

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

Supplemental Questions for Visa Applicants
OMB Number 1405-0226
DS-5535

A. JUSTIFICATION

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

The Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*, sets out application and eligibility requirements for aliens seeking to obtain nonimmigrant and immigrant visas. Most of the standards for determining visa ineligibility are detailed in INA § 212(a), 8 U.S.C. § 1182(a), which includes terrorist activities and other security and related grounds at INA § 212(a)(3), 8 U.S.C. § 1182(a)(3).

INA § 221(a), 8 U.S.C. § 1201(a) provides that a consular officer may issue an immigrant or nonimmigrant visa to an individual who has made a proper application, subject to applicable conditions and limitations in the INA and related regulations. Under INA § 222(c), 8 U.S.C. § 1202(c), every alien applying for a nonimmigrant visa must provide certain identifying particulars – name, date of birth and birthplace, nationality, purpose and length of intended stay in the United States, marital status – and “such additional information necessary to the identification of the applicant, the determination of his eligibility for a nonimmigrant visa, and the enforcement of the immigration and nationality laws as may be by regulations prescribed.” Similar requirements apply to applicants for immigrant visas, pursuant to INA § 222(a), 8 U.S.C. § 1201(a). Under regulations set out in Title 22 of the Code of Federal Regulations, visa applications must be made on a standard form and adjudicating consular officers “may require the submission of additional necessary information or question an alien on any relevant matter whenever the consular officer believes that the information provided in the application is inadequate to permit a determination of the alien’s eligibility to receive a nonimmigrant visa.” 22 C.F.R. 41.103; *see also* 22 C.F.R. 42.63 (immigrant visas).

In a Memorandum for the Secretary of State, the Attorney General, and the Secretary of Homeland Security, issued March 6, 2017 (“Presidential Memorandum”), the President stated that “[t]o avert the entry into the United States of foreign nationals who may aid, support, or commit violent, criminal or terrorist acts, it is critical that the executive branch enhance the screening and vetting protocols and procedures for granting visas, admission to the United States, or other benefits under the INA.” To that end, the recipient Cabinet officials were directed, as permitted by law, to:

implement protocols and procedures as soon as practicable that in their judgment will enhance the screening and vetting of applications for visas and all other immigration benefits, so as to increase the safety and security of the American people. These additional protocols and procedures should focus on:

- (a) preventing the entry into the United States of foreign nationals who may aid, support, or commit violent, criminal, or terrorist acts; and
- (b) ensuring the proper collection of all information necessary to rigorously evaluate all grounds of inadmissibility or deportability, or grounds for the denial of other immigration benefits.

Consistent with the authorities listed above, and responsive to the Presidential Memorandum's directive to ensure the proper collection of all information necessary to rigorously evaluate all grounds of inadmissibility, the Department of State requests the extension of this collection to supplement the DS-156, DS-160, DS-230, and DS-260 forms by asking the following questions of a subset of nonimmigrant and immigrant visa applicants worldwide:

- The applicant's travel history over the last 15 years;
- The full names and dates of birth of any siblings/children/former spouses/domestic partners not recorded in the applicant's visa application form;
- The applicant's addresses during the last 15 years, if different from the applicant's current address;
- The applicant's prior passport numbers; and
- The applicant's prior occupation(s) and employers (plus a brief description, if applicable) looking back 15 years.

Regarding travel history, an applicant may be requested to provide details of his or her international or domestic (within their country of nationality or residence) travel if the information is necessary to determine the applicant's eligibility for the visa, including cases involving applicants who have been in an area while the area was under the operational control of a terrorist organization as defined in INA § 212(a)(3)(B)(vi), 8 U.S.C. § 1182(a)(3)(B)(vi). Applicants may be asked to recount or explain the details of their travel and when possible, provide supporting documentation.

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

If a Department of State consular officer adjudicating a visa determines that the circumstances of a visa applicant, a review of a visa application, or responses in a visa interview indicate a need for greater scrutiny, the officer may collect the proposed additional information. The additional information will be used to resolve questions about the applicant's identity or to vet for terrorism, national security related, or other visa ineligibilities. This additional information collected from individual visa applicants, when assessed in the context of existing U.S. government information holdings, responsible U.S. agencies' knowledge of the identity of applicants, and an understanding of existing and evolving threats to national security, enables more rigorous evaluation of applications and serves to implement and advance the goals of the aforementioned authorities and directives.

Consular posts worldwide regularly engage with U.S. law enforcement and partners in the U.S. intelligence community to identify characteristics of post applicant populations warranting increased scrutiny. The additional information collected will facilitate consular officer efforts to immediately apply more rigorous evaluation of these applicants for visa

ineligibilities. In accordance with existing authorities, visas may not be denied on the basis of race, religion, ethnicity, national origin, political views, gender, or sexual orientation.

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

This collection involves consular officers asking these questions of a subset of nonimmigrant and immigrant visa applicants worldwide either orally or by providing a copy of the questions electronically or on paper. When the collection is provided electronically, applicants will generally be permitted to provide the response in an email. The Department is also piloting an e-version of this collection provided via Microsoft forms. This e-version of the information collection asks identical questions to the paper version. There are slight differences in formatting due to the different platforms. In some instances, when a paper copy is provided the applicant may still be permitted to return it electronically. The objectives could not all be achieved solely by electronic collection, because an interview may be required to determine who should be asked the questions.

