

**SUPPORTING STATEMENT FOR REQUEST FOR OMB APPROVAL  
UNDER THE PAPERWORK REDUCTION ACT OF 1995**

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**SUPPORTING STATEMENT**  
**APPLICATION FOR ALIEN EMPLOYMENT CERTIFICATION**  
**OMB Control No. 1205-0015**

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**A. Justification**

*A.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.*

The Department of Labor (Department) is seeking a 3-year extension, without change, of the Application for Alien Employment Certification, Form ETA 750A and Form ETA 750B (OMB control number 1205-0015). The current authority to conduct the information collection is due to expire on June 30, 2017.

The information collection is required by sections 203(b)(2)(B)(i) and 212(a)(5)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1153(b)(2)(B)(i) and § 1182(a)(5)(A)) and 8 CFR 204.5(k)(4)(ii). The text of these provisions is printed below.

Under INA § 212(a)(5)(A), the Secretary of Labor must certify that any alien seeking to permanently enter the United States to perform skilled or unskilled labor under an employment-based visa will not adversely affect the wages and working conditions of U.S. workers similarly employed, and that there are not sufficient U.S. workers able, willing, qualified, and available to perform such labor. Before an employer may request any skilled or unskilled alien labor under this section, it must submit a request for certification to the Secretary of Labor. In limited circumstances, a foreign national without an employer sponsor may apply for a waiver of the job offer requirement with the Department of Homeland Security (DHS) as provided in INA § 203(b)(2)(B)(i) on the ground that the waiver is in the national interest, which allows aliens to self-petition and, where appropriate, enter without a labor certification.

One of the forms that DOL uses to make certifications in the permanent visa program is the Form ETA 750, part A, *Application for Alien Employment Certification* (OMB Control Number 1205-0015). The Form ETA 750, part A, is used to collect information that, when appropriate, permits DOL to certify that the admission of a foreign professional athlete meets the requirements of Section 212(a)(5)(A). Section 212(a)(5)(A)(iii) of the INA deals specifically with professional athletes coming to the United States on a permanent basis as immigrants.

The Form ETA 750, part B provides detailed information about an alien's education and work history and is used by DOL to collect information about the professional athlete on whose behalf an application for permanent labor certification is filed. The Department of Homeland Security (DHS) also requires Part B under 8 CFR 204.5(k)(4)(ii) for foreign workers applying for the National Interest Waiver (NIW) of the job offer requirement under INA § 203(b)(2)(B)(i).

## **8 USC §1182. Inadmissible aliens**

### **(A) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION**

Except as otherwise provided in this chapter, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

#### **(5) LABOR CERTIFICATION AND QUALIFICATIONS FOR CERTAIN IMMIGRANTS**

##### **(A) LABOR CERTIFICATION**

###### **(I) IN GENERAL**

Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that—

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

...

###### **(III) PROFESSIONAL ATHLETES**

###### **(I) IN GENERAL**

A certification made under clause (i) with respect to a professional athlete shall remain valid with respect to the athlete after the athlete changes employer, if the new employer is a team in the same sport as the team which employed the athlete when the athlete first applied for the certification.

###### **(II) "PROFESSIONAL ATHLETE" DEFINED**

For purposes of subclause (I), the term "professional athlete" means an individual who is employed as an athlete by—

(aa) a team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed \$10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or

(bb) any minor league team that is affiliated with such an association.

...

###### **(D) APPLICATION OF GROUNDS**

The grounds for inadmissibility of aliens under subparagraphs (A) and (B) shall apply to immigrants seeking admission or adjustment of status under paragraph (2) or (3) of section 1153(b) of this title.

## **8 USC §1153. Allocation of immigrant visas**

### **(B) PREFERENCE ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS**

Aliens subject to the worldwide level specified in section 1151(d) of this title for employment-based immigrants in a fiscal year shall be allotted visas as follows:

(2) ALIENS WHO ARE MEMBERS OF THE PROFESSIONS HOLDING ADVANCED DEGREES OR ALIENS OF EXCEPTIONAL ABILITY...

### **(B) WAIVER OF JOB OFFER**

#### **(i) NATIONAL INTEREST WAIVER**

Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

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8 CFR §204.5 Petitions for employment-based immigrants:

(k) *Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability....*

(4) *Labor certification or evidence that alien qualifies for Labor Market Information Pilot Program—...*

(ii) *Exemption from job offer.* The director may exempt the requirement of a job offer, and thus of a labor certification, for aliens of exceptional ability in the sciences, arts, or business if exemption would be in the national interest. To apply for the exemption, the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate, as well as evidence to support the claim that such exemption would be in the national interest.

*A.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.*

In order to meet its statutory and regulatory responsibilities under the INA, DOL needs to extend an existing collection of information from employers seeking to import foreign labor. The form used to collect the information is used not only by DOL, but also other federal agencies in furtherance of meeting the requirements of the INA. DOL uses the information collected to implement its permanent certification program for professional athletes. The DHS, U.S. Citizenship and Immigration Services (USCIS), uses the form for the NIW program for employment-based immigration.

