

DEPARTMENT OF JUSTICE
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
INFORMATION COLLECTION REQUEST
SUPPORTING STATEMENT
OMB 1140-0060
Firearms Disabilities for Nonimmigrant Aliens

A JUSTIFICATION

1. Necessity of Information Collection

On October 21, 1998, Public Law 105-277 (112 Stat. 2681), Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 thereafter, "the Act"), was enacted. The Act amended the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44). One of the statutory provisions prohibits, with certain exceptions, the transfer to and possession of firearms and ammunition by aliens in the United States in a nonimmigrant classification regulations implementing Public Law 104-277 were published on February 5, 2002.

Section 922(g)(5) of the GCA makes it unlawful for any person who is an alien illegally or unlawfully in the United States to ship or transport any firearm or ammunition in interstate or foreign commerce, or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce, or possess any firearm or ammunition in or affecting commerce. Section 922(d)(5) makes it unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any person knowing or having reasonable cause to believe that the recipient is an alien illegally or unlawfully in the United States. The Act amended section 922(g)(5) and (d)(5) to expand the list of persons who may not lawfully ship, transfer, possess, or receive firearms or ammunition to include, with certain exceptions, aliens admitted to the United States under a nonimmigrant visa, as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)).

As indicated, there are certain exceptions to the general rule. The prohibition does not apply if the nonimmigrant alien is: (A) Admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States; (B) An official representative of a foreign government who is-

- (1) Accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States; or
- (2) En route to or from another country to which that alien is accredited;

(C) An official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or (D) A foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

Sections 478.44 and 478.45 require any nonimmigrant alien applying for a Federal firearms license or renewal of a Federal firearms license, including a collector's license to provide documentation that he or she falls within an exception to, or has obtained a waiver from the Attorney General, the nonimmigrant alien prohibition. This amendment is necessary to ensure ATF does not issue a license to any person who is prohibited from possessing a firearm or ammunition.

Section 478.120 requires any nonimmigrant alien who completes a Form 6, Application and Permit for Importation of Firearms, Ammunition and Implements of War (or any licensee who completes a Form 6 to import firearms or ammunition for a nonimmigrant alien) to attach documentation to the Form 6 establishing that the alien falls within an exception to, or has obtained a waiver from the Attorney General, the nonimmigrant alien prohibition. This is necessary to ensure we do not issue import permits to prohibited nonimmigrant aliens. Nonimmigrant aliens who fall within an exception to, or have obtained a waiver from, the nonimmigrant alien prohibition must provide documentation to the United States Customs Service establishing the exception or waiver, before importing or bringing a firearm or ammunition in the United States. This is necessary to ensure prohibited nonimmigrant aliens do not possess firearms or ammunition in the United States.

Finally, 478.124 reflects change to the Firearms Transaction Record, ATF Form 4473, which ensures prohibited nonimmigrant aliens do not obtain firearms from Federal firearms licensees. Specifically, every person must list their country of citizenship, rather than just answering if they are a United States citizen. Moreover, any person who is not a United States citizen must include his or her INS-issued alien number or admission number on Form 4473. In addition, for any nonimmigrant alien relying on an exception or waiver from the prohibition, the nonimmigrant must present documentation establishing the exception or waiver and the licensee must note the type of documentation on the Form 4473 and attach a copy of the documentation to the form. The documentation or proof must be presented is one of the following:

- a valid hunting license/permit lawfully issued by the Federal Government, a State, or local government, or an Indian tribe federally recognized by the Bureau of Indian Affairs, which is valid and unexpired;
- admitted to the United States for lawful hunting or sporting purposes
- a waiver from the prohibition from the Attorney General of the United States
- an official representative of a foreign government who is accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States
- an official representative of a foreign government who is en route to or from another country to which that alien is accredited;
- an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State;
- a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

2. Needs and uses

The requested nonimmigrant alien information will be used to determine if a nonimmigrant alien is eligible to purchase, obtain, possess, or import a firearm. Documentation obtained from a nonimmigrant alien for verification purposes will be attached to the forms required to transfer a firearm (ATF Form 4473) or import a firearm or ammunition (ATF Form 6). Nonimmigrant aliens also must maintain the documents while in possession of firearms or ammunition in the United States for verification purposes.

