

SUPPORTING STATEMENT FOR
Application for Nonimmigrant Worker: E and TN Classifications
OMB Control No.: 1615-0146
COLLECTION INSTRUMENT(S): Form I-129E&TN

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.**

USCIS needs the information collected on Form I-129E&TN and its associated Supplements to determine whether the foreign national applicant is eligible for the nonimmigrant classification and, if applicable, if the employer qualifies to bring the applicant to the U.S. The statutory authority is section 101(a)(15) and 214(c)(1); 8 U.S.C. 1101(a)(15) and 1184(c)(1) of the Immigration and Nationality Act (INA) and the regulatory authority is 8 CFR 214.2(e) and 8 CFR 214.6.

The collection of this information is required from a U.S. employer on an application for an extension of stay or change of status for E-1, E-2, E-3, and TN (NAFTA workers) who are in the United States. If the foreign national is outside the United States, an applicant is not required to file Form I-129 with USCIS as the foreign national may apply directly to Department of State for an E-1, E-2, or E-3 nonimmigrant visa or to CBP for admission as a TN nonimmigrant. An application is only required to apply for a change to one of these classifications from within the United States or extend a stay if already in one of these classifications in the United States. The statutory authority for collecting information for the E-3 classification can be found in section 101(a)(15)(E)(iii) of the INA. The additional regulatory authority for collection of this information for E-1s, E-2s, and TNs is found in 8 CFR 214.2(e)(1) and 8 CFR 214.6.

In addition to the collection of data entries directly on the form and its supplements, this form also provides the avenue through which employers or agents submit documentary evidence to establish eligibility for the nonimmigrant classification being sought. Biometric information is required to be collected from certain beneficiaries in the Commonwealth of the Northern Mariana Islands (CNMI) 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 the nonimmigrant application, and perform other functions related to administering and enforcing the immigration and nationality laws.

Authority: See section 214 of the Act and 8 CFR 214.2, especially 8 CFR and 8 CFR 214.2(h)(19)(iii)(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.**

USCIS uses the data collected on this form to determine eligibility for the requested nonimmigrant classification and/or requests to extend or change nonimmigrant status. An employer, agent, applicant, or CNMI investor uses this form to apply to USCIS for an alien to temporarily enter as an E-1, E-2, E-3, or TN nonimmigrant. An employer, agent, applicant, or CNMI investor also uses this form to request an extension of stay in one of these classifications for an alien or for themselves, or to change the status of an alien currently in the United States as a nonimmigrant or their own status if they are currently in the United States as a nonimmigrant to E-1, E-2, E-3, or TN. The form serves the purpose of standardizing requests for nonimmigrant workers in these classifications and ensuring that basic information required for assessing eligibility is provided by the applicant. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classification.

- 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-129E&TN provides the most efficient means for collecting and processing the required data. This form and its instructions reside on the USCIS website at <http://www.uscis.gov/i-129>. The form and the instructions can be downloaded, completed, and saved electronically, but the form must be mailed to USCIS.

- 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 has no other information collections that request the information needed to adjudicate applications for nonimmigrant workers in an E-1, E-2, E-3, or TN classification.

- 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.**

Form I-129E&TN may have an impact on small businesses. The form requests only that information which is needed by officers to determine the applicant's and, where applicable, the employer's eligibility. This includes information that will reduce the likelihood that USCIS may need to issue a request for evidence (RFE) upon review of the application and initial evidence submission.

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.

Without Form I-129E&TN, USCIS would not have the information needed to determine if the applicant is eligible for classification as E-1, E-2, E-3, or TN nonimmigrants and, if applicable, if the employer qualifies to bring the applicant to the U.S.

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 62280. USCIS did receive comments on this information collection and has responded to them in the preamble of the 2018 Fee Final Rulemaking (1615-AC18).

On August 3, 2020, USCIS published a Final Rule in the Federal Register at 85 FR 46788.

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 in exchange for a 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.

