

SUPPORTING STATEMENT

OMB No. 1125-0003

Fee Waiver Request Form EOIR-26A

Part A. Justification

1. Necessity of Information -

Background. The Board of Immigration Appeals (BIA or Board) may, in its discretion, authorize the filing of an appeal or motion over which the BIA 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 a motion or an 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. *See* 8 C.F.R. §§ 1003.8(a)(3), 1003.24(d). To request a fee waiver before the BIA, 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. 8 C.F.R. § 1003.8(a)(3). While the regulations do not require that 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). While the Form EOIR-26A is required to request a fee waiver before the BIA per the regulations, it remains an optional form for requesting such a waiver before the immigration judge. *Compare* 8 C.F.R. § 1003.8(a)(3) *with* 8

C.F.R. § 1003.24(d).

Information Collection. The Form EOIR-26A collects basic information about the respondent in immigration proceedings and, if applicable, the practitioner of record. With respect to the respondent, the party's full name, and identifying alien registration number (A-number) must be provided. The respondent must enter an estimate of his or her monthly average income and expenses. The respondent may also provide any other information that will help explain why he or she cannot pay the filing fees for his or her appeal, motion, or application. With respect to the practitioner of record, the attorney or representative submitting the form must enter his or her full name and EOIR ID number.

2. Needs and Uses - The information provided on the Form EOIR-26A is reviewed by the adjudicator 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. A respondent or practitioner can type the information directly into the online form and then print it for submission to EOIR, or he or she may print the blank form in its entirety and complete it by typing or printing legibly. When the Form EOIR-26A is downloaded as a fillable Portable Document Format (PDF) file, the form

will automatically calculate the total of the monthly average income column less the monthly average expenses column.

The Form EOIR-26A can also be filed in the EOIR Courts and Appeals System (ECAS) Case Portal. The ECAS Case Portal allows registered attorneys and fully accredited representatives authorized to practice before EOIR immigration courts and the BIA to electronically file case-related documents, including the Form EOIR-26A, with the immigration courts and BIA.

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 BIA is to file the Form EOIR-26A in conjunction with an appeal or motion. An individual 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 has a minor impact on small businesses or other small entities to the extent they employ attorneys or accredited representatives who represent parties in proceedings before EOIR's immigration courts and the BIA. However, this collection does not impose an undue burden on small businesses or other entities. The form requires no filing fee, and EOIR estimates that the form takes one hour

to complete.

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 application, appeal, or motion the opportunity to have his or her request for a fee waiver considered by the BIA.

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 February 27, 2024 (89 FR 14,521). 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. EOIR received one comment during the 60-day period related to the renewal of Form EOIR-26A.

Comment: The commenter asserted that fee waivers should not be granted for individuals in immigration proceedings and that filing fees should be increased for these individuals.

Response: The fee amount for filing an appeal, motion, or application with EOIR is governed by regulation. *See e.g.*, 8 C.F.R. § 1103.7 (setting the fee amount payable to

the BIA). The regulations also give the BIA and immigration judges discretion to authorize the filing of an appeal, motion, or application without payment of the required filing fee when an individual demonstrates that he or she is unable to pay the filing fee. *See* 8 C.F.R. § 1003.8(a)(3), 1003.24(d). Therefore, the Department has determined that it is necessary to require the information collected in the Form EOIR-26A to ensure that fee waivers are granted in compliance with the regulatory requirements.

If any additional 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 parties in immigration proceedings or their attorneys or representatives.

10. Assurance of Confidentiality – The original Fee Waiver Request is maintained by EOIR in the official court record of proceeding (ROP) or official court electronic ROP (eROP) 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 - To the extent that the Form EOIR-26A includes sensitive questions by asking respondents to provide an estimate of their monthly average

income and monthly expenses, along with any other information that could help explain why they cannot pay the filing fees, such questions are necessary for EOIR to determine whether respondents are unable to pay the filing fee for a motion, application, or appeal. The information collected by this form is used only to the extent necessary in order to make that determination. The Form EOIR-26A's Privacy Act Notice informs respondents that the information requested by this form is used to determine whether the respondent is eligible for a fee waiver. Respondents consent to this information collection by signing and submitting the form.

12. Estimate of Hour Burden

a. Number of Respondents	2,124
b. Number of Responses per Respondent	1
c. Total Annual Responses	2,124
d. Hours per Response	1 hour
e. Total Annual Hourly Reporting Burden	2,124 hours

2,124 respondents x 1 response per respondent x 1 hour per response = 2,124 burden hours. It is estimated that the total time to read and complete the form is approximately 1 hour.

13. Estimate of Cost Burden - There are no capital or start-up costs associated with this information collection. The estimated public cost is zero.

For informational purposes only, there may be additional costs to respondents

should they elect to use this form. Respondents may incur a cost if they hire an attorney to assist them with completing the Form EOIR-26A. The Bureau of Labor Statistics reports that the national average hourly wage for lawyers is \$65.26. For those respondents who proceed without an attorney, there is an estimated cost of \$22.26 per hour for completing the form (the individuals' time and supplies) in lieu of the practitioner cost. There are no fees associated with filing the Form EOIR-26A.

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 \$1,621.49. This amount includes printing costs of \$203.73, which was derived by multiplying the 2 pages of the form by an estimated \$.10 per copy by the estimated 1,019 paper Form EOIR-26A submissions per year. There are no printing costs associated with the estimated 1,106 electronic Form EOIR-26A submissions filed using the ECAS Case Portal. The estimated annual government cost also includes stocking, processing, and maintenance costs of \$1,237.78, 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.

Alexander Y. Hartman
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Office of the General Counsel
Executive Office for Immigration Review

Date