

**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.**

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. .

- 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.

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.

During this renewal cycle, USCIS is submitting a revision request because DHS, through a proposed rule entitled "Employment Authorization for Certain H-4 Dependent Spouses" published in the *Federal Register* on May 12, 2014 at 79 FR 26886, proposed to extend the eligibility of employment authorization to certain H-4 dependent spouses of principal H-1B nonimmigrants. DHS is now publishing a final rule that will adopt this proposal with minor changes. This final rule will add a new group of applicants who may request employment authorization, comprised of H-4 dependent spouses of principal H-1B workers who:

- Are the beneficiaries of an approved Form I-140, Immigrant Petition for Alien Worker (OMB 1615-0015); or
- Have been granted H-1B status in the United States pursuant to 106(a), and (b) of the American Competitiveness in the Twenty-First Century Act of 2000 (AC21), as amended by the 21st Century Department of Justice Appropriations Authorization Act.

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 majority of EAD applicants may submit Form I-765 electronically. USCIS, however, currently does 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 Form I-765 concurrently with the request for deferred action under childhood arrivals (Form I-821D).

Forms I-765 and I-765WS reside on the USCIS Web site at www.uscis.gov/i-765/. Form I-765 can be completed and filed electronically. The url that the public will need to access to submit the application electronically is <http://www.uscis.gov/e-filing-i-765>.

NOTE: Form I-765 Worksheet (Form I-765WS) cannot be electronically submitted as that form would be submitted by DACA recipients requesting EADs based on an economic necessity.

- 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 and also appear at a USCIS Application Support Center (ASC) to provide an electronic photograph and fingerprints. As USCIS improves its methods and tools for collection of biometrics, it is considering eliminating the requirement for passport-style photographs. USCIS will also seek public comment on this requirement.

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 and employment authorization document to applicants who request EADs. The information provided on this form is not available by any other means. These forms collect data that makes the adjudication of a request for an EAD possible. EADs provide recipients with secure identification documents, acceptable evidence of employment authorization, and facilitate an employer's verification of identity and employment authorization.

- 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 May 12, 2014, USCIS published a proposed rule, RIN 1615-AB92, Employment Authorization for Certain H-4 Spouses, in the *Federal Register* at 79 FR 26886. With that proposed rule, USCIS requested comments regarding this information collection and invited the public to submit comments during a 60-day comment period.

DHS submitted the proposed revisions to Form I-765 to OMB for review. OMB conducted a preliminary review under 5 CFR 1320.11(c) and issued a notice of action on the ICR at the proposed rule stage with the comment: Terms of the previous clearance remain in effect. . DHS has considered the public comments received in response to the publication of the proposed rule. Approximately one percent of commenters raised issues related to employment authorization requests, including filing procedures, premium processing, validity periods, renewals, evidentiary documentation, concurrent filings for extension of stay/change of status, automatic extensions of employment authorization, filing fees, and marriage fraud. One commenter asked for clarification regarding whether H-4 dependent spouses under this rule are required to demonstrate economic need for employment authorization using the Form I-765 Worksheet (I-765WS). DHS's responses to these comments appear under Part III.E and F of the final rule.

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 in this collection that solely apply to individuals requesting deferred action under DACA. Deferred action 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, 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 exercise of agency prosecutorial discretion, on a case-by-case basis, to defer the removal action against certain individuals who are unlawfully in the United States, 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	1,877,625*	1	3.42 hours ~	6,421,478	\$30.81	\$197,845,722
Individuals or Households	Application for Employment Authorization, Form I-765 (Legacy e-Filing)	103,891	1	3.17hours	329,334	\$30.81	\$10,146,795
Individuals or Households	Biometric processing	250,000**	1	1.17 hours ~~	292,500	\$30.81	\$9,011,925
Individuals or Households	Form I-765WS, 765.	250,000*** *	1	.50 hours	125,000	\$30.81	\$3,851,250
Individuals or Households	Passport-Style Photographs	1,981,516†	1	.50 hours	990,758	\$30.81	\$30,525,254
Total		1,981,516			8,159,070		\$251,380,946

