

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

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

A. JUSTIFICATION

1. *Why is this collection necessary and what are the legal statutes that allow this?*

The Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*, sets out the application and eligibility requirements for aliens seeking to obtain nonimmigrant visas. INA section 221(a), 8 U.S.C. § 1201(a) provides that a consular officer may issue a nonimmigrant visa to an individual who has made a proper application, subject to applicable conditions and limitations in the INA and related regulations. INA section 222(c), 8 U.S.C. § 1202(c), 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 regulation prescribed.

INA section 101(a)(15)(E), 8 U.S.C. § 1101(a)(15)(E), 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.” A treaty trader, or spouse or child of a treaty trader, is an E-1 applicant under INA § 101(a)(15)(E)(i), 8 U.S.C. § 1101(a)(15)(E)(i). A treaty investor, or spouse or child of a treaty investor, is an E-2 applicant under INA § 101(a)(15)(E)(ii), 8 U.S.C. § 1101(a)(15)(E)(ii).

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

2. *What business purpose is the information gathered going to be used for?*

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 E-2 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 E-1 visa, and those applicants for an E-2 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. *Is this collection able to be completed electronically (e.g. through a website or application)?*

The fillable DS-156E is available to download online at <http://travel.state.gov>.

4. *Does this collection duplicate any other collection of information?*

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. *Describe any impacts on small business.*

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. *What are consequences if this collection is not done?*

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 other than E-2 traders or investors 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. *Are there any special collection circumstances?*

No special circumstances exist.

8. *Document publication (or intent to publish) a request for public comments in the Federal Register.*

The Department of State (Visa Office, Bureau of Consular Affairs) published a notice in the Federal Register on July 23, 2018 (83 FR 34909) soliciting public comments. The Department received three non-responsive comments and one responsive comment. The responsive comment submitted by the American Immigration Lawyers Association (AILA) proposed the elimination of the DS-156E, stating that it is duplicative, in addition to other minor revisions to the form. The DS-156E is not duplicative of the DS-160. While the DS-160 is an inclusive document for some subsets of E visa applicants, for most E visa applicants, the Department requires the DS-156E as a supplemental information collection. The DS-160 is a “smart” form and the questions change based on the visa classification and subclassification selected. As applicants complete the DS-160, and are identified as required to submit the DS-156E, the potentially repetitive questions in the DS-160 do not populate for them. Instead, these questions are only asked on the DS-156E. The information on the DS-156E, for applicants required to submit the form, provides the adjudicating officer detailed information from a responsible official of the company on the type of business enterprise, the nature of the business, and financial statements of the business and is essential to the adjudication. The Department is always seeking to improve its information collections, and has taken AILA’s comments into consideration. While the Department appreciates that the changes to the verbiage on the form may clarify the information solicited for some applicants, the applicant pool using this form is diverse. The Department believes that changing the terms used on this form could cause confusion among the public, particularly among applicants whose business is primarily abroad and/or who do not have a U.S. immigration attorney. As consular officers in the field have not reported confusion among applicants regarding the information solicited in this form, the Department does not consider changes to the verbiage on the form necessary at this time.

9. *Are payments or gifts given to the respondents?*

No payment or gift is provided to respondents.

10. *Describe assurances of privacy/confidentiality*

In accordance with INA section 222(f), 8 U.S.C. § 1202(f), information obtained from applicants in the nonimmigrant visa application 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, except that, in the discretion of the Secretary of State, it may be made available to a court or provided to a foreign

government if the relevant requirements stated in INA section 222(f), 8 U.S.C. § 1202(f) are satisfied.

11. *Are any questions of a sensitive nature asked?*

The questions on the collection are designed to solicit the information necessary to determine whether an applicant is eligible for a visa under INA section 101(a)(15)(E), 8 U.S.C. § 1101(a)(15)(E). In order to determine the applicant's eligibility for an E nonimmigrant visa, information related to the associated business entity is required. As noted in paragraph 10 above, all information provided in a visa application is confidential under INA section 222(f), 8 U.S.C. § 1202(f).

12. *Describe the hour time burden and the hour cost burden on the respondent needed to complete this collection*

Approximately 50,000 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 200,000 hours (50,000 x 4 hours = 200,000 hours). Based on Bureau of Labor Statistics the average American hourly wage of \$24.34, the weighted wage hour cost burden for this collection is \$6,815,200. This is based on the calculation of $\$24.34^1$ (average hourly wage) x 1.4 (weighted wage multiplier) x 200,000 hours = \$6,815,200.

Additionally, 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 \$50,000,000 (50,000 applicants x \$1,000).

13. *Describe the monetary burden to respondents (out of pocket costs) needed to complete this collection.*

There is no cost to respondents.

14. *Describe the cost incurred by the Federal Government to complete this collection.*

This collection is a supplement to the nonimmigrant visa application (Form DS-160 – OMB Control Number 1405-0182). All E nonimmigrant applicants complete the DS-160. Much of the DS-156E cost is already incorporated into the DS-160 costs. However, processing an E visa takes an average of 13 additional minutes of locally employed staff time and an extra 1

¹ Source: Data from the U.S. Bureau of Labor Statistics' May 2017 National Occupational Employment and Wage Estimates for all occupations (<http://www.bls.gov/oes>). Retrieved November 2, 2018.

minute of consular officer time. The Department's Cost of Service Model provides these estimates. The Bureau of Consular Affairs calculates that the average global hourly cost for locally employed staff using FY 2016 Cost of Service Model (CoSM), which includes overhead, is \$110. This yields a processing time cost of \$23.83 per application. Based on the Consular Schedule of Fees (2013 CoSM), the hourly cost of a Foreign Service Officer is \$135.² This yields a cost of \$2.25 per application. The total cost per application is \$26.08. Thus, we estimate the annual cost to the Federal Government to process the form is \$1,304,000 (50,000 x \$26.08).

15. *Explain any changes/adjustments to this collection since the previous submission.*

There are adjustments in this collection from the previous renewal to adjust the most recent average wage and a slight increase in the number of applicants. Minor typographical edits are being made to the collection instrument for consistent use of abbreviations. These edits include: adding a sentence in the instructions stating "Trade means the international exchange of goods, services, and technology. The item of trade and title of that item must pass from one party to the other in exchange for consideration;" adding the currency symbol for the applicant's country of origin; and correcting the form name of an associated form from DS-156 to DS-160. No other changes were made to this collection.

16. *Specify if the data gathered by this collection will be published.*

The data gathered will not be published; however, 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 2018 [here](#).

17. *If applicable, explain the reason(s) for seeking approval to not display the OMB expiration date.*

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

18. *Explain any exceptions to the OMB certification statement below.*

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

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

² 22 CFR § 22.1 Schedule of Fees for Consular Services.