

**SUPPORTING STATEMENT FOR
Petition for Nonimmigrant Worker
OMB Control No.: 1615-0009
COLLECTION INSTRUMENT(S): Form I-129**

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 through this form and accompanying supplements to determine whether the petitioner and foreign national beneficiary(ies) is (are) eligible for the nonimmigrant classification. The statutory authority is section 101(a)(15), 103, 214(a), 214(c)(1); and 214(i), and 248 of the Immigration and Nationality Act (Act), codified at 8 U.S.C. 1101(a)(15), 1103, 8 U.S.C. 1184(a), 8 U.S.C. 1184(c)(1), 8 U.S.C. 1184(i), and 8 U.S.C. 1258, and the regulatory authority is 8 CFR 214.1, 8 CFR 214.2(h) (1)(ii)(B), (h)(2)(i)(A), (h)(4), (h)(8) through (h)(19), 8 CFR 214.2(l), (o) (p), (q), and (r), and 8 CFR 248.1. A U.S. employer, or agent in some instances, may file a petition for nonimmigrant worker to employ foreign nationals under the following nonimmigrant classifications: H-1B, H-2A, H-2B, H-3, L-1, O-1, O-2, P-1, P-2, P-3, P-1S, P-2S, P-3S, Q-1, or R-1 nonimmigrant worker.

The collection of this information is also required from a U.S. employer on a petition for an extension of stay or change of status for E-1, E-2, E-3, Free Trade H-1B1 Chile/Singapore nonimmigrants and TN (NAFTA workers) who are in the United States. If the foreign national is outside the United States, a petitioner 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, E-3 or H-1B1 nonimmigrant visa or to CBP for admission as a TN nonimmigrant. A petition 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-3s and H-1B1 classifications can be found in section 101(a)(15)(E)(iii) and (H)(i) (b1) of the Act. 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 a beneficiary 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 petition, and perform other functions related to administering and enforcing the immigrant and nationality laws.

DHS requires most aliens seeking an extension of stay or change of status to demonstrate that they have not, since obtaining the nonimmigrant status they wish to extend or change, received public benefits, as defined in the Inadmissibility on Public Charge Grounds, final rule 84 FR 41292 (Aug. 14, 2019) final rule, for more than 12 months in the aggregate within any 36-month period unless the nonimmigrant classification that they seek to extend, or to which they seek to change, is exempt from the public charge ground of inadmissibility. 8 CFR 214.1 and 8 CFR 248.1.

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 petition and/or requests to extend or change nonimmigrant status. (See USCIS response to Question 1 of this supporting statement, above). An employer (or agent, where applicable) uses this form to petition USCIS for an alien to temporarily enter as a nonimmigrant. An employer (or agent, where applicable) also uses this form to request an extension of stay or change of status on behalf of the alien worker. The form serves the purpose of standardizing requests for nonimmigrant workers and ensuring that basic information required for assessing eligibility is provided by the petitioner while requesting that beneficiaries be classified under certain nonimmigrant employment categories. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classifications.

USCIS also uses the data to determine continued eligibility. For example, the data collected is used in compliance reviews and other inspections to ensure that all program requirements are being met.

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-129 provides the most efficient means for collecting and processing the required data. This form and its instructions can be accessed on the USCIS website at <http://www.uscis.gov/i-129>. The form and the instructions can be downloaded, filled out, and saved electronically, but must be printed, signed, 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.

A review of the Forms Inventory Report revealed no duplication of effort and there is no other similar information currently available that can be used for this purpose. USCIS has investigated its internal processes, files and data as well as those of other Federal agencies that may service the same population. USCIS was not able to find any other means by which the information necessary for this process could be obtained except for the use of the form submitted for approval. USCIS will continue to examine ways in which information may be obtained from other sources and any identified duplications can be minimized or removed.

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.

USCIS has minimized the amount of information collected from the affected small businesses so as to reduce the burden placed upon them. USCIS requests only that information which is needed by officers to determine the petitioner's and beneficiary's eligibility. This includes information that will reduce the likelihood that USCIS may need to issue a request for evidence (RFE) to the petitioner upon review of the petition and initial evidence submission. USCIS has included information in the instructions of the Form I-129 to provide additional guidance to assist small businesses with the completion of the form as well as guidance for filing multiple petitions.