3. Use of Information Technology

These collections of information must be submitted as part of ATF F 6,

§ 478.120, require any nonimmigrant alien who completes a Form 6 (or any licensee who completes a Form 6 to import firearms or ammunition for a nonimmigrant alien) to attach applicable documentation to the Form 6 establishing that the alien falls within an exception to, or has obtained a waiver from, the nonimmigrant alien prohibition. The regulations require nonimmigrant aliens who fall within an exception to, or have obtained a waiver from, the nonimmigrant alien prohibition to provide documentation to the United States Customs Service establishing the exception or waiver, before importing or bringing a firearm or ammunition in the United States.

§ 478.124 reflect the Firearms Transaction Record, ATF Form 4473; ensure prohibited nonimmigrant aliens do not obtain firearms from Federal firearms licensees. Specifically, every person must list on Form 4473 their country of citizenship, rather than just answering if they are a United States citizen. Moreover, any person who is not a United States citizen must include his or her INS-issued alien number or admission number on the Form 4473. In addition, for any nonimmigrant alien relying on an exception or waiver from the prohibition, the nonimmigrant must present applicable documentation to the licensee establishing the exception or waiver and the licensee must note the type of documentation on the Form 4473 and attach a copy of the documentation to the form.

§§ 478.44 and 478.45 require any nonimmigrant alien applying for a Federal firearms license or renewal of a Federal firearms license, including a collector's license, to provide applicable documentation that he or she falls within an exception to, or has obtained a waiver from, the nonimmigrant alien prohibition.

4. Efforts to Identify Duplication

There is no duplication with respect to the information collection specific to the nonimmigrant alien purchasing a firearm or obtaining a license or importing.

5. Minimizing Burden on Small Businesses

This collection does not have any impact on small business.

6. Consequences of Not Conducting or less frequent Collection

The national security and the public's safety would be jeopardized if this information collection was not conducted or conducted less frequently. Nonimmigrant aliens could purchase, obtain, possess or import firearms. The documentation verifies who is eligible.

7. Special Circumstances

There are no special circumstances with regard to this information collection requirement conducted in a manner consistent with 5 CFR 1320.6.

8. Public Comments and Consultations

A 60-day and 30-day Federal Register Notice was published in the Federal Register in order to solicit comments from the general public. We received two comments. The comments stated that nonimmigrant aliens should not be allowed to have guns in the U.S. and that Congress should amend the GCA to stop nonimmigrant aliens from getting or having guns in the U.S.

9. Provision of Payments or Gifts to Respondents

No payment or gift is associated with this collection.

10. Assurance of confidentiality

This information is used for law enforcement purposes only. Confidentiality is not assured.

11. Justification for Sensitive Questions

Records of sensitive nature are not required.

12. Estimate Respondents Burden

ATF estimates that approximately 15,871 nonimmigrant aliens will be directly affected each year. The vast majority of the burden hours will be associated with nonimmigrant aliens trying to obtain or renew a Federal firearms license, those trying to purchase firearms from Federal firearms licensees, and those trying to import firearms temporarily in the United States. The total burden hours for the collection of this information is calculated as follows

- 15,871 respondents annually will respond 1 time. Annual responses 15,871
- 6 minutes per response = 1,587 total burden hours

13. Estimate of Cost Burden

The only cost to the respondent is associated with the nonimmigrant aliens who would need to qualify for an exception to the nonimmigrant alien prohibition by obtaining a hunting license/permit or waiver from the Attorney General. Hunting licenses/permits are usually obtained for a nominal fee.

14. Costs to Federal Government

Not applicable

15. Reason for Change in Burden

The changes in burden are due to an increase in the number of nonimmigrant aliens directly affected to 15,871.

16. Anticipated Publication Plan and Schedule

The results of this collection will not be published.

17. Display of Expiration Date

ATF does not request approval to not display the expiration date for OMB approval of this collection.

18. Exception to the Certification Statement

There are no exceptions to the certification statement.

B. STATISTICAL METHODS:

This collection of information employs no statistical methods.

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