

**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.**

In order to request employment authorization or an Employment Authorization Document (Form I-766, or successor form), or both, most aliens are required to make their request by submitting to U.S. Citizenship and Immigration Services (USCIS) an Application for Employment Authorization, Form I-765, pursuant to 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. This evidence, Form I-766, establishes identity and employment authorization for purposes of Employment Eligibility Verification (Form I-9). *See* 8 U.S.C. 1324a(a)(1)(B); 8 CFR 274a.2(b)(1). Pursuant to section 274A(h)(3)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. 1324a(h)(3)(B), Secretary of Homeland Security has the authority to extend employment authorization to noncitizens in the United States.

Any individual may be required to submit biometric information if the regulations or form instructions require such information or upon request by USCIS. *See* 8 CFR 103.16; 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; *see also* 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 employment authorization and/or for initial permission to accept employment, renewal of permission to accept employment, or replacement of a lost employment authorization document.

The regulations at 8 CFR 274a.12(a), (b), and (c) describe three broad classes of foreign nationals authorized to work in the United States. Individuals in the first class, described at 8 CFR 274a.12(a), are authorized to work in the United States incident to their immigration status, without restriction on the location of their employment or the type of employment they may accept. Those individuals seeking to obtain an EAD (Form I-766), which contains both evidence of employment authorization and a photograph, typically must file a separate application with USCIS, generally on Form I-765. See 8 CFR 274a.13(a).

Individuals in the second class, described at 8 CFR 274a.12(b), are also employment authorized incident to their nonimmigrant status, but such employment authorization is valid only with a specific employer. Foreign nationals in this second group are not issued an EAD; instead these individuals obtain an Arrival-Departure Record (Form I-94) indicating their nonimmigrant status and attendant employment authorization and do not file separate requests for evidence of employment authorization.

Individuals in the third class, described at 8 CFR 274a.12(c), are required to apply for employment authorization on Form I-765 and may begin working only if USCIS approves their application. Such employment authorization is subject to the restrictions described in the regulations for his or her respective employment eligibility category. With respect to individuals described in the first and third categories, USCIS has the discretion to establish a specific validity period for the EAD.

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 his or her background information, and produce the EAD card.

During this renewal cycle, USCIS is submitting a revision request through a proposed rule entitled, *Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers*, published in the *Federal Register* on December 31, 2015. This rule proposes to provide additional stability and flexibility to certain high-skilled nonimmigrant workers in the United States who are the beneficiaries of approved employment-based immigrant visa petitions but who cannot obtain an immigrant visa number due to current backlogs and are experiencing compelling circumstances. Specifically, the rule proposes to allow such beneficiaries in the United States on E-3, H-1B, H-1B1, L-1, or O-1 nonimmigrant status to apply for employment authorization for a limited period if there are compelling circumstances that, in the discretionary determination of DHS, justify the consideration of such employment authorization. In order to qualify for a renewal of employment authorization, the difference between such beneficiaries' priority date and the date upon which the immigrant visas are authorized for issuance for the principal alien's preference category and country of chargeability is 1 year or less according to the current Department of State Visa Bulletin.

This rule also proposes to remove the requirement for USCIS to issue an interim employment authorization document to applicants whose Form I-765 has been pending at least 90 days since USCIS' receipt of such form.

- 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.**

Form I-765 resides on the USCIS Web site at www.uscis.gov/i-765/. Form I-765 can be completed electronically. However, this form cannot be electronically filed at the present moment.

- 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 by the alien classes listed in the form instructions to request employment authorization or an Employment Authorization Document. USCIS requires applicants under this control number to provide passport-style photographs. USCIS also requires certain applicants to appear at a USCIS Application Support Center (ASC) to provide an electronic photograph and fingerprints.

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 or an Employment Authorization Document. The information provided on this form is not available by any other means for the alien classes listed on the form instructions. These forms collect data that makes the adjudication of a request for an EAD possible. EADs provide recipients with secure DHS-issued documents evidencing employment authorization and identity, and facilitate an employers' 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 December 31, 2015, USCIS published a proposed rule entitled, “**Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting Highly-Skilled H-1B Alien Workers**” (80 FR 81899) and allowing for a 60-day public comment period for this information collection. USCIS addressed comments in the final rule which published on November 18, 2016 (81 FR 82398).

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:

- DHS-USCIS-ICE-CBP-001 – Alien File, Index, and National File Tracking System, published on November 21, 2013 at 78 FR 69864.
- DHS-USCIS-007 – Benefits Information System, published on September 29, 2008 at 73 FR 56596.
- DHS-USCIS-010 – Asylum Information and Pre-Screening, published on November 30, 2015 at 8 FR 74781.

- DHS/USCIS-015 – Electronic Immigration System-2 Account and Case Management System of Records, published April 5, 2013 at 78 FR 20673.

