

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

APPLICATION FOR CONSULAR REPORT OF BIRTH ABROAD OF A CITIZEN OF THE UNITED STATES OF AMERICA

(OMB #1405-0011, Form DS-2029)

A. JUSTIFICATION

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

The Immigration and Nationality Act of 1952, as amended, (INA) Section 104(a) (3), 8 U.S.C. § 1104 (a)(3), charges the Secretary of State with the determination of nationality of a person not in the United States. 22 U.S.C. § 2705(2) provides that a Consular Report of Birth Abroad (CRBA) of a Citizen of the United States issued by a consular officer to document a citizen born abroad shall have the same force and effect as proof of United States citizenship as certificates of naturalization or of citizenship issued by the Attorney General or by a court having naturalization jurisdiction. The statute further provides, “For purposes of this paragraph, the term ‘consular officer’ includes any United States citizen employee of the Department of State who is designated by the Secretary of State to adjudicate nationality abroad pursuant to such regulations as the Secretary may prescribe.”

A CRBA may be issued to persons born abroad who acquired U.S. citizenship or U.S. noncitizen nationality at birth through a U.S. citizen or U.S. noncitizen national parent or parents who have satisfied the applicable statutory requirements for transmission of U.S. citizenship/U.S. noncitizen nationality. INA Sections 301, 308, and 309, 8 U.S.C. §§ 1401, 1408, and 1409 respectively, prescribe these legal requirements. (For purposes of this Supporting Statement, the terms “U.S. citizen” and “U.S. citizenship” will be used with the proviso that CRBAs may also be issued to persons born abroad who acquired U.S. noncitizen nationality at birth through their parent(s).)

Before issuing a CRBA, consular officers at U.S. embassies and consulates abroad must collect (on Form DS-2029 and supporting documents) and weigh the evidence in support of each statutory transmission requirement to ensure that the applicant acquired U.S. citizenship at birth under the applicable statute and therefore is eligible for a CRBA.

Implementing regulations at 22 C.F.R. Part 50, Nationality Procedures, and 22 C.F.R. Part 51, Passports, fully support this information collection as well as collection of additional evidence, through interviews and other documentation, when adjudicating a claim to U.S. citizenship at birth of a person born abroad.

Specifically, 22 C.F.R. § 50.5, Application for Registration of Birth Abroad, provides in part, “The applicant shall be required to **submit proof of the child's birth, identity and citizenship meeting the evidence requirements of subpart C of part 51 of this subchapter** [emphasis added] and shall include:

(a) Proof of child's birth. Proof of child's birth usually consists of, but is not limited to, an authentic copy of the record of the birth filed with local authorities, a baptismal certificate, a military hospital certificate of birth, or an affidavit of the doctor or the person attending the birth. If no proof of birth is available, the person seeking to register the birth shall submit his affidavit explaining why such proof is not available and setting forth the facts relating to the birth.

(b) Proof of child's citizenship. Evidence of parent's citizenship and, if pertinent, evidence of parent's physical presence in the United States as required for transmittal of claim of citizenship by the Immigration and Nationality Act of 1952 shall be submitted.”

22 C.F.R. § 51.45 provides that “[t]he Department may require an applicant to provide any evidence that it deems necessary to establish that he or she is a U.S. citizen or non-citizen national, including evidence in addition to the evidence specified in 22 CFR 51.42 through 51.44.” In *Parham v. Clinton*, No. CIV.A. H-09-1105, 2009 WL 2870671, (S.D. Tex. Aug. 31, 2009), *aff'd*, 374 F. App'x 503 (5th Cir. 2010) which involved a CRBA application at the U.S. Embassy in Manila, the Philippines, the Department was permitted to require DNA testing to establish relationship to a U.S. citizen parent (denying the application when plaintiff did not comply). In general, however, DNA testing is usually regarded as a last resort to be used when other means of proof are unavailable or unreliable.

2. *What business purpose is the information gathered going to be used for?*

The information gathered on the Form DS- 2029 and in interviews and supporting documentation is to be used in adjudicating claims to U.S. citizenship under INA Sections 301, 308 and 309, 8 U.S.C. §§ 1401, 1408, and 1409 respectively, in order to determine whether a person born abroad acquired U.S. citizenship at birth and therefore is eligible for a CRBA.

The information gathered is tied to each transmission requirement, with additional information required only as necessary to determine the citizenship claim.

