

**SUPPORTING STATEMENT FOR
Application for Employment Authorization
OMB Control No.: 1615-0040
COLLECTION INSTRUMENT(S): 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.**

An alien who seeks to be employed in the United States must apply to U.S. Citizenship and Immigration Services (USCIS) for a document evidencing such employment authorization. Aliens authorized to work in the United States must file an Application for Employment Authorization, Form I-765, to request an Employment Authorization Document (EAD), under 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. See 8 U.S.C. 1324a(a)(1)(B); 8 CFR 274a.2(b)(1). This evidence, the EAD (Form I-766), establishes identity and employment authorization.

Any individual may be required to submit biometric information if the regulations or form instructions require such information or if requested in accordance with 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; 8 U.S.C. 1103.

USCIS shares information collected on Form I-765 with the Social Security Administration (SSA) when an applicant indicates they are simultaneously applying for a Social Security Number and/or Social Security card . . . This information sharing initiative is conducted pursuant to the Social Security Act 205(c)(2)(B)(I) and 702; the Immigration and Nationality Act, 8 U.S.C. sections 1103, 1158, 1225, 1228, and Title II of Public Law 105-100; and 20 CFR 422.104; and the Interagency Agreement reached between USCIS and SSA in December 2015 and a Memorandum of Understanding (MOU) between USCIS and SSA, the Addendum to the MOU, USCIS's FMS Forms 7600 A/B.

- 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.**

Form I-765 collects information needed to determine if an alien is eligible for an initial EAD, a replacement EAD, or a subsequent EAD upon the expiration of a previous EAD under the same eligibility category. Aliens in many immigration statuses are required to possess an EAD as evidence of work authorization. To be authorized for employment, an alien must be lawfully admitted for permanent residence or authorized to be so employed by the Immigration and Nationality Act (INA) or under regulations issued by DHS. Pursuant to statutory or regulatory authorization, certain classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes. USCIS may determine the validity period assigned to any document issued evidencing an alien's authorization to work in the United States. These classes are listed in 8 CFR 274a.12.

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 their background information, and produce the EAD card. As a result of the proposed rule RIN 1615-AC27, Asylum Application, Interview, and Employment Authorization for Applicants, applicants under eligibility category (c)(8) will also be required to submit biometrics in connection with their application for employment authorization.

Instead of going to a Social Security Office, an applicant for employment authorization can apply for a Social Security Number (SSN) and Social Security card using Form I-765. If the relevant data elements on Form I-765 are filled out, USCIS will send the applicant's information to the Social Security Administration (SSA) upon approval of the employment authorization request. If the applicant already has an SSN and requested a Social Security card on Form I-765, SSA will issue a replacement SSN card.

- 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.**

Forms I-765 and I-765WS are available on the USCIS website at www.uscis.gov/i-765. This information collection cannot be submitted electronically; it must be filled out, printed, and submitted to USCIS by mail.

- 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.**

This collection of information imposes no duplication of effort because no other instrument, form or program can be used to determine employment authorization.

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. In addition, if the information is not collected, USCIS will have no basis for issuing a secure identity and employment authorization document to applicants who request EADs. The information provided on this form is not available by any other means. These forms collect data that makes the adjudication of a request for an EAD possible. EADs provide recipients with secure identification documents, acceptable evidence of employment authorization, and facilitate an employer's 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.**

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 November 14, 2019, USCIS published a Notice of Proposed Rulemaking in the Federal Register at 84 FR 62374.

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

USCIS does not provide any payment for benefit sought.

- 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.

This collection is covered under the following Privacy Impact Assessment:

- DHS/USCIS/PIA-061 Benefit Request Intake Process;
- DHS/USCIS/PIA-003(b) Integrated Digitization Document Management Program;
- DHS/USCIS/PIA-016(a) Computer Linked Application Information Management System (CLAIMS 3) and Associated Systems;
- DHS/USCIS/PIA-027(c) USCIS Asylum Division; and
- DHS/USCIS/PIA-056 USCIS Electronic Immigration System.

The collection is covered under the following System of Records Notices:

- DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, September 18, 2017, 82 FR 43556;
- DHS/USCIS-007 Benefits Information System, October 19, 2016 81 FR 72069; and
- DHS/USCIS-010 Asylum Information and Pre-Screening System of Records, November 30, 2015, 80 FR 74781.

- 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.**

There are no questions of a sensitive nature in this collection.

- 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.

		A	B	C (=AxB)	D	E (=CxD)	F	(=ExF)
Type of Respondent	Form Name / Form Number	#. of Respondents	#. of Responses per Respondent	# of Responses	Avg. Burden per Response (in hours)	Total Annual Burden (in hours)	Avg. Hourly Wage Rate*	Total Annual Respondent Cost
Individuals or Households	I-765	2,036,026	1	2,036,026	4.75	9,671,124	\$36.47	\$352,705,874
Individuals or Households	Biometric Processing	346,589	1	346,589	1.17	405,509	\$36.47	\$14,788,918
Individuals or Households	I-765 Worksheet	41,912	1	41,912	0.5	20,956	\$36.47	\$764,265
Individuals or Households	Passport-Style Photographs	2,036,026	1	2,036,026	0.5	1,018,013	\$36.47	\$37,126,934
Total				4,460,553		11,115,602		\$405,385,991

* The above Average Hourly Wage Rate is the [May 2018 Bureau of Labor Statistics](#) average wage for All Occupations of \$24.98 times the wage rate benefit multiplier of 1.46 (to account for benefits provided) equaling \$36.47. The selection of “All Occupations” was chosen because respondents to this collection could be expected from any occupation.