The associated Privacy Impact Assessments associated with this information collection are:

- DHS-USCIS-PIA-016 – Benefits Processing of Applicants other than Petitions for Naturalization, Refugee Status and Asylum (CLAIMS 3), dated September 5, 2008.
- Forthcoming DHS-USCIS-PIA-056 USCIS ELIS Update.

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	2,136,583*	1	3.42 hours ~	7,307,114	\$32.52	\$ 237,627,347
Individuals or Households	Biometric processing	405,067**	1	1.17 hours ~~	473,928	\$32.52	\$ 15,412,139
Individuals or	Form I-765WS, 765.	250,000*** *	1	.50 hours	125,000	\$32.52	\$ 4,065,000

Households							
Individuals or Households	Passport-Style Photographs	2,136,583 †	1	.50 hours	1,068,292	\$32.52	\$ 34,740,856
Total		2,136,583			8,974,364		\$ 291,845,342

* The estimated total number of respondents for the form I-765, 2,136,583 estimated new respondents USCIS anticipates would be requesting EADs under the provisions 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. USCIS is projecting that approximately 155,067 new respondents will submit this type of request as a result of this rulemaking. The 155,067 population is accounted for on the total number of respondents (2,136,583) who will submit applications for employment authorization documents.

** Not all Form I-765 respondents must provide biometrics at each submission. Two groups are required to submit to this collection of information: DACA requestors and the new group proposed in the rulemaking entitled “Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers,” published in the Federal Register on December 31, 2015. This new proposed group would include beneficiaries of approved employment-based immigrant visa petitions who are in the United States on E-3, H-1B, H-1B1, L-1, or O-1 nonimmigrant status but who cannot obtain an immigrant visa number due to current backlogs and are experiencing compelling circumstances. The rule proposes to allow such beneficiaries, and their spouses and children, to apply for employment authorization for a limited period if there are compelling circumstances that, in the discretionary determination of DHS, justify the consideration of such employment authorization.

*** The above Average Hourly Wage Rate is derived from the [May 2015 Bureau of Labor Statistics Mean Hourly Wage](#) for “All Occupations”. The wage rate of \$32.52 is calculated from the base average wage rate of \$22.23 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 and requestors under the proposed rule, who are beneficiaries of approved employment-based immigrant visa petitions in the United States on E-3, H-1B, H-1B1, L-1, or O-1 nonimmigrant status but cannot obtain an immigrant visa number due to current backlogs and are experiencing compelling circumstances, as well as qualifying spouses and children). 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: \$21,365,830 = 2,136,583 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. 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: 2,136,583 respondents x 60% of the population = 1,281,950 multiplied by the average cost per response of \$490 = \$628,155,500.

The estimated total cost to I-765 respondents: \$649,521,330.

- 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: \$846,332,235.
- c. Total Cost to Government (funded by USCIS user fee collections): \$846,356,235.

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 (2,136,583) x the fee charge for the collection (\$380) = \$811,901,540; plus estimated number of respondents from whom USCIS collects biometrics (405,067) x \$85 biometric fee = \$34,430,695. 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 burden hour inventory approved for this form is 8,185,043 hours, and the requested new total burden is 8,974,364 hours, which is an increase of 789,321 annual burden hours. The new proposed estimate for the total number of I-765 respondents is 2,136,583 respondents. USCIS is now reporting a new I-765 population (155,067 respondents), an estimate that the proposed rule discussed. 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 the newly added groups of applicants – beneficiaries of approved employment-based immigrant visa petitions who are in the United States on E-3, H-1B, H-1B1, L-1, or O-1 nonimmigrant status but who cannot obtain an immigrant visa number due to current backlogs and are experiencing compelling circumstances. The rule proposes to allow such beneficiaries, and their spouses and children, to apply for employment authorization for a limited period if there are compelling circumstances that, in the discretionary determination of DHS, justify the consideration of such employment authorization. The eligibility categories stated in the form instructions are (c)(35) for principal beneficiaries and (c)(36) for spouses and children.

The Form I-765 was amended to include check boxes that require the applicant to disclose any such criminal convictions. The applicant is further instructed on the Form and in the Instructions, to include evidence of any relevant dispositions.

USCIS is revising the instructions to Form I-765 to require aliens in the new, proposed eligibility categories (c)(35) and (c)(36) to submit to collection of biometrics information and pay the biometric services fee of \$85. Unlike most categories, the spouses and children of approved employment applicants, do not necessarily have a “principal” or “primary” benefit request that evaluates the alien’s risk to U.S. public safety and national security through background and/or security checks. USCIS believes that requiring biometrics for these applicants will mitigate the risk to USCIS of providing employment authorization to individuals who may be a risk to public safety or national security.

USCIS is also revising the instructions to Form I-765 to delete information regarding the granting of interim Employment Authorization Documents to applicants when USCIS has failed to adjudicate Form I-765 within 90 days of USCIS’s receipt of the application. The response provided under question 2 also contains information about this change. 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.

The current estimated cost burden is \$602,380,864; there is an increase of \$47,140,466 in the estimated cost burden to the respondents based on the change in the total number of respondents for this collection of information.

- 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.