As an example, 8 U.S.C. § 1409(a) (birth abroad out of wedlock to a U.S. citizen father through whom the citizenship claim is being made) has four requirements that must be met, after which a physical presence or residence requirement must be established depending on the U.S. citizenship status of the biological mother of

the child. Specifically, 8 U.S.C. § 1409(a)(1) requires that “a blood relationship between the person and the father is established by clear and convincing evidence.” 8 U.S.C. § 1409(a)(2) requires that “the father had the nationality of the United States at the time of the person’s birth.” 8 U.S.C. § 1409(a)(3) requires that, “the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years.” 8 U.S.C. § 1409(a)(4) requires that “while the person is under the age of 18 years – (A) the person is legitimated under the law of the person’s residence or domicile. (B) the father acknowledges paternity of the person in writing under oath, or (C) the paternity of the person is established by adjudication of a competent court.”

Establishing the blood relationship by clear and convincing evidence as required by 8 U.S.C. § 1409(a)(1), may involve photo comparisons for family likeness, determination of access by comparing dates of physical presence in the United States or elsewhere, and DNA testing. 22 C.F.R. § 51.45 provides that “The Department may require an applicant to provide any evidence that it deems necessary to establish that he or she is a U.S. citizen or non-citizen national, including evidence in addition to the evidence specified in 22 CFR 51.42 through 51.44.” (As noted in the response to Question 1 above, 22 CFR 51.45 is made applicable to citizenship determinations in connection with a CRBA application by 22 CFR 50.5.)

Question 18 (and 19) asks whether the transmitting parent was a U.S. citizen when the child was born, corresponding to the requirement of 8 U.S.C. § 1409(a)(2) that “the father had the nationality of the United States at the time of the person’s birth.”

The first statement in Question 28, “I am the father of (Name of Child), who was born on (Date of Birth) in (Place of Birth)” corresponds to the requirement of 8 U.S.C. § 1409(a)(4)(B), acknowledgement of paternity in writing under oath. However, if this box is not checked, the consular officer must still consider whether 8 U.S.C. § 1409(a)(4)(A) and/or (C) has been met.

The second statement in number 28, “My child was born out of wedlock, and I am the father through whom he/she is claiming U.S. citizenship,” provides the consular officer with information (which will need to be corroborated) that this is a citizenship claim under 8 U.S.C. § 1409(a).

The third statement in number 28, “I agree to provide financial support for this child until he/she reaches the age of eighteen,” corresponds to the requirement of 8 U.S.C. § 1409(a)(3), that the father has agreed in writing to support the child until the child reaches the age of 18. However, if this box is not checked, the consular officer must still consider whether other documentation suffices to establish this requirement in accordance with 8 Foreign Affairs Manual (FAM) 301.7-4(E)(3)

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

The Department has incorporated the substance of the Form DS-2029 into an online format to provide applicants with the option to complete and submit the form via the internet. This online application, or eCRBA, is part of the Department's ConsularOne modernization project. The online Form DS-2029 was piloted in March 2019, so the applicant can complete and submit the form online and upload and submit supporting documentation in electronic format. The applicant also can pay the relevant fee and schedule an appointment to appear at the adjudicating post for an interview through this online application. While the current pilot is not available for use in Assisted Reproductive Technology cases (including surrogacy), this capability will be included in the full deployment of the eCRBA application. The Department has polled its posts around the world; posts are highly supportive of this endeavor, and believe that a properly designed online application could save substantial time and effort.

An online Form DS-2029 would not supplant the physical DS-2029. In areas where internet access is unreliable, or where the applicant pool may not have technological ability to successfully submit an application online, the Department has a duty to provide U.S. citizens with the choice to use a paper form.

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

Some information requested on the Form DS-2029 is duplicative of information requested on Form DS-5507, Affidavit of Physical Presence, Parentage, and Support. The Form DS-2029 is designed so that both parents of the child born abroad can provide their information on the same form, including, for the U.S. citizen transmitting parent, dates of physical presence or prior residence in the United States or other qualifying time as provided by the birth abroad statutes. If a non U.S. citizen parent is submitting the Form DS-2029 at a U.S. Embassy or Consulate and the transmitting U.S. citizen parent is not present for that appointment, the parents are permitted in many cases to submit a Form DS-5507 completed before a U.S. notary (or other person authorized to take oaths or affirmations) along with the Form DS-2029. The Form DS-5507 requests the same information regarding parentage and dates of physical presence or prior residence in the United States as the Form DS-2029. Additionally, for a citizenship claim by out of wedlock birth abroad to a U.S. citizen father, both the Form DS-2029 and the Form DS-5507 request acknowledgement of paternity under oath and a statement agreeing to support the child financially until the age of 18.

