s (with the exception of a very limited number of filings from the CNMI), fields like the SSN are some of the only ways we have of checking the background information of the requested beneficiary.

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 ¹	No. of Responses per Respondent	Avg. Burden per Response (in hours)	Total Annual Burden (in hours)	Avg. Hourly Wage Rate *	Total Annual Respondent Cost
Business or other for-profit; Not-for-profit organizations	Petition for Nonimmigrant Worker (Form I-129) ²	333,891	1	2.34	781,305	\$31.92	\$24,939,255.6
Business or other for-profit; Not-for-profit organizations	E-1/E-2 Classification Supplement to Form I-129 ³	4,760	1	0.67	3,189.2	\$31.92	\$101,799.26
Business or other for-profit; Not-for-profit organizations	Trade Agreement Supplement to Form I-129 ⁴	3,057	1	0.67	2,048.19	\$31.92	\$65,378.22
Business or other for-profit; Not-for-profit organizations	H Classification Supplement to Form I-129 ⁵	255,872	1	2.0	511,744	\$31.92	\$16,334,868.48
Business or other for-profit; Not-for-profit organizations	H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement ⁶	243,965	1	1.0	243,965	\$31.92	\$7,787,362.8
Business or other for-profit; Not-for-profit	L Classification Supplement to Form I-129 ⁷	37,831	1	1.34	50,694	\$31.92	\$1,618,152.48

¹ The estimated number of respondents for each category is based on average actual filings for the previous four fiscal years. USCIS has no information that would indicate that the trend would vary so we expect filings to remain stable.

² This number includes all I-129 filings regardless of classification requested. It only reflects the number of petitions filed and does not provide an indication of the number of alien workers sponsored on those petitions that may include multiple workers. In certain instances, a petitioner must file one or more supplements in addition to the base form.

³ This includes all petitions filed for E-1, E-2, or E-2C nonimmigrant status.

⁴ This includes all petitions filed for TN or H-1B1 nonimmigrant status.

⁵ This includes all petitions filed for H-1B, H-1B1, H-2A, H-2B, and H-3 nonimmigrant status. It only reflects the number of petitions filed with this supplement and does not provide an indication of the number of alien workers sponsored on those petitions that may include multiple workers (H-2A, H-2B, and H-3s).

⁶ This includes all petitions filed for H-1B or H-1B1 nonimmigrant status.

⁷ This includes all petitions filed for L-1 nonimmigrant status.

organizations							
Business or other for-profit; Not-for-profit organizations	O and P Classifications Supplement to Form I-129 ⁸	22,710	1	1.0	22,710	\$31.92	\$724,903.2
Business or other for-profit; Not-for-profit organizations	Q-1 Classification Supplement to Form I-129 ⁹	155	1	0.34	52.7	\$31.92	\$1,682.18
Business or other for-profit; Not-for-profit organizations	R-1 Classification Supplement to Form I-129 ¹⁰	6,635	1	2.34	15,526	\$31.92	\$495,589.92
Individuals or Households	Biometrics	142**	1	1.17	166.14	\$31.92	\$5,303.18
Total		333,891			1,631,400.23		\$52,074,295.32

* The above Average Hourly Wage Rate is the [May 2013 Bureau of Labor Statistics](#) average wage for “All Occupations” of \$22.01 times the wage rate benefit multiplier of 1.45 (to account for fringe benefits) equaling \$31.92. The selection of “All Occupations” (for example) was chosen as the expected respondents for this collection could be expected to be from any occupation.

**This estimate number of respondents from whom USCIS collects biometrics is included in the total figure for estimated number of respondents (333,891). USCIS only collects biometrics from approximately 142 beneficiaries in the CNMI.

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).

There are no capital or start-up costs associated with this information collection. There is a \$325 fee for this information collection as well as a Fraud Prevention and Detection Fee for H-1B and L-1 petitions of \$500. Certain H-1B or L-1 petitions may also be required

⁸ This includes all petitions filed for O-1, O-2, P-1, P-1S, P-2, P-2S, P-3, and P-3S nonimmigrant status. It only reflects the number of petitions filed with this supplement and does not provide an indication of the number of alien workers sponsored on those petitions that may include multiple workers.

⁹ This includes all petitions filed for Q-1 nonimmigrant status. It only reflects the number of petitions filed with this supplement and does not provide an indication of the number of alien workers sponsored on those petitions that may include multiple workers.

