

SUPPORTING STATEMENT
Application for Stay of Removal or Deportation
(Form I-246)
OMB No. 1653-0021

- 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.**

The information collected on the Form I-246 is necessary for U.S. Immigration and Customs Enforcement (ICE) to make a determination that the eligibility requirements for a request for a stay of deportation or removal are met by the applicant. Upon approval of the application the nonimmigrant's removal from the United States is stayed at the discretion of the Field Office Director or other designated Department of Homeland Security official, pursuant to section 241.6 of Title 8 Code of Federal Regulations (CFR).

- 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.**

ICE uses the data collected on this form to determine eligibility for the requested immigration benefit. The form serves the purpose of standardizing requests for the benefit, and will ensure that applicants provide basic information required to assess eligibility.

- 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.**

ICE does not employ the use of information technology to collect and process the information taken in this collection. Due to the nature of the benefit to which the respondents are applying, some respondents may be able to submit this directly to ICE at the facility at which they are detained. Other respondents may present this form in person and certain original documents which are not accepted electronically (passports, birth certificates, etc.) in order to prevent manipulated or falsified copies from being used to obtain the benefit illegally.

- 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.**

This information is not collected in any form, and therefore is not duplicated elsewhere. Furthermore, the nonimmigrant must affirmatively apply for the benefit sought. The Government cannot compile the information and apply for the benefit on behalf of the nonimmigrant.

- 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.**

This collection of information does not have an impact on small businesses or other small entities.

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.

Sections 241.6 of Title 8 Code of Federal Regulations provide that a nonimmigrant under a final order of deportation or removal may request a stay of deportation or removal on the Form I-246. Form I-246 provides a crucial means of establishing the authenticity of such claims and the absence of this form would impede the processing of such requests for a stay of removal. The information collected on the Form I-246 is essential to documenting whether the applicant has met all of the eligibility requirements to receive an administrative and discretionary grant of a stay of removal. The information is also collected to ensure a complete and accurate adjudication.

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.**

The special circumstances contained in item 7 of the Supporting Statement are not applicable to this information collection.

- 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 June 9, 2023, DHS, Immigration and Customs Enforcement (ICE) published a notice in the Federal Register at 88 FR 37897, soliciting public review and comment for a 60-day period on the proposed extension of this information collection. ICE received one non-substantive comment. On August 22, 2023, ICE published a follow up notice in the Federal Register at 88 FR 57127, soliciting public review and comment for an additional 30-day period.

- 9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

ICE does not provide payment or gifts to respondents in exchange for a benefit sought.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

There are no assurances of confidentiality provided to the respondents for this information collection. Information on this form is authorized to be collected under 8 U.S.C. 1231 and 8 CFR 241.6. In addition, information contained on this form is covered under the DHS/USCIS-ICE-CBP 001-Alien File (A-File), Index, and National File Tracking System of Records (SORN) – November 21, 2013, 78 FR 69864.

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 person's form whom the information is requested, and any steps to be taken to obtain their consent.

The applicant may present a medical reason as justification for his or her request for the benefit. Any reason given must be supported with evidence, which would entail disclosure of confidential medical information. However, this information is necessary to determine the applicant's eligibility for the requested immigration benefit. The applicant may consult with an attorney at his or her own expense before submitting the application. The attorney can advise the applicant regarding submission of confidential information.

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.**

Hour Burden Estimate

a. Number of Respondents 3,664

b.	Number of Responses per each Respondent	1
c.	Total Annual Responses	3,664
d.	Hours per Response	0.5
e.	Total Annual Reporting Burden	1,832

The projected hours per response for this collection of information were derived by first breaking the process into three basic components:

Learning about the law and the form:	5 Minutes
Completion of the form:	20 Minutes
Assembling and filing the form:	5 Minutes
Total Hours per Response:	30 Minutes

Annual Reporting Burden

Total annual reporting burden is 1,832. This figure was derived by multiplying the number of respondents (3,664) x frequency of response (1) x hours per response (0.5 hours).

