

**SUPPORTING STATEMENT FOR REQUEST FOR OMB APPROVAL
UNDER THE PAPERWORK REDUCTION ACT OF 1995**

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**SUPPORTING STATEMENT
APPLICATION FOR ALIEN EMPLOYMENT CERTIFICATION**

A. Justification

A.1. Circumstances that make the collection of information necessary.

The information collection is required by sections 203(b)(2)(B)(i) and 212(a)(5)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1153(b)(2)(B)(i) and § 1182(a)(5)(A)) and 8 CFR 204.5(k)(4)(ii).

Under INA § 212(a)(5)(A), the Secretary of Labor must certify that any alien seeking to permanently enter the United States to perform skilled or unskilled labor under an employment-based visa will not adversely affect the wages and working conditions of U.S. workers similarly employed and that there are not sufficient U.S. workers able, willing, qualified, and available to perform such labor. Before any employer may request any skilled or unskilled alien labor under this section, it must submit a request for certification to the Secretary of Labor or, in limited circumstances, apply for a waiver of the job offer requirement with the Department of Homeland Security (DHS) as provided in INA § 203(b)(2)(B)(i) on the ground that the waiver is in the national interest, which allows aliens to self-petition without an employer sponsor and does not require a labor certification.

One of the forms that DOL uses to make certifications in the permanent visa program is the Form ETA-750, *Application for Alien Employment Certification* (OMB Control Number 1205-0015). The form can be found on-line at <http://www.foreignlaborcert.doleta.gov/pdf/eta750a.pdf> and <http://www.foreignlaborcert.doleta.gov/pdf/eta750b1.pdf>. The Form ETA 750, part A, is used to collect information that permits DOL to meet federal responsibilities for entry of professional athletes on a permanent basis. Section 212(a)(5)(A)(iii) of the INA deals specifically with professional athletes coming to the United States on a permanent basis as immigrants.

The Form ETA 750, part B provides detailed information about an alien's education and work history and is used by DOL to collect information about the professional athlete on whose behalf an application for permanent labor certification is filed. Part B is also required by the DHS under 8 CFR 204.5(k)(4)(ii) for foreign workers applying for the National Interest Waiver (NIW) of the job offer requirement under INA § 203(b)(2)(B)(i).

A.2. How, by whom, and for purpose the information is to be used.

In order to meet its statutory and regulatory responsibilities under the INA, DOL needs to extend an existing collection of information from employers seeking to

import foreign labor. The form used to collect the information is used not only by DOL, but also other federal agencies in furtherance of meeting the requirements of the INA. DOL uses the information collected to implement its permanent professional athlete program. The DHS, U.S. Citizenship and Immigration Services (USCIS) uses the form for the NIW program for employment based immigration.

Employers and individuals wishing to use one of the above-mentioned programs submit a completed form to the appropriate office of DOL or DHS, as applicable. Employers wishing to hire professional athletes from abroad on a permanent basis must submit the form to DOL's Atlanta National Processing Center. Individuals or employers applying for a NIW of the job offer requirement must submit the form directly to DHS' USCIS.

The receiving agency will review the application to assure that it is signed, completed, and is not, on its face, inconsistent with the documentation submitted in support of the application. DHS uses the form to analyze the alien's background and experience to determine whether a NIW is appropriate.

A.3. Extent to which collection is automated, reasons for automation, and considerations for reducing impact on burden.

In compliance with the Government Paperwork Elimination Act, this form is available via the Internet and is fillable on-line through DOL's Employment and Training Administration (ETA) home page at <http://www.foreignlaborcert.doleta.gov/pdf/eta750a.pdf> or <http://www.foreignlaborcert.doleta.gov/pdf/eta750b1.pdf>. DOL receives so few of these forms that it is not economically viable to spend taxpayer funded government resources making them fileable electronically.

A.4. Efforts to identify duplication – why similar information already available cannot be used for purpose described in A.2.

The procedures and documentation requirements are sufficiently specific to avoid duplication of activities.

A.5. Efforts to minimize burden on small businesses.

The information collection is required of small businesses who want to import foreign labor. However, the recordkeeping requirements largely involve information that already exists in payroll and other records kept by most employers for other purposes.

A.6. Consequences to Federal program if collection not done or done less frequently and any technical or legal obstacles to reducing the burden.

DOL would be unable to meet its statutory and regulatory mandates if this information was not collected. The information must be collected to enable DOL to meet its obligation to determine whether or not an athlete meets the criteria to be issued a labor certification and whether employment of the athlete will adversely affect the wages or working conditions of U.S. workers. DHS must use the form to determine the qualifications of an applicant for a NIW of the job offer requirement.

A.7. Special circumstances for conducting information collection.

There are no special circumstances that would require the information to be collected or kept in any manner other than those normally required under the Paperwork Reduction Act.

A.8. Summary of public comments.

