

**SUPPORTING STATEMENT FOR
Application for Employment Authorization
OMB Control No.: 1615-0040
COLLECTION INSTRUMENT(S): I-765**

A. Justification

- 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.**

An alien who seeks to be employed in the United States must apply to U.S. Citizenship and Immigration Services (USCIS) for a document evidencing such employment authorization. Aliens authorized to work in the United States must file an Application for Employment Authorization, Form I-765, to request an Employment Authorization Document (EAD), under 8 CFR 274a.13. Employers are required to verify a person's identity and authorization to work in the United States, and the employee is required to provide evidence of his or her authorization to work in the United States. *See* 8 U.S.C. 1324a(a)(1)(B); 8 CFR 274a.2(b)(1). This evidence, the EAD (Form I-766), establishes identity and employment authorization.

Any individual may be required to submit biometric information if the regulations or form instructions require such information or if requested in accordance with 8 CFR 103.2(b)(9). DHS may collect and store for present or future use, by electronic or other means, the biometric information submitted by an individual. DHS may use this biometric information to conduct background and security checks, adjudicate immigration and naturalization benefits, and perform other functions related to administering and enforcing the immigration and naturalization laws. *See* 8 CFR 103.16; 8 U.S.C. 1103.

An alien may use Form I-765 to simultaneously apply for a Social Security Number and/or Social Security card when applying for employment authorization. USCIS shares information collected on the form with the Social Security Administration (SSA). This information sharing initiative is conducted pursuant to the Social Security Act 205(c)(2)(B)(I) and 702; the Immigration and Nationality Act, 8 U.S.C. sections 1103, 1158, 1225, 1228, and Title II of Public Law 105-100; and 20 CFR 422.104; and the Interagency Agreement reached between USCIS and SSA in December 2015 and a Memorandum of Understanding (MOU) between USCIS and SSA, the Addendum to the MOU, USCIS's FMS Forms 7600 A/B.

On December 1, 2017, DHS implemented the immigrant entrepreneur rule. The Final Rule for this regulation published on January 17, 2017 in the Federal Register at 82 FR 5238, giving USCIS discretion to adjudicate such requests on a case-by-case basis under

section 212(d)(5) of the INA, 8 U.S.C. 1182(d)(5). Parole under this regulation allows these individuals to temporarily enter the United States with employment authorization incident to their parole. The immigrant entrepreneur and his or her spouse may apply for employment authorization using Form I-765 once paroled into the United States.

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.

Form I-765 collects information needed to determine if an alien is eligible for an initial EAD, a replacement EAD, or a subsequent EAD upon the expiration of a previous EAD under the same eligibility category. Aliens in many immigration statuses are required to possess an EAD as evidence of work authorization. To be authorized for employment, an alien must be lawfully admitted for permanent residence or authorized to be so employed by the Immigration and Nationality Act (INA) or under regulations issued by DHS. Pursuant to statutory or regulatory authorization, certain classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes. USCIS may determine the validity period assigned to any document issued evidencing an alien's authorization to work in the United States. These classes are listed in 8 CFR 274a.12.

USCIS also collects biometric information from certain EAD applicants, from whom USCIS has not previously collected biometrics in connection with an underlying application or petition, to verify the applicant's identity, check or update their background information, and produce the EAD card.

Instead of going to a Social Security Office, an applicant for employment authorization can apply for a Social Security Number (SSN) and Social Security card using Form I-765. If the relevant data elements on Form I-765 are filled out, USCIS will send the applicant's information to the Social Security Administration (SSA) upon approval of the employment authorization request. If the applicant already has an SSN and requested a Social Security card on Form I-765, SSA will issue a replacement SSN card.

Immigrant entrepreneur parolees and their paroled spouses may use Form I-765 to apply for employment authorization.

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.

Forms I-765 and I-765WS are available on the USCIS website at www.uscis.gov/i-765/.

This information collection cannot be submitted electronically; it must be filled out, printed, and submitted to USCIS by mail.

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 collection of information imposes no duplication of effort because no other instrument, form or program can be used to determine employment authorization.

USCIS has also investigated the information that may be obtained from other Federal programs and agencies and has determined that the information necessary to determine if the alien is eligible to work in the United States is not available through other Federal sources.

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.

If the information is not collected, USCIS will not be able to fulfill its core mission of providing effective immigration and information services while ensuring the integrity of the immigration system. The adjudicating officer will not be able to determine whether the applicant is eligible for employment authorization. In addition, if the information is not collected, USCIS will have no basis for issuing a secure identity and employment authorization document to applicants who request EADs. The information provided on this form is not available by any other means. These forms collect data that makes the adjudication of a request for an EAD possible. EADs provide recipients with secure identification documents, acceptable evidence of employment authorization, and facilitate an employer's verification of identity and employment authorization.

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.**

This information collection is conducted in a manner consistent with the guidelines in 5 CFR 1320.5(d)(2).