The system of record notices associated with this information collection are:

- DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, November 21, 2013, 78 FR 69864;
- DHS/USCIS-007 Benefits Information System SORN, October 19, 2016, 81 FR 72069; and
- DHS/USCIS-018 Immigration Biometric and Background Check System of Records, July 31, 2018, 83 FR 36950.

The privacy impact assessments associated with this information collection are:

- DHS/USCIS/PIA-003 (b) Integrated Digitization Document Management Program (IDDMP)-2017;

- DHS/USCIS/PIA-016 Computer Linked Application Information Management System (CLAIMS 3) and Associated Systems, which covers the processing and adjudication of Form I-129E&TN; and
- DHS/USCIS/PIA-061 Benefit Request Intake Process, which covers the processing of Form I-129E&TN.

- 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.**

The information of a sensitive nature collected includes the applicant's and/or beneficiary's Social Security Number (SSN), if they have one, Alien Registration Number (A Number), and employer's or applicant's Tax Identification Number. This information is required to ensure proper identification of each alien beneficiary. The information helps USCIS to positively identify individuals when other available data, such as names and date of birth, is the same as or similar to another individual's information. USCIS currently does not collect fingerprints for Form I-129E&TN (with the exception of a very limited number of filings from the CNMI); therefore, this information may be the only way to verify an individual's unique identity.

- 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 Respondents | No. of Responses per Respondent | Total Number of Responses | Avg. Burden per Response (in hours) | Total Annual Burden (in hours) | Avg. Hourly Wage Rate | Total Annual Respondent Cost |
|--|--|--------------------|---------------------------------|---------------------------|-------------------------------------|--------------------------------|-----------------------|------------------------------|
| Business or other for-profit; Not-for-profit organizations | Application for Nonimmigrant Worker: E and TN Classifications (Form I-129E&TN) | 12,709 | 1 | 12,709 | 3 | 38,127.00 | \$54.84 | \$2,090,885 |
| Business or other for-profit; Not-for-profit organizations | E-1/E-2 Classification Supplement to Form I-129E&TN | 4,236 | 1 | 4,236 | 1.45 | 6,142.68 | \$54.84 | \$336,865 |
| Business or other for-profit; Not-for-profit organizations | E-3 Classification Supplement to Form I-129E&TN | 2,824 | 1 | 2,824 | 1 | 2,824.22 | \$54.84 | \$154,880 |
| Business or other for-profit; Not-for-profit organizations | NAFTA Supplement to Form I-129E&TN | 7,349 | 1 | 7,349 | 0.5 | 3,674.50 | \$54.84 | \$201,510 |
| Total | | 12,709 | | 27,119 | | 50,768.41 | | \$2,784,139 |

* This Average Hourly Wage Rate is the May 2019 Bureau of Labor Statistics average wage for Business and Financial Operations Occupations of \$37.56 times the wage rate benefit multiplier of 1.46 (to account for benefits provided) equaling \$54.84.

- 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 are no start-up, maintenance, and operating costs associated with this collection of information. For informational purposes, there is a \$695 filing fee, which covers all costs associated with the filing of this information collection.

This information collection may impose some out-of-pocket costs on respondents in addition to the time burden for the form's preparation. Costs may include payments for document translation and preparation services, attorney and legal fees, postage, and costs associated with gathering documentation. USCIS estimates the average cost of this information collection may vary widely, from as little as \$20 to \$1,000 per respondent. USCIS estimates that the average cost for these activities is \$515.00. The estimated out of pocket cost to respondents is the total estimated respondent population of 12,709 multiplied by the average cost per response of \$515.00, which equals **\$6,545,135.00**.

- 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.

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-129E&TN at \$695.

The total estimated cost of the program to USCIS is calculated by multiplying the estimated number of respondents (12,709) by the fee charge (\$695), which equals **\$8,832,755**. This total includes the suggested average hourly rate for clerical, officer, and supervisory time with benefits, plus a percent for the estimated overhead cost for printing, stocking, and distributing the form.

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

The original Form I-129 has been separated into several different forms covering different nonimmigrant employment visa classifications. Form I-129E&TN is filed by petitioners seeking to employ nonimmigrants under the E-1, E-2, E-3, or TN classifications.

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.