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

To our knowledge, this collection is not duplicative of another existing collection. To the extent any questions are covered in OMB Control Number 1405-0182 (Online Application for Nonimmigrant Visa (DS-160)), OMB Control Number 1405-0018 (Nonimmigrant Visa Application (DS-156)), OMB Control Number 1405-0185 (Electronic Application for Immigration Visa and Alien Registration (DS-260)), and OMB Control Number 1405-0015 (Application for Immigrant Visa and Alien Registration (DS-230)), applicants will be instructed to provide the information only if they have not provided it in one of these forms during the current application. This collection is intended to supplement the existing collections for a subset of visa applicants.

5. Describe any impacts on small business.

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

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

Consistent with the authorities detailed above, this information collection is responsive to the directive in the Presidential Memorandum to “ensur[e] the proper collection of all information necessary to rigorously evaluate all grounds of inadmissibility” on the part of individuals applying for a nonimmigrant or immigrant visa. Failure to collect the information would impede such rigorous evaluation and the national security purposes for which it was directed when the circumstances of an individual applicant, a review of a visa application, or responses in a visa interview indicate a need for additional information to resolve the applicant’s identity or to vet for terrorism, national security-related, or other visa ineligibilities. Failure to provide requested information will not necessarily result in visa denial, if the consular officer determines the applicant has provided a credible explanation why he or she cannot answer a question or has not provided requested supporting documentation, such that the consular officer is able to conclude that information provided is adequate to determine the applicant's identity and eligibility to receive the visa.

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 published a notice in the *Federal Register* on 10/21/2020 soliciting public comments for a period of 60 days and are submitting this notice to solicit comments for another 30 days. During the 60 day comment period, the Department received three comments, one supportive, one unsupportive and one requesting a copy of the proposed information collection instrument, which the Department provided.

The supportive comment, sent anonymously, expressed general support for this information collection and contained some recommendations for future initiatives:

I support this additional collection.

A family member has recently applied for a visa to a [sic] East Asian country and this type of comprehensive information collection is being done for USA citizens wishing to visit. In the nature of reciprocity, I believe this is a fair and reasonable request, as this is already currently in use for other international destinations for USA citizens requesting visa entry.

A future standardized system for bilateral information collection could also be of future interest, where the citizens will benefit from knowing what to expect and have opportunities to maintain orderly files if they anticipate international travel. For instance, an app or similar mechanism for entering data in real time could be of great use to prevent loss or forgetting which types of data, or sharing a data collection point between countries with close ties. This would of course be for a future project to help streamline the process on a consumer-level. Perhaps some of the current tech companies could support the consolidation, safeguarding and accessibility of the citizens [sic] virtual CV.

It is time to expect our visitors to be as well-documented as our own citizens are required when they also travel internationally.

The unsupportive comment, sent by the International Refugee Assistance Project (IRAP) expressed several concerns about the DS-5535:

- IRAP believes that the collection will be unduly burdensome, expressing particular concern about the requirement to provide addresses and biographical information going back 15 years.

Response: The Department does not believe that this collection is unduly burdensome. Applicants using the DS-160 will have already been asked to provide their current address and applicants using the DS-260 will have already been asked to provide an address history from age 16 onward. This collection is designed to standardize a set of basic additional information collected from applicants who present the need for additional scrutiny, it is therefore reasonable to request that applicants provide additional address history and biographical information if the consular officer determines additional scrutiny is warranted.

As noted in the 60-day *Federal Register* notice, failure to provide requested information will not necessarily result in visa denial. In assessing the applicant's credibility and whether the applicant is ineligible for a visa under U.S. law, the consular officer may consider whether

the applicant has provided a credible explanation why he or she cannot answer a question or provide requested supporting documentation.

- IRAP claimed that it may be difficult for some applicants to provide this information, and that in the context of screening for terrorism, national security-related, or other visa ineligibilities, a demonstrated connection to neighborhoods associated with terrorist activity is more likely to trigger false positives for victims of terrorism than to successfully filter out applicants who pose a legitimate security threat.

Response: Applicants are only inadmissible under the terrorism-related grounds of inadmissibility if they have engaged in relevant activity described in section 212(a)(3)(B) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(3)(B). Residing in a neighborhood associated with terrorism activity alone is not a basis for a consular officer to determine that an applicant has engaged in terrorist activity. Accurate biographical information and address history allows consular officers to ensure that they have as much information as possible to confirm and applicant's identity and make such a determination regarding the applicant's eligibility for a visa. While the Department appreciates that some individuals may not be entirely truthful in responding to the additional questions or may not have the information requested, that is true in any request for information and does not render the collection unnecessary. This collection will be undertaken only when the consular officer determines that additional scrutiny is warranted. As noted above, failure to provide requested information will not necessarily result in visa denial.

- IRAP expressed concerns over the estimated time burden of 55 minutes, claiming it may take applicants far longer to assemble all pertinent information.

