

SUPPORTING STATEMENT

OMB No. 1125-XXXX

Unfair Immigration-Related Employment Practices Complaint Form

Form EOIR-58

Part A. Justification

1. Necessity of Information Collection – Section 274B of the Immigration and Nationality Act (INA) (8 U.S.C. § 1324b) prohibits employment discrimination on the basis of citizenship status or national origin; retaliation or intimidation by an employer against an individual seeking to exercise his or her rights under this section; and "document abuse" or over-documentation by the employer, which occurs when the employer asks an applicant or employee for more or different documents than are required for employment eligibility verification under INA § 274A, with the intent of discriminating against the employee based on the employee's national origin or citizenship status. Individuals who believe that they have suffered discrimination in violation of section 274B may file a charge with the Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC). The OSC then has 120 days to determine whether to file a complaint with the Executive Office for Immigration Review (EOIR), Office of the Chief Administrative Hearing Officer (OCAHO) on behalf of the individual charging party. If the OSC does not file a complaint within 120 days, it will issue a letter to the charging party informing the individual that he or she may file his or her own complaint directly with OCAHO. The individual must file his or her complaint with OCAHO within 90 days of receipt of

OSC's letter. This information collection may be used by an individual to file his or her own complaint with OCAHO. The Form EOIR-58 will elicit, in a uniform manner, all of the required information for OCAHO to accept and assign a section 274B complaint to an Administrative Law Judge for adjudication.

2. Needs and Uses - The form is filed and considered in the context of an immigration-related unfair employment practices proceeding against an employer pursuant to INA § 274B. Accordingly, the Chief Administrative Hearing Officer and the Administrative Law Judge consider the information contained in the form to the extent necessary to accept and process the complaint and determine appropriate future action in the case. Use of the Form EOIR-58 ensures complete collection of necessary information, allowing EOIR to more effectively evaluate the merits of section 274B complaints and to timely process them. Moreover, the form provides a helpful, clear, and concise summary of the steps for preparing and filing a section 274B complaint.

3. Use of Technology - The use of this form provides the most efficient means for collecting and processing the required data. The Form EOIR-58 will be available on EOIR's website for completion and printing. Since May 30, 2014, EOIR has been conducting a voluntary pilot program to test an electronic filing system in cases filed with OCAHO. See <http://go.usa.gov/8wEP>. The initial six-month pilot period ending on November 26, 2014, was extended until May 29, 2015. Due to increased efficiencies, such as the rapid submission and transmission of pleadings, orders and decisions; cost savings in reduced mailings; and a significant increase in enrollment in the program, the

electronic filing pilot program has now been extended indefinitely while OCAHO works toward implementation of a permanent e-filing system. Although the electronic filing pilot program does not permit complaints to be filed by email, OCAHO is exploring a permanent e-filing system which may allow for electronic submission of the form in the future. Currently, an applicant may type the requested information into the online form and then print it for submission to EOIR, or an applicant may print the blank form in its entirety and complete it by typing or printing legibly.

4. Efforts to Identify Duplication - The only form for filing a section 274B complaint alleging unfair immigration-related employment practices by an employer is the Form EOIR-58. A review of EOIR's existing forms revealed no duplication of effort, and there is no similar information currently being collected which can be used for this purpose.

5. Impact on Small Businesses - This collection does not have an impact on small businesses or other small entities.

6. Consequences of Less Frequent Collection - Failure to collect this information would inhibit an individual's ability to file a complaint regarding an employer's alleged unfair immigration-related employment practices. It would also substantially hinder EOIR's ability to accept complaints and effectively adjudicate cases under this federally mandated program.

7. Special Circumstances Influencing Collection - None of the eight special circumstances identified in OMB instruction number 7 apply to this collection.

8. Federal Register Publication and Consultation - A 60-day notice covering this collection was published in the Federal Register on May 21, 2015. *See* 80 FR 29340 (May 21, 2015). No public comments were received pursuant to that notice. A 30-day notice covering this collection was published in the Federal Register on July 20, 2015. *See* 80 FR 42840 (July 20, 2015). Copies of these notices are attached. One comment was received from the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), recommending several clarifying changes.