It is not expected that a transmitting U.S. citizen parent who completes the Form DS-2029 would also be required to complete the Form DS-5507 or vice versa. It is also not expected that the applying parent complete the sections on the Form

DS-2029-pertaining to the other parent if that parent is completing the Form DS-5507.

5. *Describe any impacts on small business.*

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

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

22 U.S.C. § 2705 provides that the following documents, both issued by the Department of State, shall have the same force and effect as proof of United States citizenship as certificates of naturalization or of citizenship issued by the Attorney General or by a court having naturalization jurisdiction.

(1) A passport, during its period of validity (if such period is the maximum period authorized by law), issued by the Secretary of State to a citizen of the United States.

(2) A CRBA.

If the Department of State is not permitted to collect on the Form DS-2029 and in supporting documentation and interviews the information necessary to adjudicate claims to U.S. citizenship under the relevant subsections of INA Sections 301, 308 and 309, 8 U.S.C. §§ 1401, 1408, and 1409 respectively, in order to determine whether a person born abroad acquired U.S. citizenship at birth and therefore is eligible for a CRBA, there would be several adverse consequences, as follows:

- A CRBA is a formal document certifying the acquisition of U.S. citizenship at birth of a person born abroad. It is not a birth certificate, such as is issued by a government-authorized bureau or office of vital statistics, because a consular commission does not empower consular officers to assume a foreign, local, or state vital statistics function. However, for parents of children born overseas who have a foreign birth certificate only, the CRBA is essential to quickly establishing their child's eligibility to attend U.S. schools and obtain other benefits and services attendant upon being a U.S. citizen.
- Unlike the U.S. passport, the CRBA does not expire and may be used for a lifetime as proof of acquisition of U.S. citizenship at birth. If this information collection was not permitted, then the child would only be able to obtain a U.S. passport from the Department of State, which, as noted above, is proof of U.S. citizenship only during its period of validity.
- A Certificate of Citizenship, issued by U.S. Citizenship and Immigration Services, also does not expire but would involve a separate application process and would not be available in all cases. Moreover, per the form's instructions, the nonrefundable filing fee for an N-600, Application for a Certificate of Citizenship, is \$1,170; by contrast, the current fee for a CRBA

application is \$100.00, 22 C.F.R. § 22.1, an important financial consideration for many parents.

Since information is collected only once, with respect to an individual applicant, the frequency for collection has been minimized.

7. *Are there any special collection circumstances?*

No special circumstances exist.

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

The Department of State published a 60-day notice in the *Federal Register* to solicit public comments on December 14, 2018 (83 FR 64424). No comments were received.

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

No payment or gift is provided to respondents.

10. *Describe assurances of privacy/confidentiality.*

This form includes a Privacy Act statement explaining the routine uses of the information collected in accordance with 5 U.S.C. § 552a(b)(3) and Department of State Systems of Records Notices. There are no assurances of confidentiality to the respondents other than those contained in federal statutes and regulations.

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

.Questions that may be considered of a sensitive nature are asked on the Form DS-2029 and during the interview process as necessary for adjudicators to be able to establish that the requirements for transmission of U.S. citizenship under the applicable birth abroad statute, including for a biological relationship between the transmitting U.S. citizen parent(s) and the applicant child, have been met.

Although providing information on the Form DS 2029, supporting documentation and interview statements is all voluntary, the CRBA application may be denied if the requested information is not provided.

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

The hour burden of -73,647 hours per year is based on the form being completed by an average of 70,473 persons per fiscal year, and only one response is permitted per applicant per child. The form takes each respondent an average of 60 minutes to complete. The number of respondents constitutes the three-year average of respondents to the form for fiscal years FY15, FY16, and FY17 (see data chart below). The information is based on personal biographic data. The information collected usually does not require any special research, although some complex claims to citizenship may require special research.

| Fiscal Year | Total # of post CRBA Applications |
|-------------|-----------------------------------|
| FY15 | 68,144 |
| FY16 | 73,424 |
| FY 17 | 69,851 |

The estimated cost to respondents is based on the weighted civilian hourly wage rate from the Bureau of Labor Statistics website multiplied by the annual time burden (73,647 hours). The wage rate is estimated to be \$36.32 per hour (\$24.91 average wage + 11.41 benefits). The Department used the Employer Costs for Employee Compensation released by the Bureau of Labor Statistics in 2019.ⁱ

$$\text{\$36.32/hr.} \times 73,647 \text{ burden hours} = \text{\$2,647,859.04 annual cost burden.}$$

13. Describe the monetary burden to respondents (out of pocket costs) needed to complete this collection.

The cost associated with this application that respondents may incur is the mileage travel costs for submitting the form to the U.S. diplomatic mission in person.