¹⁰ This includes all petitions filed for R-1 nonimmigrant status.

to file an additional fee of \$2,000 (H-1B) or \$2,250 (L-1) mandated by Public Law 111-230, as amended by Public Law 111-347. A petitioner filing for an H-1B nonimmigrant or for a Chile or Singapore H-1B1 Free Trade Nonimmigrant may be required to pay an additional fee of either \$1,500 or \$750 under the American Competitiveness and Workforce Improvement Act (ACWIA), unless exempt. The petitioner should review Part B of the H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement to determine which ACWIA fee, if any, is required. A chart, which can be found at <http://www.uscis.gov/forms/h-and-l-filing-fees-form-i-129-petition-nonimmigrant-worker> in the USCIS Website, provides more information regarding these additional fees. These additional fees are not used to recoup the cost to the government.

There is also the additional CNMI biometric fee (\$85) for certain petitions requesting that the alien worker be afforded a “grant of status” in the CNMI. This fee is used to recuperate government costs associated with collecting and processing the biometrics collected from these individuals. More information on this fee is fully discussed in our response to Question 14.

There is also a \$3.75 average postage cost to each respondent to mail a completed package to USCIS. The total cost associated with postage is \$1,252,091.25 (333,891 respondents x \$3.75 per request).

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.

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

2. Preparers. Many Form I-129 respondents hire third parties (e.g. those providing legal services) to assist with form completion so there may be costs for a petitioner to hire a preparer to assist in the process. USCIS currently estimates that the cost to petitioners associated with this activity amounts to \$73,751,280, which results from the following analysis: 333,891 (Total number of petitioners who file forms I-129) X 3.51 hours (Time Burden per request) X \$62.93 ([BLS National Mean Hourly Wage rate](#)).

- 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	\$	1,500
b. Collection and Processing Cost	\$	275,458,575
c. Total Annual Cost to Program	\$	275,460,075

Government Cost

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-129 at \$325.00.

The total estimated cost of the program to USCIS (\$275,460,075) is calculated by multiplying the estimated number of respondents (333,891) by the fee charge (\$325). This total includes the suggested average hourly rate for clerical, officer and supervisory time with benefits, plus a percent for the estimated overhead cost for printing, stocking, and distributing and processing of this form; plus a Fraud Prevention and Detection Fee for H-1B and L-1 petitions (333,891) respondents x \$500 fee.

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 an increase of 545,150.23 hours in the estimated burden previously reported for this collection of information. This change can be attributed to USCIS performing better analysis of the actual burden time for its estimates. The estimated number of respondents, however, has decreased from 395,000 to 333,891, for a difference of 61,109 fewer annual respondents.

During this revision cycle, USCIS has clarified guidance to petitioners completing the form as this estimate now includes burden for preparing and filing each Form I-129 supplement. USCIS is making a few minor changes to the form including: additional questions made necessary by Customs and Border Protection's paperless I-94 initiative, an additional question in support of USCIS's Entrepreneurs in Residence (EIR) program, and additional questions on the H supplement for H-2A and H-2B petitioners to assist USCIS in determining eligibility.

USCIS, moreover, has made some further changes to the collection in response to some of the public comments it received after publishing the 60-day notice in the Federal Register. These changes include the removal of the DUNS number request, modification to the preparer and interpreter attestations on the form, as well as various edits to address typographical errors and to ensure consistency between the H and L supplements. Those comments and changes are described in the appendix referenced above in the response to Question 8 of this supporting statement. USCIS is modifying the preparer and interpreter attestations on the form to protect the form against fraud and misuse. The U.S. Department of Justice (DOJ, Criminal Division, Civil Division, EOUSA, and U.S. Attorney's Offices) has indicated that visa fraud and misrepresentation, especially for employment-based petitions like Form I-129, have been the subject of a significant number of criminal prosecutions. DOJ press releases and news reports reveal numerous

indictments and prosecutions based on Form I-129 fraud, often involving complex fraud schemes. In Colorado a Form I-129 scheme involved creating a nonexistent University, which operated for years and was highly profitable until DOJ filed an indictment in 2012. In New Jersey a lawyer was indicted on Form I-129 fraud when it was discovered that he had received millions in fees from technology companies for fraudulently prepared petitions. In fiscal years 2012 and 2013 the USCIS, Fraud Detection & National Security Staff, found fraud in 1,499 and 723 cases respectively in Form I-129 filings, which means that approximately 0.33 percent of Forms I-129 result in a finding of fraud.

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 except for what is required statutorily by Congress on an annual basis.

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 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.

B. Collection of Information Employing Statistical Methods. Not Applicable.