

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

Nonimmigrant Treaty Trader/Investor Application OMB Number 1405-0101 DS-156E

A. JUSTIFICATION

1. The Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 et seq., statutorily mandates the application and eligibility requirements for aliens seeking to obtain nonimmigrant visas. INA section 221(a) [8 U.S.C. § 1201] provides that a consular officer may issue a nonimmigrant visa to an alien who has made proper application therefor.

INA section 222(c) [8 U.S.C. § 1202] specifically requires that, “Every alien applying for a nonimmigrant visa and for alien registration shall make application therefor in such form and manner as shall be by regulations prescribed. In the application the alien shall state his full and true name ... and such additional information necessary to the identification of the applicant, the determination of his eligibility for a nonimmigrant visa, and the enforcement of the immigration and nationality laws as may be by regulations prescribed.”

INA section 101(a)(15)(E) [8 U.S.C. § 1101] includes within the definition of nonimmigrant alien: “an alien entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national, and the spouse and children of any such alien if accompanying or following to join him: (i) solely to carry on substantial trade, including trade in services or technology, principally between the United States and the foreign state of which he is a national; (ii) solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital.”

Department of State regulations pertaining to nonimmigrant visas under the INA are published at 22 CFR part 41. The regulations pertaining in particular to treaty trader and treaty investor nonimmigrant visa are specifically provided for in 22 CFR 41.51.

2. Department of State consular officers use Form DS-156E (Nonimmigrant Treaty Trader/Investor Application), in conjunction with Form DS-160, to fulfill the legal requirements for treaty trader/investor visas. The information requested on the form is limited to that which is necessary for consular officers to determine the eligibility of an alien applicant for a nonimmigrant treaty trader/investor visa. Applicants provide information on the nature of the business or investment in the United States, including the percentage of its trade that is with the United States, the value of its assets, and the applicant’s own qualifications to direct the

enterprise. A consular officer is unable to approve a treaty trader/investor visa without collecting this information.

Consular officers currently use the form as an indispensable part of adjudicating approximately 48,600 treaty trader/investor visa cases per year. An applicant for an E2 visa who is a treaty investor coming to the United States to develop and direct the operations of an enterprise in which he or she has invested, or is actively in the process of investing, need only complete a DS-160. Currently, all applicants for an E1 visa, and those applicants for an E2 visa who are employees of a treaty investor coming to the United States to engage in duties of an executive or supervisory character or who have special qualifications that make the services to be rendered essential to the efficient operation of the enterprise, must submit both the DS-160 and DS-156E.

3. The DS-156E is available to download from the Internet at <http://travel.state.gov>. The form is not e-fileable at this time.

4. The Form DS-156E is a supplement to the DS-160, which is required by regulation for all nonimmigrant visa applicants. Except for basic identifying biographic information collected by the DS-160, information collected by the DS-156E is not duplicative of information maintained elsewhere or otherwise available. As indicated in paragraph (2), for those categories of E2 cases for which adequate information is requested in the DS-160, completion of the DS-156E is not required.

5. The information collection does involve obtaining information from small businesses or other small entities; however, the impact on these entities is minimal. The minimal impact would involve a small adjustment to customary business practices and procedures. The online fillable form and order of questions is designed to reduce the impact as much as possible.

6. This information collection is essential for determining whether an applicant is eligible for a nonimmigrant treaty trader/investor visa. An applicant fills out the form if they are E-1 treaty trader visa applicant or an Executive, Manager, or Essential Employee E-2 treaty investor visa applicant. Individuals seeking to renew Treaty Trader or Treaty Investor visas are asked to complete all or part of the DS-156E so that consular officers have current information at the time of the visa adjudication. It is not possible to collect the information less frequently than once per application or renewal because consular officers need up to date information to determine efficiently whether an applicant is eligible to receive a visa.

7. No special circumstances exist.

8. The Department of State published a notice in the Federal Register on May 18, 2016 (81 FR 31289) soliciting public comments. One comment was received. The comment was related to responsibility of third parties who complete DS-160s on behalf of applicants and was not related to the DS-156E. However, it is important to note that the DS-156E does require that the

individual who completed the collection sign the form, and that individual signs the collection by “solemnly swear[ing] or affirm[ing] that all statements which appear in this application are true and complete to the best of [his or her] knowledge and belief.”

9. No payment or gift is provided to respondents.

10. In accordance with section 222(f) of the INA, information obtained from applicants in the nonimmigrant visa process is considered confidential and is to be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States. Certified copies may be made available to a court which certifies that the information is needed in a case pending before the court. Visa records can also be shared with foreign governments in certain circumstances.

11. The questions on the collection are designed to solicit the information necessary to determine whether an applicant is eligible for a visa under Section 101(a)(15)(E) of the INA. The collection does not ask any questions of a sensitive nature.

12. Approximately 48,600 respondents complete this form each year. This number was arrived at by averaging the responses we have received for the past three fiscal years. Finding the necessary background information and completing the form is estimated to require four hours. The annual hour burden to respondents is estimated to be 194,400 hours ($48,600 \times 4 \text{ hours} = 194,400 \text{ hours}$). Based on Bureau of Labor Statistics the average American hourly wage of \$25.35, the weighted wage hour cost burden for this collection is \$6,899,256. This is based on the calculation of $\$25.35 \text{ (average hourly wage)} \times 1.4 \text{ (weighted wage multiplier)} \times 194,400 \text{ hours} = \$6,899,256$.

13. Many respondents employ attorneys to help complete the form and assemble the supporting documentation, or rely on their company’s human resources staff to prepare the application package. Thus, the cost to prepare the form and assemble the supporting documentation varies widely. For applications prepared by a company’s human resources office, the cost to photocopy and assemble relevant documentation is minimal. For those applications prepared by an immigration attorney, the cost may be significantly higher. Based on this analysis and input from the American Immigration Lawyers Association, the Department estimates the average cost of completing a Form DS-156E is approximately \$1,000. We therefore estimate that the total cost burden for the collection is \$48,600,000 ($48,600 \text{ applicants} \times \$1,000$).

14. This collection is a supplement for both the paper and electronic Nonimmigrant Visa Applications, forms DS-156 (OMB # 1405-0018) and DS-160 (OMB# 1405-0182). All E category applicants will use the DS-160. Due to business sensitive information that is on the applications, only E-1 category applicants and those E-2 category applicants who are deemed “essential employees” will fill out the DS-156E in addition to the DS-160. Much of the 156E cost is already incorporated into the DS-160 costs. However, processing an E visa takes an

average of 13 minutes extra of locally employed staff time and an extra 1 minute of consular officer time. Using the average hourly wage with included overhead of \$53.32 and \$202.39 for each position respectively yields a cost of \$14.92 per application. Multiplied by the number of respondents, we estimate the cost of the DS-156E to be \$725,112.

15. There are adjustments in this collection from the previous renewal due to a more accurate estimation of the number of respondents. From fiscal year 2013 to fiscal year 2015, the Department of State saw an increase in applicants.

16. A quantitative summary of all Department of State visa activities is published in the annual Report of the Visa Office. The Report of the Visa Office is an annual report providing statistical information on immigrant and non-immigrant visa issuances by consular offices, as well as information on the use of visa numbers in numerically limited categories. The Visa Office currently has annual reports available from 2000 to 2015. The reports can be found [here](#).

17. The Department will display the expiration date for OMB approval of the information collection.

18. The Department is not requesting any exception to the certification statement.

B. STATISTICAL METHODS

This collection does not employ statistical methods.