The number of people traveling by vehicle per number of miles shown in the table below was determined by dividing 70,473 individuals (number of respondents) by 3 which gives you 23,491 individuals, which assumes an even split between the three mileages detailed

below. The driving cost per mile of \$0.59 was determined using the Bureau of Transportation Statistics (BTS) calculation from 2018.ⁱⁱ

Mileage costs for traveling by various methods of transportation will vary based on how far the person has to travel. If the driving distance is ten miles, the overall total cost based on 23,491 respondents is \$138,596.90. If the distance is 25 miles, the overall total cost based on 23,491 respondents is \$346,492.25. If the distance is 50 miles, the overall total cost based on 23,491 respondents is \$692,984.50. The total mileage cost of \$1,178,073.65 is based on respondents that traveled by various methods of transportation.

| | Total # of Respondents that Traveled by Various Methods of Transportation | 70,473 | | |
|-------------|---|---------------|--|----------------|
| # of People | # of Miles | Cost Per Mile | Total cost for mileage listed for one person | Totals |
| 70,473 | 10 | \$0.59 | \$5.90 | \$138,596.90 |
| 70,473 | 25 | \$0.59 | \$14.75 | \$346,492.25 |
| 70,473 | 50 | \$0.59 | \$29.50 | \$692,984.50 |
| | | | | \$1,178,073.65 |

14. Describe the cost incurred by the Federal Government to complete this collection.

The annual cost to the federal government is calculated using the current consular time hourly rate published in the Schedule of Fees for Consular Service. This total is \$135 per hour. The dollar amount is not an hourly wage, but reflects the amount of resources attributed to Consular Officer time based on the activity-based costing model used at overseas posts. These forms are processed by overseas Foreign Service Officers at U.S. embassies and consulates overseas. Overseas Citizens Services believes it takes a Foreign Service Officer approximately 15 minutes to process the form. The cost for 15 minutes is \$33.75 (135 x 0.25 hour = \$33.75).

70,473 applications per year x \$33.75 = \$2,378,463.75 annual cost to the federal government.

While true that in 2010, CoSS identified the cost of this service at \$197.28 . (<https://www.federalregister.gov/d/2010-15622>), the Department sets the fee for CRBAs below cost. As noted in the cited rule, “The Department decided to

charge less than cost precisely to prevent American citizens from being deterred from declaring the birth of a child while overseas which would be detrimental to national interests.” Per 31 U.S.C § 9701(b)(2) an agency can set fees below cost for “public policy or interest served.” More recently approved iterations of the Cost of Service Model have confirmed this policy, and costs continue to be higher than the fee.

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

The average number of respondents has decreased from 71,275 to 70,473. The hour burden has increased from 23,758 to 73,647 because the estimated time to complete this form was increased from 20 to 60 minutes, as recommended by the Office of Management and Budget. The estimated time of 20 minutes had not changed since the number of pages to Form DS-2029 increased from 3 to 9 pages. The number of respondents decreased because the number of respondents varies from year to year depending on the number of citizens in need.

Also, there were non-substantive changes to verbiage on the form that are designed to provide additional clarity.

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

General tabulations of information regarding Applications for Consular Report of Birth Abroad of a Citizen of the United States of America are maintained in the “Consular Package,” the Consular Workload Statistical System (CWSS) system. This contains raw data broken down by the Foreign Service post issuing the report. Permanent records of Consular Reports of Birth Abroad applications are maintained at the National Archives and Records Administration and filed in accession libraries. Electronic copies of the Consular Report of Birth are maintained by the Department of State, Passport Services.

17. *If applicable, explain the reason(s) for seeking approval to not display the OMB expiration date.*

The OMB expiration date will be displayed.

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

No exceptions are requested.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

ⁱ Source: Bureau of Labor Statistics, “Employer Costs for Employee Compensation – December 2018,” <https://www.bls.gov/news.release/ecec.toc.htm>.

ⁱⁱ Source: Bureau of Transportation Statistics, “Average Cost of Owning and Operating an Automobile,” <https://www.bts.gov/content/average-cost-owning-and-operating-automobile>.