

SUPPORTING STATEMENT

Application to Register Permanent Residence or Adjust Status Form I-485, Supplements A, C and E; and Form I-485, new Supplement J, Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j)

OMB No. 1615 - 0023

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.**

In connection with the Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers proposed rule, RIN 1615-AC05 (NPRM), this new information collection (Supplement J, Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j) to the Form I-485) is necessary to gather information regarding the essential elements of the job offer, including to either confirm that the job offered to the adjustment applicant on the Form I-140 remains a bona fide job offer that the applicant intends to accept once the Form I-485 is approved, or to request job portability under INA section 204(j) to a new, full-time, permanent job offer that the adjustment applicant intends to accept once his or her Form I-485 is approved. The new job offer must be in the same or similar occupational classification as the job offered on an approved employment-based immigrant [Form I-140] petition that is the basis for the I-485 adjustment application. The Form I-485 Supplement J is necessary to ensure the integrity of the overall statutory framework governing the employment-based immigration process.

The typical employment-based immigrant visa process requires the prospective employer filing an immigrant petition on behalf of a foreign national to make certain formal attestations under penalty of perjury in Part N of the ETA Form 9089, commonly referred to as a labor certification. The required attestations capture important aspects and requirements of the statutory framework governing employment-based visa categories requiring a labor certification. However, the current practice regarding the processing of portability requests under INA Section 204(j) does not require the new employer to make similar attestations which are important in maintaining the integrity of the employment-based immigration process.

Additionally, the foreign beneficiary named on an U.S. Department of Labor (DOL) Application for Permanent Employment Certification, ETA Form 9089, is also required to make a formal attestation under penalty of perjury in Part L of the ETA Form 9089 that he or she intends to accept the position offered in the labor certification, if the labor certification is approved and the applicant is granted a visa or adjustment of status based on the labor certification. Currently, an applicant is not required to make a similar attestation, or any specific attestation, when submitting a portability request under INA Section 204(j) to USCIS.

This new information collection will allow USCIS to perform these important functions by requiring formal attestations by both (a) the adjustment applicant requesting portability under INA Section 204(j) and (b) the employer offering the applicant a new permanent job offer. Requiring a formal attestation from the employer is important in any employment visa classification requiring a new or amended job offer, regardless of whether a certified labor certification is required.

Currently, USCIS does not collect detailed information from new employers in the portability context under INA Section 204(j). Therefore, this information collection will be the first time USCIS collects basic but important information about employers offering a new permanent job offer to a specific foreign national under INA Section 204(j).

This information collection will serve as an important anti-fraud measure, and it will assist USCIS in validating employers who extend new permanent job offers to foreign nationals under INA Section 204(j).

Background: Section 245 of the INA is the primary law that provides for the adjustment of status of foreign nationals in the United States to that of a lawful permanent resident. INA Section 245A provides for the adjustment of status of “legalization” applicants. INA Section 209 provides for the adjustment of status of asylees and refugees. Special laws (cited below) provide for the adjustment of status of certain Afghan and Iraqi nationals. INA Section 249 provides for the “registry” of lawful permanent residence for persons residing continuously in the United States since before January 1, 1972.

INA Section 291 provides that “whenever any person makes an application for a visa . . . or makes an application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not inadmissible under any provision of this Act, and, if an alien, that he is entitled to the . . . immigrant . . . status claimed.

INA Section 204(b) states:

Investigation; consultation; approval; authorized to grant preference status. After an investigation of the facts in each case, and after consultation with the Secretary

of Labor with respect to employment-based immigrant [Form I-140] petitions to accord a status under section 203(b)(2) or 203(b), the Attorney General shall, if he determines that the facts stated in the petition are true and that the alien in behalf of whom the petition is made . . . is eligible for preference under subsection (a) or (b) of 203(b), approve the petition.