Employers or other individuals wishing to use one of the above-mentioned programs complete and file the applicable “part(s)” of the ETA-750 and submit it/them to the appropriate office of DOL or DHS, as applicable. Employers wishing to hire professional athletes from abroad on a permanent basis must submit Parts A and B to DOL’s Atlanta National Processing Center. Individuals applying for a NIW must submit Part B directly to DHS’ USCIS with their application.

The receiving agency will review the application to assure that it is signed, completed, and is not, on its face, inconsistent with the documentation submitted in support of the application. DHS uses the form to analyze the alien’s background and experience to determine whether a NIW is appropriate.

*A.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.*

In compliance with the Government Paperwork Elimination Act, this form is available via the Internet and is fillable online through ETA’s home page at <http://www.foreignlaborcert.doleta.gov/pdf/eta750a.pdf> and <http://www.foreignlaborcert.doleta.gov/pdf/eta750b1.pdf>. The Department receives so few of these forms that it is not economically viable to spend taxpayer-funded government resources to enable electronic filing.

*A.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.*

The procedures and documentation requirements are sufficiently specific to avoid duplication of activities.

*A.5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.*

The information collection is required of small businesses who want to import foreign labor. However, the recordkeeping requirements largely involve information that already exists in payroll and other records kept by most employers for other purposes.

The Department has reviewed the memorandum issued to all heads of departments and agencies by the Office of Budget and Management on June 22, 2012 about Reducing Reporting and Paperwork Burdens. The Department concludes that it cannot make any exemptions for small entities (including small businesses) or streamline the forms, because the statute and regulations require employers of foreign athletes and NIW workers to make the necessary attestation and provide the information requested. The collection is not disproportionately more burdensome for small entities than large ones because the form is easy to understand and provides all of the necessary attestation on the form, so that the employer does not need to find the appropriate law

to know how to apply for permission to use foreign crewmembers. It is not possible to reduce the burden on small entities by shortening the form because the form collects only the minimum information needed to process the form and gather the necessary information for administration of the program. The use of electronically filed forms is also not feasible in this program because a small percentage of forms are submitted each year, making it economically prohibitive to spend taxpayer money to enable electronic fil. The forms collect email addresses to enhance electronic communication, which it believes will reduce the burdens on respondents and increase efficiency.

*A.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.*

DOL would be unable to meet its statutory and regulatory mandates if this information was not collected. The information must be collected to enable DOL to meet its obligation to determine whether a foreign professional athlete meets the criteria to be issued a labor certification and whether employment of the athlete will adversely affect the wages or working conditions of U.S. workers. DHS needs the information on the form to determine the qualifications of an applicant for a NIW.

*A.7. Explain any special circumstances that would cause an information collection to be conducted in a manner that requires further explanation pursuant to regulations 5 CFR 1320.5.*

These data collection efforts do not involve any special circumstances.

*A.8. If applicable, provide a copy and identify the date 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.*

In accordance with the Paperwork Reduction Act of 1995, the public was allowed 60 days to comment through the Federal Register Notice posted on April 24, 2017 (82 FR 18929). The Department received one comment that was not germane to this ICR.

*A.9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.*

There is no payment or gifts to respondents involved with this information collection.

*A.10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.*

The information collected is not confidential.

*A.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.*

This information collection does not involve sensitive matters.

*A.12. Provide estimates of the hour burden of the collection of information.*

DOL estimates that approximately 6,695<sup>1</sup> submissions/responses a year will be submitted to DOL and to DHS, combined – approximately 52 applications to ETA and approximately 6,643 to DHS for the National Interest Waiver program. This is an increase in the submission/response below ETA’s previous estimate due to previous recorded filings.

The public reporting burden for the collection of information, which includes the supporting documentation such as press clippings of the athletes, sports team contracts, off-season employment letter, and notice of filing, is estimated to average: (1) athlete applications filed with DOL (both parts A and B) - 2.8 hours per response where Part A consists of 1.0 reporting hour and Part B consists of 1.8 reporting hours; and (2) NIW applications filed with USCIS (part B only) – 1.8 hours per response. These estimates include the time for reviewing instructions, searching existing information/data sources, gathering and maintaining information, completing and reviewing the application, and providing notice of the filing.

The overall hours needed for each respondent to produce the required information:

Permanent, Athletes	52	x	2.8 hour	=	145.6
Permanent, NIW	6,643	x	1.8 hour	=	11,957.4
				=====	
Total Hours					12,103.0

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<sup>1</sup> The number of filings for the ETA Form 750 parts A and B has steadily increased. In Fiscal Year (FY) 2013, 34 ETA Form 750, parts A and B, were filed with ETA; in FY 2014, 31 applications were filed with ETA; in in FY 2015, 55 applications were filed with ETA; and in in FY 2016, 52 applications were filed with ETA. For purposes of ETA-750 filings with ETA, an “application” refers to the filing of Parts A and B together. In FY 2013, 4,923 ETA Form 750, part B, were filed with DHS; in FY 2014, 5,441 applications were filed with DHS; in FY 2015, 6,097 applications were filed with DHS; and in FY 2016, 6,643 applications were filed with DHS.

