

**SUPPORTING STATEMENT FOR
Notice of Appeal or Motion
OMB Control No.: 1615-0095
COLLECTION INSTRUMENT(S): Form I-290B**

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.**

When U.S. Citizenship and Immigration Services (USCIS) denies or revokes the approval of certain types of immigration benefit requests, an applicant or petitioner may appeal the adverse decision to the Administrative Appeals Office (AAO), or file a motion reopen and/or a motion to reconsider the decision with the USCIS office that issued the adverse decision. This form also used to appeal bond breach determinations by U.S. Immigration and Customs Enforcement to the AAO. These provisions are stated in 8 CFR 103.2, 103.3, and 103.5.

The information collection required on the Form I-290B is necessary for USCIS to adjudicate the appeal or motion.

Statutory Authority: 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.**

The form serves the purpose of standardizing requests for motions and appeals and ensures that the basic information required to adjudicate appeals and motions is provided by applicants and petitioners, or their attorneys or representatives. USCIS uses the data collected on Form I-290B to determine whether an applicant or petitioner is eligible to file an appeal or motion, whether the requirements of an appeal or motion have been met, and whether the applicant or petitioner is eligible for the requested immigration benefit.

- 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 Form I-290B provides the most efficient means for collecting and processing the required data. Form I-290B is available at <http://www.uscis.gov/i-290b> and it can be

accessed, completed and saved 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.

A review of USCIS's Forms Inventory Report revealed no duplication of effort and there is no other similar information currently available which can be used for this purpose.

There is no similar data collected. 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 in this request. 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.

Small entities might complete and file this type of information collection with USCIS; however, their burden is no different from that of other respondents such as individuals or households that submit this type of request.

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 through Form I-290B, USCIS will not be able to determine whether the applicant or petitioner is eligible to file an appeal or motion, whether the requirements of an appeal or motion have been met, and whether the applicant or petitioner is eligible for the requested immigration benefit. .

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.**

This information collection is conducted in a manner consistent with the guidelines in 5 CFR 1320.5(d)(2) and does not require or result in any of the circumstances above.

- 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.**

On May 20, 2016, USCIS published a 60-day notice in the Federal Register at 81 FR 31954. USCIS received 1 comment after publishing that notice.

Comment Summary

The commenter requests that USCIS not allow foreign nationals to appeal its immigration decisions because the commenter believes that foreign nationals should not have the same rights as U.S. citizens.

The commenter also requests that USCIS increase the Form I-290B filing fee to \$25,000 because the commenter believes that foreign nationals impose a financial cost to U.S. citizens by breaking the law and obtaining welfare benefits.

USCIS Response

USCIS' jurisdiction over administrative appeals is primarily based on a delegation of authority from the Secretary of the Department of Homeland Security (DHS). See Delegation Number 0150.1(U) (effective March 1, 2003). The regulations for

administrative appeals are located at 8 C.F.R. 103.3. Through its Administrative Appeals Office (AAO), USCIS adjudicates administrative appeals of the approximately 50 different immigration case types under its jurisdiction. Appeals may be filed by persons and entities with legal standing in the case, including foreign nationals, U.S. citizens, and U.S. employers. See 8 C.F.R. 103.3(a)(1)(iii)(B). The commenter's request that USCIS prohibit foreign nationals from filing administrative appeals to the AAO is counter to current and long-standing DHS regulations.

Regarding the Form I-290B filing fee, USCIS is primarily funded by immigration benefit request fees charged to applicants and petitioners. DHS is authorized by INA section 286(m), 8 U.S.C. 1356(m), to charge fees for adjudication and naturalization services; however, DHS may only charge fees at a level to ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge in certain humanitarian cases. Neither DHS nor USCIS is permitted to use the Agency's fee schedule to recoup the types of costs claimed by the commenter.

On August 23, 2016, USCIS published a 30-day notice in the Federal Register at 81 FR 57600. USCIS has not yet received comments.

