

## SUPPORTING STATEMENT

OMB No. 1125-0003

Fee Waiver Request  
Form EOIR-26A

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### Part A. Justification

1. Necessity of Information - The Board of Immigration Appeals (Board) may, in its discretion, authorize the filing of an appeal or motion over which the Board has jurisdiction without payment of the required filing fee. *See* 8 C.F.R. § 1003.8(a)(3). Similarly, an immigration judge may, in his or her discretion, waive a fee for motion or application for relief. *See* 8 C.F.R. § 1003.24(d). An individual who wants a waiver of such fee must demonstrate that he or she is unable to pay the fee. To request a fee waiver before the Board, the individual files with his or her Notice of Appeal or motion a Fee Waiver Request (Form EOIR-26A) in lieu of the filing fee. *Id.* While the regulations do not require the Form EOIR-26A be used to request a fee waiver before the immigration judge, it has long been accepted in the absence of a specific fee waiver form for such purposes. If the request does not establish the inability to pay the required fee, the application, appeal or motion will not be deemed properly filed. *Id.*, see also 8 C.F.R. § 1003.24(d). EOIR has removed “Board of Immigration Appeals” from the header of the Form EOIR-26A to more clearly demonstrate its multipurpose use for requesting a fee waiver before both the Board and the immigration judge. While the Form EOIR-26A is required to request a fee waiver before the Board per the regulations, it remains an optional form for requesting such a waiver before the immigration judge. *Compare* 8 C.F.R. § 1003.24(d) with 8 C.F.R. § 1003.24(d). EOIR intends to further update its forms page on the

EOIR website to indicate the mandatory and optional uses of the form.

The form requests information about the individual's assets and expenses, which is then used by the adjudicator to determine whether the individual has established his or her inability to pay the filing fee. In addition to changing the header of the form, EOIR has reformatted the assets and expenses fields into a more user-friendly table format with clearly delineated columns and rows, and has retitled those columns as "income sources" and "expense sources." The form was modeled on similar forms used by the Federal Circuit Courts of Appeals for individuals who are financially unable to pay the docket and filing fees. *See United States Court of Appeals for the Ninth Circuit, Form 4. Motion and Affidavit for Permission to Proceed in Forma Pauperis, available at: <https://cdn.ca9.uscourts.gov/datastore/uploads/forms/form04.pdf>.* EOIR intends to assist applicants by making the form available in a fillable pdf format that will automatically calculate the total of the assets column less the total expenses.

2. Needs and Uses - The information provided on the Form EOIR-26A is reviewed by the adjudicators to determine whether to waive the filing fee for an application, appeal or motion. One fee waiver request is collected for each application, appeal or motion in which a waiver of the filing fee is requested

3. Use of Technology - The use of this form provides the most efficient means for collecting and processing the required data. The Form EOIR-26A is available on EOIR's website for printing. The information can be typed into the online form which is then printed out for submission to the agency, or the individual has the option of printing the form in its entirety to

complete by typing or printing legibly.

Currently, EOIR does not have the capability to accept electronic submission of the Form EOIR-26A. However, EOIR has developed an eRegistry, which is part of a long-term agency initiative to create an electronic case access and filing system for the Immigration Court and the Board of Immigration Appeals. eRegistry allows attorneys and accredited representatives with full accreditation to create and maintain a personal profile in order to electronically submit forms and update existing forms. EOIR is also in the process of deploying its electronic case filing system to the Board and all of the immigration courts nationwide. The electronic filing system will allow parties to file applications, motions, appeals and other forms electronically. Electronic submission of the Form EOIR-26A is part of EOIR's long-term electronic filing initiative.

4. Efforts to Identify Duplication - The only method by which an individual can request a waiver of a fee required to file an appeal or motion with the Board is to file the Form EOIR-26A in conjunction with the Notice of Appeal or motion. Individuals seeking to request a fee waiver before the immigration judge has the option to use the EOIR-26A or to submit a written, signed affidavit or declaration in conforming with the regulations at 8 C.F.R. § 1003.24(d). A review of EOIR's existing forms revealed no duplication of effort, and there is no similar information currently available which can be used for this purpose.

5. Impact on Small Businesses - This collection does not have an impact on small businesses or other small entities.

6. Consequences of Less Frequent Collection - Failure to collect and present this information would deprive an individual who may be unable to pay the required fee for an appeal or motion the opportunity to have his/her request for a fee waiver considered by the Board.

7. Special Circumstances Influencing Collection - None of the eight special circumstances identified in OMB instruction number seven apply to this collection.

8. Federal Register Publication and Consultation – A 60-day notice covering this collection was published in the Federal Register at 86 Fed. Reg. 12713 (Mar. 4, 2021). A 30-day notice covering this collection will be published in the Federal Register following the expiration of the 60-day notice. Copies of these notices will be provided in ROCIS. If comments are received, they will be considered and incorporated where appropriate.

9. Payment or Gift to Claimants - EOIR does not provide any payment or gifts to respondents.

10. Assurance of Confidentiality – The original Fee Waiver Request is maintained by EOIR in the official court record of proceeding (ROP) and is accessed by those EOIR employees processing the ROP. The confidentiality of the contents of an individual’s Fee Waiver Request (Form EOIR-26A) is protected by EOIR, as are all the documents in the ROP, to the extent permitted by the law, including the Privacy Act and the Freedom of Information Act.

11. Justification for Sensitive Questions - There are no questions of a sensitive nature.

12. Estimate of Hour Burden

a. Number of Respondents	5,499
b. Number of Responses per Respondent	1
c. Total Annual Responses	5,499
d. Hours per Response	1 hour
e. Total Annual Hourly Reporting Burden	5,499 hours

5,499 respondents x 1 response per respondent x 1 hour per response = 5,499 burden hours.

13. Estimate of Cost Burden - There are no capital or start-up costs associated with this information collection. The estimated public cost is \$54,990. This estimate is derived by multiplying the number of respondents (5,499) by the hours per response (1) by the individual's estimated cost of \$10 per hour for completing the form (the individual's time and supplies):  
 $5,499 \text{ respondents} \times 1 \text{ hour per response} \times \$10/\text{hr} = \$54,990$ . There is no filing fee associated with this collection.

14. Estimated Cost to the Federal Government – EOIR estimates that the annual government cost for printing, distributing, stocking, processing and maintaining the Form EOIR-26A is \$5,002. This amount includes printing costs of \$1,100, which was derived by multiplying the 2 pages of the form by an estimated \$.10 per copy by the estimated 5,499 respondents per year. This amount also includes stocking, processing and maintenance costs of \$3,902, which was

derived by calculating the personnel and overhead costs to EOIR for processing the form.

15. Reasons for Change in Burden - The burden decreased due to a decrease in the number of submissions received over the past three years.

16. Plans for Publication - EOIR does not intend to employ the use of statistics or the publication thereof for this collection of information.

17. Exceptions to the Certification Statement - EOIR does not request an exception to the certification of this information collection.

**Part B. Collection of Information Employing Statistical Methods**

This collection does not employ statistical methods.

## PAPERWORK CERTIFICATION

In submitting this request for Office of Management and Budget (OMB) approval, I certify that the requirements of the Privacy Act and OMB directives have been complied with, including paperwork regulations, any applicable statistical standards or directives, and any other information policy directives promulgated under 5 C.F.R. § 1320.

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4/22/2021

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Date