The Department of Labor receives ETA-750 forms (Parts A and B) filed by employers. DHS receives only Part B, and those are filed by foreign nationals, sponsoring employers, or appropriate third parties. For purposes of calculating the cost of completing the form, the Department is using the same hourly estimate for employers and foreign nationals.

Each individual employer that files an application may have a salary range that could be from several hundred dollars to several hundred thousand dollars for a CEO of a business. Salaries for employers and/or their employees who perform the reporting and recordkeeping functions required under this OMB Control Number may vary, but the Department believes that in most companies a Human Resources Manager will perform these activities. In estimating employer staff time costs, the Department used the national cross-industry mean hourly wage rate for a Human Resources Manager (\$50.21), based on the U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics survey wage data and increased it by a factor of 1.43 to account for employee benefits and other compensation for a total hourly cost of \$50.21. This number was multiplied by the total hourly annual burden for the information collections under this OMB Control Number in order to arrive at total annual respondent hourly costs for all information collections under this request. The total annual respondent hourly costs are estimated as follows:

Total annual respondent hourly reporting costs for the ETA-750 are 12,103 hours x \$50.21 = \$607,691.63.

*The following table can be used as a guide to calculate the total burden of an information collection.*

Forms	Number of Respondents	Frequency	Total Annual Responses	Time Per Response	Total Annual Burden (Hours)	Hourly Rate*	Monetized Value of Respondent Time
ETA Form 750, part A	52	1	52	2.8	145.6	\$50.21	\$7,310.58
ETA Form 750, part B	6,643	1	6,643	1.8	11,957.4	\$50.21	\$600,381.05
<b>Unduplicated Totals</b>	<b>6,695</b>		<b>6,695</b>		<b>12,103</b>		<b>\$607,691.63</b>

\* Bureau of Labor Statistics. Occupational Employment Statistics: May 2015 National Occupational Employment and Wage Estimates; Management Occupations. Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2016-17 Edition*, Human Resources Managers, on the Internet at <https://www.bls.gov/ooh/management/human-resources-managers.htm>.

*A.13. Provide an estimate for 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 already reflected on the burden worksheet).*

1. Start-up/capital costs: There are no start-up costs.



2. Annual costs: There are no annual costs to respondents.

*A.14. Provide estimates of annualized costs 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 may also aggregate cost estimates from Items 12, 13, and 14 in a single table.*

It is estimated that the OFLC and National Processing Center (NPC) staff spend the following time each year reviewing applications filed on Form ETA-750 to ensure compliance with the regulations. We are using the same hourly rate to estimate the DHS staff cost. The average Federal Government<sup>2</sup> cost for the year of operation is estimated at \$984,566.70 calculated as follows:

Estimated Hours and Cost - Data Entry/Review

Staff Cost Per Application

Professional (14 level, step 1)	
\$50.97 x 2½ hour	= \$127.43
Clerical (6 level, step 3)	+
\$ 19.63 x 1 hour	= \$ 19.63
	\$147.06

Estimated Total Cost

Staff \$147.06 x 6,695 = \$984,566.70

The total estimated annual cost to the Federal government for this data collection is \$984,566.70.

For purposes of calculating the cost of processing the form, the Department is using the same estimate for employees of the Department as with the employees of the Department of Homeland Security. The hourly rate used to calculate cost is the average hourly rate for an employee in the Federal service (based on 2016 GS locality pay schedules for Atlanta, Georgia ([https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2016/ATL\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2016/ATL_h.pdf))).

*A.15. Explain the reasons for any program changes or adjustments reported on the burden worksheet.*

Although the time to complete the ETA Form 750, parts A and B, have remained the same, the annual burden for these information collections increased from 3,692 in June 2014 (date of previous ICR approval) to 12,103 hours, an increase of 8,411 hours over ETA's previous

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<sup>2</sup>The average Federal Government cost for a year of operation, where salaries are involved, is estimated on an hourly basis multiplied by an index of 1.69 to account for employee benefits and proportional operating costs, otherwise known as Fully Loaded Full Time Equivalent (FLFTE). The index is derived by using the Bureau of Labor Statistics' index for salary plus benefits and the Department's internal analysis of overhead costs averaged over all employees of OFLC.

estimate. The increase is due to the steady increase of ETA Form 750, part B applications to the Department of Homeland Security.

*A.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.*

The information on the ETA-750 will not be published.

*A.17. If seeking approval not to display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.*

ETA displays the OMB approval number and expiration date.

*A.18. Explain each exception to the topics of the certification statement identified in “Certification for Paperwork Reduction Act Submissions.”*

There are no exceptions.

## **B. Collection of Information Employing Statistical Methods**

This information collection does not employ statistical methods.