Response: The Department recognizes that some applicants may take longer to respond to the information request, while other applicants may be able to compile the information more rapidly. Estimated burden on affected visa applicants represents the anticipated average response time, and the Department believes that the current time burden estimate of 55 minutes is accurate. On the revised DS-5535, questions on social media platforms, email address history, and phone number history have been removed, a change which will lower the time burden on applicants from the previously approved information collection.

- IRAP expressed concerns that the information collection will be applied in a discriminatory fashion and that it will disproportionately affect certain groups, particularly Muslims. IRAP further expressed concerns that even if the information collected is not used in a discriminatory fashion, consular officers may discriminatorily select which visa applicants to target with this collection, leading to disproportionate delays and denials of visa applications.

Response: This collection is not specific to nationals from any particular country, nor any particular religion, and it is not mandated for all nationals of any particular country nor any particular religion. The purposes of the collection are strictly limited to collecting information necessary to properly determine individual visa applicants' identity and vet for national security-related visa ineligibilities. This collection impacts only a small percentage of all visa applicants, and will not significantly impact processing times for the vast majority of visa applicants.

Applicants will be asked to provide this information when a consular officer determines the additional information is necessary to confirm identity or that more rigorous national security vetting should be conducted because the consular officer determines that information about the applicant raises individual concerns or the applicant falls within a population identified by post, through post's routine engagement with U.S. law enforcement and partners in the U.S. intelligence community, as warranting increased scrutiny. This determination may be based on circumstances in the application itself, a review of automated screening results, or responses in a visa interview. The precise circumstances that will indicate the need for increased scrutiny will be determined on a case-by-case basis and subject to localized, and sometimes sensitive information and expertise at consular posts worldwide. Visas may not be denied on the basis of race, religion, ethnicity, national origin, political views, gender, or sexual orientation.

Consular officers are required to undertake significant training prior to adjudicating visa applications. In accordance with 8 U.S.C. § 1734, this training includes specialized training in effective screening and extensive training in cultural-sensitivity towards visa applicants. In accordance with their training, which continues throughout their career, consular officers adjudicate visa applications solely based on visa ineligibilities under existing U.S. law, which do not allow visas to be denied on the basis of race, religion, ethnicity, national origin, political views, gender, or sexual orientation.

9. Are payments or gifts given to the respondents?

No payment or gift is provided to respondents.

10. Describe assurances of privacy/confidentiality

In accordance with INA § 222(f), 8 U.S.C. § 1202(f), information obtained from applicants in the nonimmigrant or immigrant visa application process is considered confidential and is to be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States, except that, in the discretion of the Secretary of State, it may be made available to a court or provided to a foreign government if the relevant requirements stated in INA § 222(f), 8 U.S.C. § 1202(f) are satisfied.

11. Are any questions of a sensitive nature asked?

Yes, the DS-5535 requires biographical information, such as passport numbers, address history, employment history, marital status, and names and birthdates for all children and siblings.

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

The Department estimates that 75,000 applicants annually will complete this collection. Therefore, the Department of State estimates that the annual hour burden to visa applicants posed by the additional questions is 68,750 hours (75,000 applicants x 55 minutes). Based on an average hourly wage of \$25.72¹, the weighted wage hour cost burden for this collection

¹ Source: Data from the U.S. Bureau of Labor Statistics' May 2019 National Occupational Employment and Wage Estimates for all occupations (<http://www.bls.gov/oes>).

is \$3,665,100. This is based on the calculation of \$25.72 (average hourly wage) x 1.5 (weighted wage multiplier) x 68,750 hours = \$ 2,652,375.

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

There are no anticipated monetary burdens associated with the additional questions posed as part of this information collection.

14. Describe the cost incurred by the federal government to complete this collection.

The Department of State estimates that the annual hour burden to consular service officers posed by the additional questions is 37,500 hours (75,000 applicants x .5 hour). Based on the hourly rate for Consular Time of \$135, the cost burden for this collection is \$5,062,500 (37,500 hours x \$135).

The Department conducts a biannual review of consular fees using its Cost of Service Model. Consular fees are generally set based on the policy of full cost recovery, and the Model is updated annually to take into account all costs to the U.S. government of providing consular services. The Model will be updated to include costs associated with processing this information, and those costs will be reflected in any future adjustments to the relevant visa fees.

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

The Department is removing the questions on social media platforms, email address history, and phone number history from the DS-5535 because they are now incorporated into the DS-156, DS-160, and DS-260, and therefore duplicative on this information collection. The Department is also implementing an e-version of this form in addition to the existing PDF format. There are no differences between the e-version and the PDF. Aside from the above, there are no changes or adjustments to this collection since the previous submission.

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

The information gathered by this collection will not be published, however Section 3 of the President's *Proclamation on Ending Discriminatory Bans on Entry to The United States*, issued January 20, 2021 requires the Secretary of State to produce a report on visa screening and vetting, to include the use of the DS-5535.

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

The Department of State will display the expiration date for OMB approval on the information collection.

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

The Department of State is not requesting any exceptions to the certification statement requirements.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.