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.

This information collection is only conducted whenever a form is filed seeking a nonimmigrant classification for a foreign worker. Without this information collection, USCIS would not have the information needed to make eligibility determinations under sections 101(a)(15), 214 and 248 of the INA, 8 U.S.C. 1101(a)(15), 1184 and 1258.

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 2, 2020, USCIS published a Notice of Proposed Rulemaking at 85 FR 69236.

- 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-003 Integrated Digitization Document Management Program; and
- DHS/USCIS/PIA 016(a) Computer Linked Application Information Management System (CLAIMS 3) and Associated Systems.

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-018 Immigration Biometric and Background Check (IBBC) System of Records, July 31, 2018, 83 FR 36950.

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 only information collection of a sensitive nature is the Social Security Number (SSN) of the alien worker, if one exists. The SSN is required to ensure proper identification of the alien worker. The SSN is pertinent for I-129 adjudication as it assists in making positive identifications of individuals. For example, there may be multiple individuals with the same/similar name and date of birth. In that instance, SSN may be beneficial in determining whether this is one and the same person. Since USCIS currently does not collect fingerprints for most I-129s (with the exception of a very limited number of filings from the CNMI), information like the SSN may be the best way of checking the background information of the requested beneficiary.

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 (=Cx D)	F	(=ExF)
Type of Respondent	Form Name / Form Number	#. of Respondents ¹	#. 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
Business or other for-profit; Not-for-profit organizations	Petition for Nonimmigrant Worker (Form I-129) ²	294,751	1	294,751	3.09	910,781	\$54.84	\$49,947,208
Business or other for-profit; Not-for-profit organizations	E-1/E-2 Classification Supplement to Form I-129 ³	4,760	1	4,760	0.67	3,189	\$54.84	\$174,896
Business or other for-profit; Not-for-profit organizations	Trade Agreement Supplement to Form I-129 ⁴	3,057	1	3,057	0.67	2,048	\$54.84	\$112,323
Business or other for-profit; Not-for-profit	H Classification Supplement to Form I-129 ⁵	96,291	1	96,291	2	192,582	\$54.84	\$10,561,197

¹ The estimated number of respondents for each category is based on average actual filings for the previous four fiscal years. USCIS has no information that would indicate that the trend would vary so we expect filings to remain stable.

² This number includes all I-129 filings regardless of classification requested. It only reflects the number of petitions filed and does not provide an indication of the number of alien workers sponsored on those petitions that may include multiple workers. In certain instances, a petitioner must file one or more supplements in addition to the base form.

³ This includes all petitions filed for E-1, E-2, or E-2C nonimmigrant status.

⁴ This includes all petitions filed for TN or H-1B1 nonimmigrant status.

organizations								
Business or other for-profit; Not-for-profit organizations	H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement ⁶	96,291	1	96,291	1	96,291	\$54.84	\$5,280,598
Business or other for-profit; Not-for-profit organizations	L Classification Supplement to Form I-129 ⁷	37,831	1	37,831	1.34	50,694	\$54.84	\$2,780,034
Business or other for-profit; Not-for-profit organizations	O and P Classifications Supplement to Form I-129 ⁸	22,710	1	22,710	1	22,710	\$54.84	\$1,245,416
Business or other for-profit; Not-for-profit organizations	Q-1 Classification Supplement to Form I-129 ⁹	155	1	155	0.34	53	\$54.84	\$2,890
Business or other for-profit; Not-for-profit organizations	R-1 Classification Supplement to Form I-129 ¹⁰	6,635	1	6,635	2.34	15,526	\$54.84	\$851,440
Total		294,751		562,481		1,293,873		\$70,956,002

* 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**

5 This includes all petitions filed for H-1B, H-1B1, H-2A, H-2B, and H-3 nonimmigrant status. It only reflects the number of petitions filed with this supplement and does not provide an indication of the number of alien workers sponsored on those petitions that may include multiple workers (H-2A, H-2B, and H-3s).

