

# SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

## Nonimmigrant Treaty Trader/Treaty Investor Application OMB Number 1405-0101 DS-156E

### 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 the application and eligibility requirements for noncitizens seeking to obtain nonimmigrant visas. INA section 221(a), 8 U.S.C. § 1201(a) provides that a consular officer may issue a nonimmigrant visa to an individual who has made a proper application, subject to applicable conditions and limitations in the INA and related regulations. INA section 222(c), 8 U.S.C. § 1202(c), specifically requires that:

Every [individual] applying for a nonimmigrant visa... shall make application therefor in such form and manner as shall be by regulations prescribed. In the application the [individual] shall state his full and true name... 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 regulation prescribed.

INA section 101(a)(15)(E), 8 U.S.C. § 1101(a)(15)(E), includes within the definition of nonimmigrant alien: “an [individual] entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which the [individual] is a national, (or, in the case of an alien who acquired the relevant nationality through a financial investment and who has not previously been granted status under this subparagraph, the foreign state of which the alien is a national and in which the alien has been domiciled for a continuous period of not less than 3 years at any point before applying for a nonimmigrant visa under this subparagraph), and the spouse and children of any such [individual] if accompanying or following to join him: (i) solely to carry on substantial trade, including trade in services or technology, principally between the United States and the foreign state of which he is a national; (ii) solely to develop and direct the operations of an enterprise in which the [individual] has invested, or of an enterprise in the [individual] is actively in the process of investing, a substantial amount of capital...”

Department of State regulations pertaining to nonimmigrant visas under the INA are published at 22 CFR part 41. The regulations pertaining to treaty trader and treaty investor nonimmigrant visas are specifically provided for in 22 CFR 41.51.

This collection is necessary to provide the Department of State with information needed to determine an applicant's eligibility for a visa under INA section 101(a)(15)(E), 8 U.S.C. § 1101(a)(15)(E).

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

The Department of State uses Form DS-156E (Nonimmigrant Treaty Trader/Treaty Investor Application) to gather information to assess the enterprise and the applicant's fulfillment of the legal requirements for treaty trader/treaty investor visas. The information requested on the form is limited to that which is necessary for consular officers to determine the eligibility of a noncitizen applicant for a nonimmigrant treaty trader/treaty investor visa. Applicants provide information on the nature of the business or investment in the United States, including the percentage of its trade that is with the United States, the value of its assets, and the applicant's own qualifications to direct the enterprise. A consular officer is unable to approve a treaty trader/treaty investor visa without collecting this information.

Consular officers currently use the form as an indispensable part of adjudicating approximately 43,000 treaty trader/investor visa cases per year. Currently, all applicants for an E-1 visa, and those applicants for an E-2 visa who are employees of a treaty investor coming to the United States to engage in duties of an executive or supervisory character or who have special qualifications that make the services to be rendered essential to the efficient operation of the enterprise, must submit both the DS-160 and DS-156E. The DS-160 already solicits adequate information for a consular officer to adjudicate an application for an E-2 visa where the applicant is a treaty investor coming to the United States to develop and direct the operations of an enterprise in which they have invested or are actively in the process of investing. Therefore, such applicant need only complete a DS-160.

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

The fillable DS-156E is available for download at <http://travel.state.gov>. While the form is e-fillable, the form is not e-fileable at this time – applicants must print and physically have the form signed before returning the form in person or via the mail. In some cases, respondents may have the option to scan and email a copy of their application. Applicants are directed to follow the instructions provided by consular officers at their respective posts for submission guidance.

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

The Form DS-156E is a supplement to the DS-160, which is required by regulation for all nonimmigrant visa applicants. Except for basic identifying biographic information collected by the DS-160, information collected by the DS-156E is not duplicative of information maintained elsewhere or otherwise available. As indicated in paragraph (2), the DS-156E is not required for categories of E-2 applications for which adequate information is collected in the DS-160.

*5. Describe any impacts on small business.*

The information collection does involve obtaining information from small businesses or other small entities; however, the impact on these entities is minimal. An employee of a small business filing form DS-156E may not have direct access to the financial information requested on the DS-156E, and therefore, it may fall on the small business to provide a response to some questions. Providing necessary information could require a small adjustment to customary business practices and procedures, but we do not anticipate this burden will disrupt day-to-day operations. The fillable form and order of questions is designed to reduce the impact on small business as much as possible.

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

This information collection is essential for determining whether an applicant is eligible for a nonimmigrant treaty trader/investor visa. A principal applicant fills out the form if they are an E-1 treaty trader visa applicant (i.e. Trader, Executive/Manager, or Essential Employee) or a principal E-2 treaty investor in one of the following categories Executive/Manager, or Essential Employee. Individuals other than E-2 investors seeking to renew Treaty Trader or Treaty Investor visas are asked to complete all or part of the DS-156E so that consular officers have current information at the time of the visa adjudication. It is not possible to collect the information less frequently than once per application or renewal because consular officers need up to date information to determine efficiently whether an applicant is qualified for the visa. If this collection is not done, consular officers will not be able to issue certain E visas.

*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 soliciting public comments for a period of 60 days on April 29, 2024. The Department received 2 non-responsive comments and determined no further changes were necessary.

*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 section 222(f), 8 U.S.C. § 1202(f), information obtained from applicants in the nonimmigrant 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 section 222(f), 8 U.S.C. § 1202(f) are satisfied.