INA Section 204(e) states:

Subsequent finding of non-entitlement to preference classification. Nothing in this section shall be construed to entitle an immigrant, on behalf of whom a petition under this section is approved, to be admitted to the United States as an immigrant under subsection (a), (b), or (c) of section 203 . . . if upon his arrival at a port of entry in the United States he is found not to be entitled to such classification.

The employment-based immigrant visa process generally involves a multi-step process that may involve various U.S. governmental departments, including USCIS, DOL, and the U.S. Department of State (DOS).

Because of the passage of time between the approval of the labor certification process, the approval of the employment-based immigrant [Form I-140] petition process, and adjustment of status, [Form I-485] process, this information collection is necessary to ensure that the applicant is still entitled to employment-based immigrant visa classification under INA Section 203(b) and is not inadmissible to the United States at the time the Form I-485 is filed and adjudicated. Regarding inadmissibility grounds that this information collection relates to see INA Section 212(a)(5)(A); INA 212(a)(4).

Additionally, Section 106(c) of The American Competitiveness in the Twenty-First Century Act of 2000, Pub. L. No. 106-313, 114 Stat. 1251 (“AC21”), amended INA Section 204 by adding subsection (j), titled “Job Flexibility for Long Delayed Applicants for Adjustment of Status to Permanent Residence.” INA Section 204(j) states:

A petition under subsection (a)(1)(D) [redesignated as (a)(1)(F)] for an individual whose application for adjustment of status pursuant to INA section 245 has been filed and remained unadjudicated for 180 days or more shall remain valid with respect to a new job if the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the petition was filed.

Importantly, AC21 created a parallel provision at INA Section 212(a)(5)(A)(iv) that extended the validity of any underlying labor certification if the conditions of INA Section 204(j) are satisfied.

Prior to this NPRM to implement INA Section 204(j), USCIS has published several Policy Memoranda¹ providing interim guidance to the field regarding the processing of Form I-140 petitions and Form I-485 applications eligible for processing within the purview of INA Section 204(j). Given the provisions of the Paperwork Reduction Act (PRA), 44 U.S.C. § 35, USCIS has been limited in what information the agency can collect regarding an applicant's request to port to a new permanent job offer under INA Section 204(j).

Authority: INA Section 245 and 8 CFR 245.1 et seq.; INA Section 245A and 8 CFR 245(a).1 et seq.; INA Section 209 and 8 CFR 209.1 et seq.; Section 1059

of Public Law 109-163, as amended by Public Law 110-36; Section 1244 of Public Law 110-181, as amended by section 602(b)(9) of Public Law 111-8; Section 602(b) of Public Law 111-8; INA Section 249 and 8 CFR 249.1 et seq; INA Section 291; INA Section 204(b); INA Section 204(e); INA Section 212(a) (5)(A); INA Section 212(a)(4); INA Section 204(j); Section 902 of Public Law 105-277 (HRIFA).

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 data collected on these forms are used by U.S. Citizenship and Immigration Services (USCIS) to determine eligibility for the requested immigration benefit. The forms serve the purpose of standardizing requests for benefits and ensuring that applicants provide all essential information required for USCIS to assess eligibility and adjudicate the applications. Form I-485 is used by all applicants seeking to adjust status to permanent resident under INA 245. The new Supplement J will be used by applicants whose adjustment of status is based on an approved employment-based immigrant visa petition that requires a job offer.

This specific information collection will be used by USCIS to determine whether the beneficiary of an employment-based immigrant visa petition still has a bona

¹ ? Memo. from Michael D. Cronin, INS Exec. Assoc. Comm'r, Office of Programs, 7 (June 19, 2001), available at <http://www.uscis.gov/files/pressrelease/ac21guide.pdf> ; Memo. from William R. Yates, USCIS Acting Assoc. Dir. for Operations (Aug. 4, 2003), available at http://www.uscis.gov/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2003/i140_ac21_8403.pdf; Memo. from William R. Yates, USCIS Assoc. Dir. for Operations (May 12, 2005), available at http://www.uscis.gov/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2005/ac21intrm051205.pdf (reissued by Michael Aytes, USCIS Acting Dir. Of Domestic Operations (Dec. 27, 2005)); and Memo. from Donald Neufeld, USCIS Acting Assoc. Dir., Domestic Operations, 8 (May 30 2008), available at http://www.uscis.gov/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2008/ac21_30may08.pdf.

vide job offer from the petitioning employer at the time the foreign national applies for adjustment of status to lawful permanent resident, and at the time the foreign national's Form I-485 is adjudicated.