6 This includes all petitions filed for H-1B or H-1B1 nonimmigrant status.

7 This includes all petitions filed for L-1 nonimmigrant status.

8 This includes all petitions filed for O-1, O-2, P-1, P-1S, P-2, P-2S, P-3, and P-3S nonimmigrant status. It only reflects the number of petitions filed with this supplement and does not provide an indication of the number of alien workers sponsored on those petitions that may include multiple workers.

9 This includes all petitions filed for Q-1 nonimmigrant status. It only reflects the number of petitions filed with this supplement and does not provide an indication of the number of alien workers sponsored on those petitions that may include multiple workers.

10 This includes all petitions filed for R-1 nonimmigrant status.

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 capital or start-up costs associated with this information collection. There is a \$460 fee for this information collection.¹¹

USCIS estimates that costs for form preparation, legal services, translations, required consultations, document search and generation, and postage to mail the completed package will vary widely. USCIS estimates that petitioners will pay an average of \$239.80 per response. The total estimated cost burden to respondents is calculated by multiplying the number of respondents (294,751) by the estimated cost per response (\$239.80), which equals **\$70,681,290**.

- 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.**

¹¹ A \$500 Fraud Prevention and Detection Fee is required by law for Forms I-129 filed for an H-1B and L-1 petition. Some H-1B nonimmigrant or H-1B1 Free Trade Nonimmigrant petitioners may be required to pay an additional fee of either \$1,500 or \$750 ACWIA fee, unless exempt.

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-129 at \$460.00.

The estimate is calculated by multiplying the estimated number of respondents (294,751) by the filing fee (\$460), which equals \$135,585,460.00 (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 and processing of this form) and adding that product to the estimated cost for the Fraud Prevention and Detection Fee for H-1B and L-1 petitions, which equals \$67,061,000.00 (134,122 respondents x \$500 fee).

The total estimated cost of the program to USCIS is **\$202,646,460**.

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

As indicated in the rule, DHS estimates the costs and benefits of this proposed rule using the newly published Fee Schedule Final Rule, and related form changes, as the baseline. The Fee Schedule Final Rule was scheduled to go into effect on October 2, 2020. On September 29, 2020, the U.S. District Court for the Northern District of California issued a nationwide injunction, which prevents DHS from implementing the Fee Schedule Final Rule. See, *Immigrant Legal Resource Center v. Wolf*, No. 4:20-cv-5883 (N.D. Cal. Sept. 29, 2020). In addition, on October 8, 2020, DHS was also preliminarily enjoined from implementing and enforcing the Fee Schedule Final Rule by the U.S. District Court for the District of Columbia, including by adopting any form changes associated with the rule. See, *Northwest Immigrant Rights Project v. U.S. Citizenship and Immigration Servs.*, 1:19-cv-03283-RDM (D.D.C. Oct. 8, 2020). While DHS intends to vigorously defend these lawsuits and is not changing the economic baseline for this proposed rule as a result of the litigation, it is using the currently approved Form I-129, and not the form version associated with the enjoined Fee Schedule Final Rule for the purpose of seeking OMB approval of form changes associated with this proposed rule. Should DHS prevail in the Fee Schedule Final Rule litigation and be able to implement the form changes associated with that rule, DHS will comply with the Paperwork Reduction Act and seek approval of the information collection changes associated with this proposed rule, based on the version of the Form I-129 that is in effect at that time.

Data collection Activity/Instrument (in hours)	Program Change (hours currently on OMB Inventory)	Program Change (New)	Difference	Adjustment (hours currently on OMB Inventory)	Adjustment (New) [new minus current]	Difference
Form I-129	1,072,810	1,293,873	221,063			
Total(s)	1,072,810	1,293,873	221,063			

The estimated annual time burden for this information collection has increased as a result of the changes made by this NPRM. USCIS estimates that the time burden per response will increase by 0.25 hours.

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
Form I-129	\$70,681,290	\$70,681,290	\$0			
Total(s)	\$70,681,290	\$70,681,290	\$0			

There is no change to the annual estimated cost burden for this information collection as a result of this NPRM.

- 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.