

## SUPPORTING STATEMENT

OMB No. 1125-0009

### Application for Suspension of Deportation Form EOIR-40

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#### Part A. Justification

1. Necessity of Information Collection - Certain individuals who are deportable from the United States may be eligible to request that the Attorney General suspend their deportation and adjust their status under former section 244 of the Immigration and Nationality Act (INA). *See also* 8 C.F.R. § 1240.55 (2011). To be granted such relief from deportation, the applicant must prove that s/he meets all the statutory prerequisites for such relief and that s/he is entitled to a favorable exercise of discretion. Each applicant for suspension of deportation will file one application (Form EOIR-40) based on the individual facts and circumstances in his/her case. The form contains information, such as identifying characteristics, residence, employment history and family information, which is necessary for the Attorney General to decide whether to permit the applicant to remain in the United States. The authority to adjudicate the application for suspension of deportation has been delegated to immigration judges by the Attorney General. EOIR seeks a three year extension.

The one substantive change is to permit the Form EOIR-40 to be electronically filed and served on the opposing. All other proposed changes are non-substantive in nature (e.g., typographical and grammatical edits).

2. Needs and Uses - The application for suspension of deportation (Form EOIR-40) is filed and considered in the context of an immigration proceeding. Accordingly, information contained in the application is considered only to the extent necessary to process the application. The application is accepted into the official record of the immigration proceeding and is considered by an immigration judge, or the Board of Immigration Appeals if on appeal, in determining the applicant's request for suspension of deportation. The authority to adjudicate the application for suspension of deportation has been delegated to EOIR by the Attorney General.

3. Use of Technology - The use of this form provides the most efficient means for collecting and processing the required data. The Form EOIR-40 is available on EOIR's website as a fillable pdf. Information can be typed into the online form, which can then be printed out for submission to the agency, or the individual has the option of printing the form in its entirety for completion by typing or printing legibly.

EOIR is also further developing its electronic case filing system, which will allow respondents to electronically file the form and service it on the opposing party.

Respondent's representatives already have the ability to electronically file the form through the system. Respondents may also serve the opposing party by email, or if filed through the electronic case filing system, the system will automatically serve the opposing party.

4. Efforts to Identify Duplication - The only method for applying for suspension of deportation for an alien in immigration proceedings is to file the Form EOIR-40. A review of EOIR's forms revealed no duplication of effort, and there is no similar information currently being collected 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 this information would deprive the individual from establishing his or her eligibility for suspension of deportation.
7. Special Circumstances Influencing Collection - None of the eight special circumstances identified in OMB instruction number 7 apply to this collection.
8. Federal Register Publication and Consultation - A 60-day notice covering this collection was published in the Federal Register on September 28, 2021. *See* 86 FR 53677. No public comments were received. A 30-day notice covering this collection will be published in the Federal Register. If any public comments are received, they will be considered and incorporated as appropriate.
9. Payment or Gift to Claimants - EOIR does not provide any payment or gifts to individuals in exchange for the information provided in Form EOIR-40.

10. Assurance of Confidentiality - The original application is maintained by EOIR in the official court record of proceeding (ROP) and is accessed by those staff members processing the ROP. The confidentiality of the contents of the Form EOIR-40 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 - Any question that inquires into matters commonly considered as private is necessary for the immigration judge to consider an applicant's statutory and discretionary eligibility for suspension of deportation and to determine his/her legal right to remain in the United States. *See* number 2, above.

12. Estimate of Hour Burden

a. Number of Respondents	133
b. Number of Responses per Respondent	1 each
c. Total Annual responses	133
d. Hours per response	5 hours, 45 minutes
e. Total annual hourly reporting burden	764.75

The total annual reporting burden is derived by multiplying the number of respondents (133) by the frequency of response (1) by the number of hours per response (5 hours, 45 minutes or 5.75): 133 respondents x 1 response per respondent x 5 hours, 45 minutes per respondent = 764.75 burden hours. The reporting burden for this collection of information is computed as follows: 1) learning about the form, 45 minutes, 2)

completing the form, 2 hours, and 3) assembling and filing the form, 3 hours, for an average of 5 hours, 45 minutes per application.

13. Estimate of Cost Burden - There are no capital or start-up costs associated with this information collection. The estimated total public cost is \$. This estimate is derived by multiplying the burden hours of 764.75 by the estimated practitioner cost of \$61.03 per hour, plus a filing fee of \$100 per respondent.

$$764.75 \text{ burden hours} \times \$61.03/\text{hr (estimated practitioner cost)} = \$46,672.69$$

$$\$100 \text{ filing fee} \times 133 \text{ respondents} = \$13,300$$

$$\$46,672.69 + \$13,300 = \$59,972.69$$

These costs are estimates with respect to the burden on the public and may vary greatly depending on whether a respondent uses a practitioner for assistance in completing the form, the level of detail a respondent includes in the form and whether the respondent seeks a waiver of the filing fee. The amount of \$59,972.69 represents the maximum estimate of cost burden. EOIR recognizes that a certain portion of the respondents will not retain a practitioner to assist them in filling out the form; accordingly, not every respondent will incur the practitioner's fees. The practitioner fee represents the median hourly wage for lawyers, as reported by the Bureau of Labor Statistics. For those individuals who proceed without a practitioner, there is an estimated cost of \$10 per hour for completing the form (the individuals' time and supplies) in lieu of the practitioner cost. This amount to the individual is not included as it is less than the estimated practitioner cost and would not add to the maximum estimate of \$59,972.69.

Additionally, respondents may seek to have the \$100 filing fee waived by requesting a

waiver from an Immigration Judge or submitting Form E-26A.

14. Estimated Cost to Federal Government - It is estimated that the annual cost for printing, distributing, stocking, processing, and maintaining the Form EOIR-40 is \$761.50. This estimate was derived by adding the cost to process the total annual responses to the overhead costs to the agency. The annual cost to process the forms was derived by dividing the hourly wage to process the form (\$25.91) by the number of forms processed in one hour (7.5) multiplied by the total estimated annual responses (133) = \$459.47. The overhead cost to the agency is estimated to be 31% of the annual cost to process the forms (\$142.43) = \$601.90. The form, including the instructions, is twelve pages. The maximum cost of printing the form, were the agency to provide the applicants with copies of the form as a courtesy, would be \$159.60 (133 forms x 12 pages x .10 per page).

15. Reason for Change in Burden -The difference in hour burden in the present ICR is due to an agency adjustment, specifically a decrease in the number of respondents. Previously, EOIR estimated 160 respondents annually. At present, there are approximately 133 respondents annually. As the number of hours per response remained the same (5 hours, 45 minutes), the total burden hours decreased from 920 to 764.75 burden hours, for a difference of 155.25 burden hours. Because of the lower number of respondents, the cost burden to respondents similarly decreased to reflect the adjustment for the number of applicants.

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

**Section 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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Christina Baptista  
Senior Counsel for Immigration  
Executive Office for Immigration Review

11/26/2021  
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Date