Additionally, this information collection will be used by USCIS to make an eligibility determination in instances when an adjustment of status applicant requests to change jobs under INA Section 204(j).

- 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-485 provides the most efficient means of collecting and processing the information needed to determine eligibility for individuals to acquire permanent resident status.

The use of the Form I-485 Supplement J provides the most efficient means of collecting and processing the information needed to determine eligibility for applicants applying to adjust status to lawful permanent resident on the basis of an employment-based immigrant visa petition.

These forms can be completed electronically but currently cannot be filed electronically.

- 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 has investigated its internal processes, files, and data, as well as those of other Federal agencies that may service the same population. The information collected via the I-485 and its associated supplements collect information necessary to adjudicate the respondent's request. Some pieces of the data collected here may be done so via instruments that other agencies use, but the bulk of the information necessary to adjudicate the request of a change in status must be up-to-date at the time of the request and decision. Attempting to gather and verify partial information from other agencies would require USCIS to invest additional time and manpower to administer the I-485 process, and would necessitate an increase in the petition costs for the respondent beyond the current fee charged due to the increase in time and resources needed to investigate, obtain, and verify other agencies' information.

- 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.

The 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 this information is not collected, it would hinder USCIS's ability to accept and analyze information submitted by applicants for permanent residence status.

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.**

This information collection is related to the publication of the proposed rule - Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers, RIN 1615-AC05, in the *Federal Register*. As part of the proposed rule, USCIS will request comments regarding this information collection and will invite the public to submit comments during a 60-day comment period. USCIS will address any public comments that it receives in connection with that proposed rule and the imbedded 60-day information collection when it publishes 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 records notices associated with this information collection are:

- USCIS Benefits Information System, published at 73 FR 56596 on September 29, 2008.
- Electronic Immigration System-2 Account and Case Management System of Records, published at 78 FR 20673 on April 5, 2013.
- Alien File, Index, and National File Tracking System of Records, published at 78 FR 69864 on November 21, 2013.

The associated privacy impact assessment is USCIS Benefits Processing of Applicants other than Petitions for Naturalization, Refugee Status, and Asylum (CLAIMS 3), September 5, 2008.

- 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.

USCIS asks questions of a sensitive nature regarding past behavior and activities. These questions are necessary to determine eligibility of the applicant for adjustment to permanent residence status as required by law. Sensitive questions are asked to determine: whether an individual might be inadmissible under INA 212 (a)(3) (A)-(F)– Security Grounds for Unlawful Activity, Control or Overthrow of the U.S. Government, Terrorist grounds, Adverse Foreign Policy Consequence, Communist or Totalitarian Affiliation; whether an individual might be inadmissible under INA 212 (a)(2)(A)(i)(I) – Conviction or Commission of a Crime Involving Moral Turpitude (CIMT) or INA 212(a)(2)(A)(i)(II), (B), or (C) – Controlled Substance Violations, Multiple Criminal Convictions, or Controlled Substance Traffickers, or; whether an individual might be inadmissible under INA 212 (a)(2)(D)(i) and (ii) – coming to the United States solely, principally, or incidentally to engage in prostitution, or an unlawful commercialized vice.