Pursuant to the comment received from OSC, EOIR has incorporated a number of changes to the form EOIR-58 that will clarify the purpose of the form and the information needed to adjudicate a complaint. Moreover, the text and format changes use plain writing, and are intended to improve the applicant's understanding of what is required to file a complaint under section 274B, and to increase efficiency in completing the form. For example, EOIR has replaced the section heading "Knowingly and Intentionally Fired," a legal standard, with the more concise and clear heading "Discrimination in Firing." Similarly, EOIR has taken the question "Were you knowingly and intentionally fired?," a legal question to be decided by the ALJ, and reworded it as "Did the Business/Employer fire you?" EOIR has also modified Section 3, "Citizenship or Immigration Status", by dividing the section into two subsections: (a) immigration status at the time of the alleged discrimination; and (b) current immigration status. This is necessary as the complainant's immigration status at the time of the

alleged discrimination is relevant to the claim. Similarly, the complainant's current immigration status is relevant to the relief available and may have changed since the time of the alleged discrimination. These changes should reduce the need for the public to seek clarification from the agency, and reduce the need to solicit this information in the future during the adjudication of the complaint.

9. Payment or Gift to Claimants - EOIR does not provide any payment or gifts to individuals in exchange for the information provided in Form EOIR-58.

10. Assurance of Confidentiality – EOIR’s Office of the Chief Administrative Hearing Officer maintains the original complaint. EOIR staff members who process the complaint may access the Form EOIR-58. To the extent permitted by law, EOIR protects the confidentiality of the contents of the Form EOIR-58 and its attachments. EOIR would release information in accordance with the Privacy Act and the Freedom of Information Act.

11. Justification for Sensitive Questions - Any question that inquires into matters commonly considered as private is necessary for the Administrative Law Judge to adjudicate a section 274B complaint regarding alleged unfair immigration-related employment practices.

12. Estimate of Hour Burden

a. Number of Respondents

22

b. Number of Responses per Respondent	1
c. Total Annual responses	22
d. Hours per response	.5 hours
e. Total annual hourly reporting burden	11

The total annual reporting burden is derived by multiplying the number of respondents (22) by the frequency of response (1) by the number of hours per response (30 minutes or .5 hours): 22 respondents x 1 response per respondent x .5 hours per respondent = 11 burden hours.

13. Estimate of Cost Burden

There are no capital or start-up costs associated with this information collection. The estimated public cost is zero.

There may be ancillary costs to complainants if they hire a private attorney to assist them with completing the Form EOIR-58. The Bureau of Labor Statistics reports that the median hourly wage for lawyers is \$55.27/hour. For those complainants who proceed without an attorney, there is an estimated cost of \$10 per hour for completing the form (the individual's time and supplies) in lieu of the attorney cost. There are also no fees associated with filing the Form EOIR-58.

14. Estimated Cost to Federal Government - It is estimated that the annual government cost for printing, distributing, filing, processing and maintaining the Form EOIR-58 is \$703. This estimate was derived by adding the cost to process the total annual responses

to the overhead costs to the agency. The annual cost to process the forms was derived by dividing the hourly wage to process the form (\$36.6) by the number of forms processed in one hour (1.5) multiplied by the total estimated annual responses (22) = \$537. The overhead cost to the agency is estimated to be 31% of the annual cost to process the forms (\$166) = \$703.

16. Plans for Publication - EOIR does not intend to employ the use of statistics or the publication thereof for this collection of information.

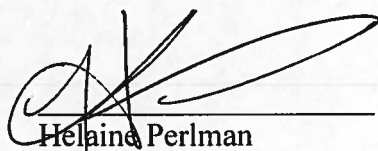
17. Exceptions to Certification Statement - EOIR does not request an exception to the certification of this information collection.

Section B. Collection of Information Employing Statistical Methods

This collection does not employ statistical methods.

PAPERWORK CERTIFICATION

In submitting this request for OMB approval, I certify that the requirements of the Privacy Act and OMB directives have been complied with, including paperwork regulations, any applicable statistical standards or directives, and any other information policy directives promulgated under 5 CFR § 1320.



Helaine Perlman
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Executive Office for Immigration Review

Date 9/22/15