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 petitioners or applicants 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 USCIS Benefits Information System, 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 USCIS Benefits Processing of Applicants other than Petitions for Naturalization, Refugee Status, and Asylum dated 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.

There are no questions of a sensitive nature.

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	No. of Responses per Respondent	Avg. Burden per Response (in hours)	Total Annual Burden (in hours)	Avg. *Hourly Wage Rate	Total Annual Respondent Cost
Individual or Households/Employers	Notice of Appeal or Motion	22,062	1	1.5	33,093	\$32.52	\$1,076,184
Total		22,062			33,093		\$1,076,184

* The above Average Hourly Wage Rate is the [May 2015 Bureau of Labor Statistics](#) average wage for “All Occupations” of \$23.23 times the wage rate benefit multiplier of 1.4 (to account for fringe benefits) equaling \$32.52. The selection of “All Occupations” (for example) was chosen as the expected respondents for this collection could be expected to be from any occupation.

NOTES ON HOUR BURDEN:

USCIS has sought comments in conjunction with other information collection requests on how the burden of the following information collection requirements affects respondents. USCIS will revise its burden estimates based on the public comments received, its own expert analysis, and informational resources.

1. Affidavits. This information collection also provides that a motion must state new facts and must be supported by, among others, affidavits. An affidavit may require research and preparation by a third party as well as payment for the third party’s effort.

2. Preparers. Some respondents may hire third parties for form completion so there may be a burden for a preparer to assist in the form completion process.

3. Records. Respondents might need to provide documentary evidence demonstrating eligibility at the time the underlying petition or application was filed. There may be a burden associated with having to gather the required documentation

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 no capital, start-up, operational, or maintenance cost associated with this collection of information. There is, however, a fee charge of \$630 per submission.

In addition, USCIS estimates that respondents will incur an estimated cost of \$3.75 average postage cost to each respondent to submit the completed package to USCIS. Postage to mail completed package (22,062 x \$3.75 average postage) = **\$82,733.**

This information collection may impose some out-of-pocket costs on respondents in addition to the time burden for the form's preparation. Some respondents may incur expenses to obtain translators and third-party preparers. For form preparation, legal services, translators, and document search and generation, USCIS estimates the average cost of this information collection may vary widely, from as little as \$20 to \$1000 per respondent. USCIS estimates that the average cost for these activities is \$490 and that an average of 25% of the total respondent population may incur this cost. The total cost to respondents would generate as follows: 22,062 respondents x 25% of the population = 5,516 respondents multiplied by the average cost per response of \$490 = **\$2,702,840.**

The estimated total cost to I-290B applicants: **\$2,785,573.**

- 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	\$	2,360
b.	Collection and Processing Cost	\$	13,899,060
c.	Total Annual Cost to Government	\$	13,901,420

The estimated cost of the program to the government is calculated by multiplying the estimated number of respondents (22,062) x the suggested fee charge (\$630). 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.

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-290B				58,389	33,093	-25,296
Total(s)				58,389	33,093	-25,296

There is a decrease in the annual burden hours previously reported for this information collection. This change is due to an adjustment in agency’s estimates for the number of respondents associated with this collection. USCIS previously reported 25,465 estimated number of respondents but it is now reporting 22,062 estimated number of respondents. As a result, the annual burden hours have decreased by 25,296 hours.

The revised form incorporates new standard language in the instructions, making the form clearer, more concise, and reduces the rate of errors in filings.

Data collection Activity/Instrument	Program Change (cost currently on OMB Inventory)	Program Change (New)	Difference	Adjustment (cost currently on OMB Inventory)	Adjustment (New)	Difference
I-290B				0	+2,702,840	+2,702,840

Total(s)				0	+2,702,840	+2,702,840 0
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The increase in public cost is due to USCIS not accounting for postage and other out-of-pocket expenses for the previously approved 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.**

This information collection will not be published for statistical purposes.

- 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 OMB approval of 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.