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	No. of 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	<u>Form I-485</u>	697,811	1	6.25	4,361,319	\$31.26	\$136,334,824
Individuals or households	<u>Supp. A</u>	3,888	1	.216	840	\$31.26	\$26,252
Individuals or households	<u>Supp. C</u>	386	1	.5	193	\$31.26	6,033
Individuals or households	<u>Supp. E</u>	31,000	1	1	31,000	\$31.26	969,060
Individuals or households	<u>Supp. J</u>	29,166	1	1	29,166	\$31.26	\$911,729
Individuals or households	Biometrics Processing	697,811	1	1.17	816,439	\$31.26	\$25,521,879
Total		697,811***			5,238,957		\$163,769,777

* The time burden includes the estimated time for reviewing the instructions, completing the petition, gathering the supporting documents, and submitting the petition.

** The above Average Hourly Wage Rate is the [May 2013 Bureau of Labor Statistics](#) average wage for “All Occupations” of \$22.33 times the wage rate benefit multiplier of 1.4 (to account for fringe benefits) equaling \$31.26. The selection of “All Occupations” (for example) was chosen as the expected respondents for this collection as the respondents to this collection of information could be expected to participate in any occupation listed in the BLS table.

*** Form I-485 number of respondents is representative of the total population of the categories of filers that file Form I-485. All I-485 respondents will be required to complete the biometric collection activities so the total does not double account for those respondents. In addition, the total does not separately account for the respondents that will be need to complete one or more of the Supplements to Form I-485 because they are already included in the overall number of respondents to the Form I-485.

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 are no capital or start-up costs associated with this information collection. Any cost burdens to respondents as a result of this collection are identified in question 14.

However, there is a fee charge of:

- \$985 for filing fee for Form I-485;
- \$85 biometric fee for filing Form I-485
- There is no filing fee charge in connection with Supplement J

Respondents for Form I-485 and Supplement J will incur costs associated with this collection of information. These costs include, but are not limited to, hiring

attorneys, translators or preparers, obtaining copies of documents required for submission, and postage. USCIS estimates the average cost per respondent to be:

I-485: \$490 (average cost) * 697,811 * 70% (estimated weighted average) = \$239,349,173.

- 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	\$54,065
b. Collecting and Processing:	\$750,491,705
c. Total Annual Cost to the Government: (funded by USCIS user fee collections)	\$750,545,770

Government Cost

The estimated cost to the Government includes the suggested average hourly rate for clerical, officer, and managerial time with benefits, plus a percent for the estimated overhead cost for printing, stocking, distributing, and processing of this form. The following calculations were used to determine the estimated cost to the Government:

Form I-485

- Estimated number of respondents (697,811) x (1) x the \$985 fee.
- Estimated number of respondents (697,811) x (1) x the \$85. biometrics fee.

Form I-485, Supplement A

- Estimated number of respondents (3,888) x (1) x \$1,000 fee.

Form I-485, Supplements C and E

- No fee charged for Supplements C and E.

Form I-485, new Supplement J

- No fee charged for Supplement J.

Form I-485: The estimated cost to the Government is \$750,545,770. 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, 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.

Data collection Activity/Instrument	Program Change (hours currently on OMB Inventory)	Program Change (New)	Difference	Adjustment (hours currently on OMB Inventory)	Adjustment (New)	Difference
I-485				4,463,894	4,361,319	(102,575)
I-485 Supplement A				840	0	0
I-485 Supplement C				193	0	0
I-485 Supplement E				31,000	0	0
I-485 Supplement J				0	29,166	29,166
Biometric Processing				0	816,439	816,439
Total(s)				4,495,927	5,206,924	743,030

There is a decrease in the burden estimated for the I-485 due to a reduction in the burden last submitted. There is an overall increase of annual hour burden from 4,495,927 to 5,238,957. This is due to the estimated number of Supplement J respondents being included with this submission. This estimated time burden is also increased because during the previous submission, the biometric processing time associated with Form I-485 was not calculated in the burden calculation. To comply with time burden reporting requirements the time burden is now reported as part of the time burden for this information collection

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 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. Collections of Information Employing Statistical Methods.

There is no statistical methodology involved with this collection.