* *The estimated number of respondents for the form I-765, 1,981,516, includes 117,300 estimated new respondents USCIS anticipates would be requesting EADs under the provisions the final rule, “Employment Authorization for Certain H-4 Spouses,” RIN 1615-AB92.*

** *Not all Form I-765 respondents must provide biometrics at each submission. Only DACA requestors are required to submit to this collection of information.*

*** *The above Average Hourly Wage Rate is derived from the [May 2013 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” represents the possibility that a respondent can be employed in any type of work; the collection is not targeting any specific category of employment.*

**** *All Deferred Action for Childhood Arrivals (DACA requestors) in addition to individuals whose cases are deferred and who are not childhood arrivals will complete form I-765WS.*

~ *USCIS has estimated the average time required to complete an EAD application as 3.42 hours (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).*

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 (applicable only to DACA requestors). See response to Question 14 below for more information.

In addition, USCIS estimates that respondents must pay \$10 fee to obtain the required passport-style photographs (Total estimated cost: \$19,815,160 = 1,981,516 Respondents x \$10/per photograph fee).

In addition, this information collection may impose some out-of-pocket costs on respondents in addition to the time burden for the form's preparation. Many I-765 respondents may incur expenses to obtain medical, military, education, or religious records. For form preparation, legal services, translators, and document search and generation, USCIS estimates that the average cost for these activities is \$490 and that an average of 60% of the total respondent population may incur this cost. The total cost to respondents would generate as follows: 1,981,516 respondents x 60% of the population = 1,188,909.6 multiplied by the average cost per response of \$490 = \$582,565,704.

The estimated total cost to I-765 respondents: \$602,380,864.

- 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: \$24,000
- b. Collection and Processing Cost: \$774202080.
- c. Total Cost to Government (funded by USCIS user fee collections): \$774,226,080

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-765 at \$380.

The estimated cost to the government, which is funded by USCIS user fee collections, is calculated by multiplying the estimated number of respondents filing form I-765 (1,981,516) x the fee charge for the collection (\$380) = \$752,976,080; plus estimated number of respondents from whom USCIS collects biometrics (250,000) x \$85 biometric fee = \$21,250,000. 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.

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

The current hour inventory approved for this form is 7,140,900 hours, and the requested new total hour burden is 8,159,070, which is an increase of 1,018,170 annual burden hours. The estimate for the total number of I-765 respondents is 1,981,516 respondents. USCIS is now reporting new estimates with regard to the number of I-765 respondents and also the new population (117,300 respondents) the final rule discussed in this

supporting statement projects would request H-4 based employment authorization. In addition, USCIS is also now reporting the burden associated with the electronic filings of requests for EADs (329,334 burden hours). The table provided under question 12 contains more information on this topic.

USCIS is revising the instructions to Form I-765 to include information for this newly added group of applicants – certain H-4 dependent spouses. The response provided under question 2 also contains information about this change. The proposed rule stated that to request H-4 dependent spouse-based employment authorization, applicants would have to submit a Form I-765 and would also be required to submit documentation establishing either that the H-1B principal has an approved Form I-140, or that the H-4 dependent spouse's current H-4 admission or extension of status was approved pursuant to the principal H-1B nonimmigrant's grant of H-1B status based on section 106(a) and (b) of AC21. This final rule adopts the proposal with some minor changes. The final rule clarifies that supporting evidence must also include documentary evidence of the spousal relationship and documentary evidence that the H-1B nonimmigrant is currently in H-1B status and that the H-4 dependent spouses is currently in H-4 status. In addition, the final rule allows for the filing of Form I-765 by eligible H-4 dependent spouses concurrently with Form I-539, Application to Extend/Change Nonimmigrant Status. The revisions to the instructions to Form I-765 include these clarifications, as well as wording changes from the proposed instructions to improve readability.

In addition to the changes explained above, DHS has revised the form itself to include a check box that self-identifies the applicant as an eligible H-4 dependent spouse. DHS believes that adding the H-4 dependent spouse box to the form will aid in the efficient processing of the form for adjudication by facilitating USCIS's ability to match the application with related petitions that are integral to determining the H-4 dependent spouse's eligibility for employment authorization.

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 future information collection request to OMB.

- 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.