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

The questions in the collection are designed to solicit the information necessary to determine whether an applicant is eligible for a visa under INA section 101(a)(15)(E), 8 U.S.C. § 1101(a)(15)(E). To determine the applicant's eligibility for an E nonimmigrant visa, information related to the associated business entity is required. Some companies may consider the financial information provided to be sensitive in nature. As noted in question 10 above, all information provided in a visa application is confidential under INA section 222(f), 8 U.S.C. § 1202(f).

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

Approximately 43,000 respondents complete this form each year. Although not all E1/E2 applicants will fill out Form DS-156E, the approximate number of respondents is determined by finding the average of all E1/E2 DS-156E applications received in the past three fiscal years  $((30,484 + 40,961 + 56,549) / 3 = 42,675)$  and rounding up to the nearest thousand.<sup>1</sup>

Finding necessary background information and completing the form is estimated to require four hours. The total annual hour burden to respondents is estimated to be 172,000 hours  $(43,000 \times 4 \text{ hours} = 172,000 \text{ hours})$ . According to the Bureau of Labor Statistics, the average American hourly wage is \$29.76 for all occupations.<sup>2</sup> The weighted wage hour cost burden for this collection is \$7,678,080. This is based on the calculation of  $\$29.76$  (average hourly wage)  $\times 1.5$  (weighted wage multiplier)  $\times 172,000$  hours = \$7,678,080.

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

Many respondents employ attorneys to help complete the form and assemble the supporting documentation or rely on their company's human resources staff to prepare the application package. Thus, the cost to prepare the form and assemble the supporting documentation varies widely. For applications prepared by a company's human resources office, the cost to photocopy and assemble relevant documentation is minimal. For those applications prepared by an immigration attorney, the cost may be significantly higher. Based on this analysis and input from the American Immigration Lawyers Association, the Department estimates the average cost of completing a Form DS-156E is approximately \$1,000. We therefore estimate that the total monetary burden for the collection is \$43,000,000  $(43,000 \text{ applicants} \times \$1,000)$ .

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

This collection is a supplement to the nonimmigrant visa application (Form DS-160 – OMB Control No. 1405-0182). All E nonimmigrant visa applicants complete the DS-160. Much of the DS-156E cost is already incorporated into the DS-160 costs. However, processing an E visa takes

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<sup>1</sup> U.S. Department of State. (2023). *Nonimmigrant Visa Statistics*. <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html>

<sup>2</sup> U.S. Bureau of Labor Statistics. (2023). *Occupational Employment and Wage Statistics*. [https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm).

an average of 13 additional minutes of locally employed staff time and an extra 1 minute of consular officer time. Using the average hourly wage with included overhead of \$53.32 and \$202.39 for each position respectively yields a cost of \$14.92 per application. (( $\$53.32 \text{ per hour} \times 13 \text{ minutes}$ ) +  $\$202.39 \text{ per hour} \times 1 \text{ minute}$ ) = \$14.92 per application.) Multiplied by the number of respondents, we estimate the federal government cost of the DS-156E to be \$641,710.50.

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

The Department proposed the following changes to the Form DS-156E during the 60-day comment period. Revisions were based on feedback from the public as well as from consulates/embassies worldwide:

- Modify the title of the collection to: “Nonimmigrant Treaty Trader/ Treaty Investor Application”
- Instructions:
  - Replace “first time” with “principal”
  - Addition of “unless you are an E2 investor. Parts I and II may also be completed by a responsible officer(s) of the enterprise if the information is unknown to you as the principal applicant.”
  - Replace “individual” with “principal”
  - Addition of “unless you are an E2 investor.”
  - Addition of “unless instructed by the embassy/consulate to submit them in a different format.”
- Question 2 –Addition of “Limited Liability” option
- Question 3 –Reword to read “Address of U.S. Enterprise (Specify type of office: Headquarters, Subsidiary of U.S. Headquarters, Branch Office)”
- Question 4 –Delete language “e.g., corporate papers, partnership agreements, etc.”
- Question 6 –Replace language from “in No. 5 above” to “of the U.S. Enterprise”
- Question 9 –Simplify financial statement information requested by
  - Deleting “Current Cash,” “Historic Cost” “Before Taxes,” “After Taxes,” and “Total annual.”
  - Adding “Net Income” box.
- Question 10 –Add title for section 10 “Trade of U.S. Enterprise”
- Question 11 –Add title for section 11 “Investment of U.S. Enterprise”
- Question 14 –Replace “This Year” with “Current Year”
- Question 15 –Delete “Division” and Replace “Nationality” with “U.S. Immigrant/Nonimmigrant status”
- Question 27 –Add “Email” field
- Replace “for year” text and box by adding parentheses (\_\_\_\_) after “Calendar Year” and “Fiscal Year” options in questions 9, 10, and 12.
- Modify instructions in questions 4, 8, 13, 14 and 22 to include “or follow instructions from embassy or consulate”

Proposed adjustments to burden estimates were a result of application volume and inflation. Burden estimates were updated with the latest wage data and application numbers, resulting in a respondent cost burden increase of approximately \$1,000,000 and a federal government cost burden decrease of about \$104,000 since the previous submission.

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

A quantitative summary of all Department of State visa activities is published in the annual Report of the Visa Office. The Report of the Visa Office is an annual report providing statistical information on immigrant and nonimmigrant visa issuances by consular offices, as well as information on the use of visa numbers in numerically limited categories. The Visa Office currently has annual reports available from 2000 to 2023. The link to the site is: <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics.html>.

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

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

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

The Department is not requesting any exception to the certification statement.

**B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not employ statistical methods.