

# SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

## J-1 Waiver Recommendation Application OMB Number 1405- 0135 DS-3035

### A. JUSTIFICATION

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

Section 212(e) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(e), provides that certain categories of persons admitted under INA § 101(a)(15)(J), 8 U.S.C. § 1101(J), or acquiring such status after admission shall not be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H), 8 U.S.C. § 1101(H) or INA § 101(a)(15)(L), 8 U.S.C. § 1101(L), until it is established that such person has resided and been physically present in the country of their nationality or their last residence for an aggregate of at least two years following departure from the United States. This provision in § 212(e) applies to the following categories of persons:

- (i) A person whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the United States Government or by the government of the country of his or her nationality or of his or her last residence;
- (ii) A person who at the time of admission or acquisition of status under 101(a)(15)(J) was a national or resident of a country which the Secretary of State, pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged; or
- (iii) A person who came to the United States or acquired such status in order to receive graduate medical education or training.

INA § 212(e), 8 U.S.C. § 1182(e), provides for waivers of the two-year foreign residency requirement in several circumstances, including if the return of the alien to his or her country of nationality or last residence would result in exceptional hardship to the alien's spouse or child who is a United States citizen or lawful permanent resident; or if the alien cannot return to the country of his or her nationality or last residence because he or she would be subject to persecution on account of race, religion, or political opinion.

Department of State regulations pertaining to applications for waiver of the two-year residence requirement are published at 22 CFR 41.63.

#### 2. *For what business purpose will the information gathered be used?*

The J-1 Waiver Recommendation Application, DS-3035, is used to record the information required by 22 CFR 41.63 for aliens who seek a waiver of the two-year home-country residence and physical presence requirement. The information requested on the form is limited to that

which is necessary to enable the Department of State to assess whether to issue a favorable recommendation to the Department of Homeland Security to grant such a waiver.

**3. *Is this collection able to be completed electronically (e.g. through a website or application)?***

The DS-3035 will be submitted electronically to the Department at <https://j1visawaiverrecommendation.state.gov>. While the applicant will complete the DS-3035 online, they will need to print out the 2-D barcodes, and submit the barcodes, fee payment, and any additional supporting documents to the following address: Department of State J-1 Waiver, P.O. Box 979037, St. Louis, MO 63197. A separate 2-D barcode will be printed and mailed to the applicant's embassy.

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

This collection is not duplicative of another existing Department collection.

**5. *Describe any impacts on small business.***

The information collection does not impact small businesses or other small entities.

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

This information collection is essential for the Department to assess whether to recommend a waiver of the two-year home-country residence and physical presence requirement under INA section 212(e). Without this information, the Department will not have adequate information to fully assess whether to issue a favorable recommendation, and could not carry out its statutorily mandated requirement to issue such recommendations.

**7. *Are there any special collection circumstances (e.g. responding in less than 30 days, excessive record retention, or requiring submission of proprietary trade secrets)?***

No special circumstances exist.

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

The Department published a notice in the *Federal Register* on June 15, 2020 (85 FR 36255) soliciting public comments for a 60-day period. The Department received one non-responsive comment.

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

No payment or gift is provided to respondents.

**10. *Describe assurances of privacy/confidentiality***

In accordance with § 222(f) of the INA, 8 U.S.C. § 1202(f), State Department records pertaining to the issuance or refusal of visas, which includes Department records pertaining to the eligibility of visa applicants, is considered confidential, but may be used in circumstances described in 8 U.S.C. § 1202(f), including the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States, and may be provided, in the discretion of the Secretary of State, to a court or to a foreign government if the relevant requirements stated in INA § 222(f), 8 U.S.C. § 1202(f), are satisfied.

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

The DS-3035 does not seek personal information of a sensitive nature.

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

The Department anticipates that it will take respondents one hour to complete this form. The Department also estimates that approximately 8,145 respondents will complete this form each year, based on an average of submissions over last three fiscal years: 8,070 in FY 2017, 7,896 in FY 2018, and 8,469 in FY 2019. Based on an average hourly wage of \$24.98<sup>1</sup>, the weighted wage hour cost burden for this collection is \$283,343. This is based on the calculation of \$24.98 (average hourly wage) x 1.4 (weighted wage multiplier) x 8,145 hours = \$284,846.94.

**13 Describe any monetary burden on the respondent needed to complete this collection.**

The average postage cost for all applicants submitting the DS-3035 is estimated to be \$17,919.00. This is based on the calculation of 4 stamps (in addition to two mailing destinations, the applicant is required to include two self-addressed stamped envelopes in the application) x .55 per stamp (based on Forever fifty-five cents stamps) x 8,145 respondents.

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

The annual cost burden to the Federal Government to process the DS-3035 is \$2,624,104.50 and it assumes an annual workload of 7,935 waiver applications processed, based on previous year actuals. These cost and workload figures are the weighted averages of the budgeted amounts included in the latest update to the Department of State's Cost of Service Model.

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

The collection has been adjusted for annual reporting and recordkeeping to note the number of applicants for the previous fiscal years. There are minor changes over the previous version of the form. The A# and I-94# fields have been removed from the form because they are no longer necessary for the purposes of reviewing waiver requests. The collection has also been adjusted for annual burden cost to note that there is no cost, other than the application fee and postage stamp, to the respondents for filing the DS-3035.

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

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 2019. The link to the site is: <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics.html>.

**17. Explain the reasons for seeking approval to not display the OMB expiration date.**

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

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<sup>1</sup> Source: Data from the U.S. Bureau of Labor Statistics' May 2018 National Occupational Employment and Wage Estimates for all occupations ([https://www.bls.gov/oes/current/oes\\_nat.htm#00-0000](https://www.bls.gov/oes/current/oes_nat.htm#00-0000)). Retrieved January 13, 2020.

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

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.