Annualized Cost to Respondents

The annualized cost to respondents is estimated to be \$41,924. This figure was derived by multiplying the annual reporting burden (2,325) x average hourly loaded wage for unskilled labor and manufacturing workers (\$22.88). This figure was chosen as many nonimmigrants placed in removal proceedings are employed or seeking employment in these categories.

The hourly wage rate for unskilled labor is represented by the national average of state minimum wage rates, \$9.77. See Minimum Wage Laws in the States, January 1, 2023,

<https://www.dol.gov/whd/minwage/america.htm>. The fully loaded wage rate, \$14.16, is calculated using the percentage of wages and salaries to total compensation, found in Bureau of Labor Statistics, Employer Costs for Employee Compensation, March 2023, Table 1: Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group, All workers, https://www.bls.gov/news.release/archives/ecec_03172023.htm. Wages and salaries are 69 percent of total compensation. $\$14.16 = \$9.77 / 0.69$.

The hourly wage rate for manufacturing labor is represented by the average hourly wage for production occupations, \$21.81. See All Production Occupations, May 2022 National Occupational Employment and Wage Estimates United States, https://www.bls.gov/oes/2022/may/oes_nat.htm. The fully loaded wage rate is calculated using the percentage of wages and salaries to total compensation for all workers as referenced above, 69 percent. $\$31.61 = \$21.81 / 0.69$.

The average of the hourly loaded wage rate for unskilled labor and manufacturing is \$22.88 $((\$14.16 + \$31.61) / 2)$.

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 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 record keeping, capital or start-up or maintenance costs associated with this information collection. Many applicants will enlist the services of an attorney to file this application on their behalf. Attorneys may be expected to charge for an initial consultation of \$100 and either a fee for service or an hourly rate of approximately \$100. If one quarter of applicants use an attorney, the estimated costs are \$91,600. This is calculated by multiplying the number of applicants (3,664) x .25 x the initial consultation (\$100); $3,664 \times .25 \times \$100 = \$91,600$. In addition, the Department provides localized lists of free or low-cost legal providers to every nonimmigrant in removal proceedings. There is a fee of \$155 associated with the collection of information to partially off-set agency costs. The total annual cost burden is \$659,520. This is calculated by multiplying the fee (\$155) x the number of respondents (3,664) and adding this figure to the estimated range of legal fees; $\$155 \times 3,664 + \$91,600 = \$659,520$.

- 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.**

Annualized Cost Analysis:

Printing Cost	\$	0
Collecting and Processing	\$	3,006,774
Total Cost to Program	\$	3,006,774
Fee Charge	\$	567,920

Form I-246 is available for download at www.ice.gov so the Federal Government will not incur any costs from its reproduction. Respondents or their attorneys will receive a written decision on agency letterhead.

Government Cost

The estimated cost of the program to the Government is \$3,006,774. ICE found it takes ICE personnel an average of 7.26 hours to complete the activities to adjudicate Form I-246. With a projected workload of 3,664 forms in FY 2020, ICE estimated a total of 26,601 hours would be spent adjudicating Form I-246 (7.26 hours x 3,664 forms, rounded). ICE calculated the FTEs needed to adjudicate forms by dividing the total hours of 26,601 by the OMB approved FTE annual available productive hours metric of 1,776 hours. This resulted in a total of 15 FTEs ($26,601/1,776 = 14.98$, rounded up). ICE then used BFR's standardized cost forecasting figures to estimate the total cost for the 15 FTEs. The average cost for each FTE processing Form I-246 is \$200,451.59 in 2019 dollars. Multiplying this by 15 FTEs, ICE estimates the total cost projection and fee-recoverable budget for FY 2020 to be \$3,006,774.

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

There has been adjustment (decrease) to the burden associated with this collection. There is no change to the information being collected in this collection.

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.

ICE does not intend to employ the use of statistics or the publication thereof for this information collection.

- 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.**

ICE 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.**

ICE does not request an exception to the certification of this information collection.