** Not all Form I-765 respondents must provide biometrics. Eligibility categories required to submit biometrics are: Deferred Action for Childhood Arrivals (DACA) requestors (c)(35); applicants under compelling circumstances (c)(36); and, under the Asylum EAD rulemaking, applicants for asylum (c)(8).

*** All DACA requestors, as well as individuals whose cases are deferred but who are not childhood arrivals, will complete Form I-765WS.

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 \$410 fee associated with the request submitted under this information collection. Some respondents must also pay an \$85 biometrics services fee. .

USCIS estimates that all respondents will pay approximately \$20 to obtain the required passport-style photographs, which equals a total of \$40,720,520.00 (2,036,026 respondents x \$20). Form I-765 is filed concurrently with a number of forms, and many of the costs associated with filing the I-765 would be covered under the primary form being filed by the respondent. Costs associated with the filing of the I-765 may include legal services, translator costs, document and record copy fees, and fees to obtain passport-style photos and mailing costs. USCIS estimates that approximately 60 percent of respondents may pay an estimated \$515 to cover these additional costs, for a total of \$629,132,034.00 (1,221,615.60 respondents x \$515). The total estimated annual cost to respondents is **\$669,852,554.00**.

- 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.**

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 printing costs) 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 \$410, and the fee for biometric processing at \$85.

The cost to the government is calculated by multiplying the \$410 fee times the total number of respondents (2,036,026), which equals \$834,770,660.00, and adding that to the \$85 fee times the total number of respondents subject to biometrics processing (346,589), which equals \$29,460,065, for a total of **\$864,230,725.00**.

15. Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.

USCIS is making a number of changes to the I-765 information collection as a result of this proposed rule. A series of questions was added to Form I-765 that will allow USCIS to evaluate if applicants filing under the (c)(8) eligibility category meet the proposed rule’s requirement of having lawfully entered the United States through a port of entry. Applicants who did not enter lawfully are provided an opportunity to explain the circumstances of their unlawful entry.

Additionally, under the proposed rule, all applicants under the (c)(8) eligibility category will be required to pay the \$85 biometric services fee and attend a biometric services appointment. This expands the number of employment authorization eligibility categories required to submit biometrics after filing Form I-765, and increases the respondent population for the biometric processing information collection.

New, expanded instructions relating to the requirements of the proposed rule and the new questions on the form were added to the I-765 Instructions. These instructions provide information regarding the biometric services appointment requirement; the consequences on employment authorization eligibility of having filed for asylum after the one-year filing deadline; the lawful entry requirement; the potential consequences on employment authorization under the (c)(8) category of having been convicted of certain types of crimes; the evidence required in association with any arrests or convictions; the types of delays that USCIS will consider “applicant-caused”; and the impacts applicant-caused delays may have on employment authorization. The Instructions also clarify that the (c) (11) eligibility category is not available to applicants who established a credible fear of persecution or torture and were released on parole.

Data collection Activity/Instrument (in hours)	Program Change (hours currently on OMB)	Program Change (New)	Difference	Adjustment (hours currently on OMB Inventory)	Adjustment (New) [new minus current]	Difference
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	Inventory					
I-765	9,432,000	9,671,124	239,124			
Biometric Processing	49,593	405,509	355,916			
I-765 Worksheet	20,956	20,956	0			
Passport-Style Photographs	1,048,000	1,018,013	(29,987)			
Total(s)	10,550,549	11,115,601	565,053			

The estimated annual hour burden to respondents for this collection of information has increased as a result of this proposed rule. The addition of questions and instructions increased the estimated average burden per response from 4.5 hours to 4.75 hours, increasing the estimated annual burden for Form I-765 by 239,123.5 hours. The proposed rule also expands the population of respondents required to submit biometrics. This resulted in an increase of 355,916.13 hours in the estimated annual hour burden for the biometric processing information collection, which also contributed to the overall increase in the estimated annual hour burden of 565,052.63 hours. The proposed rule is expected to decrease the total number of Form I-765 responses by 59,974, which resulted in a decrease in the estimated annual hour burden for Passport-Style Photographs; however, that decrease was not enough to offset the increase created by the change in the estimated hour burden per response and the increase in the estimated annual hour burden for biometric processing.

Data collection Activity/Instrument (in dollars)	Program Change (cost currently on OMB Inventory)	Program Change (New)	Difference	Adjustment (cost currently on OMB Inventory)	Adjustment (New) [new minus current]	Difference
I-765	\$346,615,520.00	\$629,132,034.00	\$282,516,514.00			
Biometric Processing	\$-	\$-	\$-			
I-765 Worksheet	\$-	\$-	\$-			
Passport-Style Photographs	\$20,960,000.00	\$40,720,520.00	\$19,760,520.00			
Total(s)	\$367,575,520.00	\$669,852,554.00	\$302,277,034.00			

The estimated annual cost burden to respondents for this information collection has increased. USCIS has adjusted the estimated cost per response from \$490 to \$515. This estimate is a more accurate reflection of the costs respondents may incur. Additionally, the proposed rule is reporting an estimated cost burden of \$20 per respondent for obtaining passport-style photos. Previously, USCIS estimated a \$10 cost burden for obtaining passport-style photos. Although the estimated number of respondents for Form I-765 has decreased as a result of the proposed rule, the overall estimated annual cost burden has increased due to these revised cost estimates.

- 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.**

This information collection will not be published for statistical purposes.

- 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 for OMB approval of this information collection.

- 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.

B. Collections of Information Employing Statistical Methods.

There is no statistical methodology involved with this collection.