In accordance with the Paperwork Reduction Act of 1995, the public was given 60 days to comment by way of a Notice published in the Federal Register on January 3, 2014 (Vol. 79, P. 407). The Department received two comments related to this information collection. Neither comment addressed the burden calculations. One commenter made general comments about immigration. The other commenter specifically addressed the ETA-750 in terms of whether or not it is needed because, according to the commenter, the USCIS does not even notice when the ETA-750 is missing from a National Interest Waiver application. The Department believes that as long as the USCIS regulations pertaining to the NIW applications require the ETA-750, we cannot terminate the form. We have, however, shared the comment with USCIS for that agency's consideration outside the information collection process. Taking steps to removing this regulatory requirement will mean that USCIS will need to comply with the Administrative Procedure Act.

A.9. Explanation of decision to provide any payment or gift to respondents.

No payments or gifts will be made to respondents.

A.10. Assurance of confidentiality provided to respondents.

The information collected is not exempt from disclosure under the Freedom of Information Act. It is also subject to the Privacy Act of 1974. The form ETA-750

contains the privacy notice statement, which specifies whom the form can be released to, including other Federal agencies, the employer, the beneficiary, and –in limited circumstances - to congress and the press and others. When the information is disclosed to the public, personal identifiable information and other information deemed private under the Privacy Act or excludable under the Freedom of Information Act will be redacted. Information about the employer, however, is normally disclosed in full.

A.11. Justification for any sensitive questions.

The information collections do not involve sensitive matters.

A.12. Estimated hourly burden.

DOL estimates approximately 2,033 submissions/responses a year will be submitted either to DOL or to DHS. DOL estimates that approximately 33 applications will be submitted per year to ETA and approximately 2,000 will be submitted to DHS for their National Interest Waiver program. This is a decrease of two submission/response below ETA’s previous estimate.

The public reporting burden for the collection of information, which includes the supporting documentation such as press clippings of the athletes, sports team contracts, off-season employment letter, and notice of filing, is estimated to average: (1) athlete applications (both parts A and B) - 2.8 hours per response; and (2) NIW applications (part B only) – 1.8 hours per response. These estimates include the time for reviewing instructions, searching existing information/data sources, gathering and maintaining information, completing and reviewing the application, and providing notice of the filing.

The overall hours needed for each respondent to produce the required information:

Permanent, Athletes	33	x	2.8 hour	=	92
Permanent, NIW	2,000	x	1.8 hour	=	3,600
					=====
Total Hours					3,692

It is difficult to estimate the value of respondent time involved in completing and maintaining the attestation form. Each individual employer who files an attestation may have a salary range from several hundred dollars to several hundred thousand dollars for a CEO of a business. However, DOL believes that in most companies a Human Resources Manager will perform these activities. In estimating employer staff time costs, DOL used the hourly wage rate for a Human Resources Manager (\$47.94), as published by DOL’s Occupational

Employment Statistics online,¹ and we increased that rate by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of \$68.55.

Total annual respondent hourly reporting costs for the ETA-750 are 3,692 hours x \$68.55 = \$253,087

A.13. Estimated cost burden to respondents.

a) Start-up/capital costs: There are no start-up costs. There is no obligation to own a computer to participate in the program. Anyone without computer access can request the form from OFLC.

b) Annual costs: ETA will be responsible for the annual maintenance costs for the free downloadable forms.

A.14. Estimated cost burden to the Federal government.

The average Federal Government cost for the year of operation is estimated at \$295,110 calculated as follows:

Estimated Hours and Cost - Data Entry/Review

<u>Staff Cost Per Application</u>		
Professional (14 level, step 2)		
\$50.53 x 2½ hour	=	\$126.33
Clerical (6 level, step 3)	+	
\$ 18.83 x 1 hour	=	<u>\$ 18.83</u>
		\$145.16
<u>Estimated Total Cost</u>		
Staff \$145.16 x 2,033		= \$295,110

A.15. Reasons for any program changes.

The annual burden for these information collections decreased from 3,696 to 3,692 hours resulting in a decrease of 4 hours over ETA's previous estimate. The decrease is due to the H-2B program, which used to require the ETA-750 for the temporary admission of professional athletes, now uses a different form, namely the ETA Form 9142B (OMB control number 1205-0509). Consequently the H-2B IC has been removed from ROCIS. This is a discretionary program change.

The Department is correcting an inadvertent error in earlier submissions under this control number. Those earlier requests erroneously included the monetized

¹ Source: Bureau of Labor Statistics 2013 O*NET wage data.

value of respondents' time as an operations cost, and that cost has been removed.

A.16. Method for publishing results.

No collection of information will be published.

A.17. If seeking approval not to display the expiration date for OMB approval, explain why display would be inappropriate.

DOL will display the expiration date for OMB approval on both Part A and Part B.

A.18. Explanation of each exception in the certification statement identified in Item 19 "Certification for Paperwork Reduction Act Submissions" on OMB Form 83-1.

DOL is not seeking any exception to the certification requirements.

B. Collection of Information Employing Statistical Methods

No statistical methods are employed.