- 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 October 13, 2017 USCIS published a 60-day notice in the Federal Register at 82 FR 47761. USCIS did receive 92 comments after publishing that notice. Public comments and USCIS's responses to those comments are included in *Appendix A: I-765 Public*

Comments and Responses Matrix.

On February 8, 2018, USCIS published a 30-day notice in the Federal Register at 83 FR 5643. USCIS received three comments. The first comment did not make any request for action on Form I-765 or its instructions, so no changes were made to the information collection. The second and third comments offered substantive recommendations.

In response to the second comment, provided by the Hofstra Law Clinic, USCIS notes that USCIS officers are required by regulation to evaluate aggravated felonies for applicants requesting an EAD based on a pending asylum application and have been trained at doing this for many years. Arrests/convictions are specific to c35, c36, c8 and are regulatory. Form I-765 is not an appealable form, so there will be no increase in appeals to the Administrative Appeals Office. Approval or denial of the request for employment authorization has no bearing on the final determination on the Form I-589, Application for Asylum.

In response to the third comment, provided by Adam Beals, USCIS is not making any changes to the applicant's declaration and certification part at this time. This language is standard across USCIS forms. The information about which categories of filers are required to pay the \$85 biometric services fee and attend an ASC appointment that the commenter request be provided on the form is already detailed in the Form Instructions under the **What Is The Filing Fee?** section.

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

USCIS does not provide any payment for benefit sought.

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

There is no assurance of confidentiality. The System of Record Notices (SORN) associated with this information collection are: DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, September 18, 2017, 82 FR 43556; DHS/USCIS-007 Benefits Information System, October 19, 2016 81 FR 72069; and DHS/USCIS-010 Asylum Information and Pre-Screening System of Records, November 30, 2015, 80 FR 74781.

The Privacy Impact Assessments (PIA) associated with this information collection are: DHS/USCIS/PIA-061 Benefit Request Intake Process; DHS/USCIS/PIA-003(b) Integrated Digitization Document Management Program; DHS/USCIS/PIA-016(a) Computer Linked Application Information Management System (CLAIMS 3) and Associated Systems; DHS/USCIS/PIA-027(c) USCIS Asylum Division; and DHS/USCIS/PIA-056 USCIS Electronic Immigration System.

Applicants are informed that USCIS may provide this information to other government agencies and failure to provide this information, and any requested evidence, may delay a final decision or result in denial of their request.

- 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 persons from whom the information is requested, and any steps to be taken to obtain their consent.**

There are no questions of a sensitive nature in this collection.

- 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.**

		A	B	C (=AxB)	D	E (=CxD)	F	(=ExF)
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Type of Respondent	Form Name / Form Number	#. of Respondents	#. of Responses per Respondent	# of Responses	Avg. Burden per Response (in hours)	Total Annual Burden (in hours)	Avg. Hourly Wage Rate*	Total Annual Respondent Cost
Individuals or Households	Application for Employment Authorization, Form I-765	2,096,000***	1	2,096,000	4.5	9,432,000	\$34.84	\$328,610,880
Individuals or Households	Biometric processing	42,387**	1	42,387	1.17	49,593	\$34.84	\$1,727,820
Individuals or Households	Form I-765WS	41,912***	1	41,912	.50	20,956	\$34.84	\$730,107
Individuals or Households	Passport-Style Photographs	2,096,000****†	1	2,096,000	.50	1,048,000	\$34.84	\$36,512,320
Total			-	4,276,299	-	10,550,549	-	\$367,581,127

* The above Average Hourly Wage Rate is the May 2016 Bureau of Labor Statistics average wage for All Occupations of \$23.86 times the wage rate benefit multiplier of 1.46 (to account for benefits provided) equaling \$34.84. The selection of "All Occupations" was chosen as the expected respondents for this collection could be expected to be from any occupation.

** The estimated number of respondents for Form I-765 reflects USCIS's projections for FY 2018-19 filings, including the 2,940 respondents USCIS estimates will request an EAD under the provisions of the International Entrepreneur Rule.

** Not all Form I-765 respondents must provide biometrics at each submission. Only Deferred Action for Childhood Arrivals (DACA) requestors and applicants under compelling circumstances (c(35) and c(36) eligibility categories) are required to submit to this collection of information.

*** All DACA requestors, in addition to individuals whose cases are deferred and who are not childhood arrivals, will complete form I-765WS.

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 is a \$410 fee associated with the request submitted under this information collection. Some respondents must also pay an \$85 biometrics services fee. See response to Question 14 below for more information.

USCIS estimates that all respondents will pay approximately \$10 to obtain the required passport-style photographs, which equals a total of \$20,960,000 (2,096,000 respondents x \$10). Form I-765 is filed concurrently with a number of forms, and many of the costs associated with filing the I-765 would be covered under the primary form being filed by the respondent. Costs associated with the filing of the I-765 may include legal services, translator costs, document and record copy fees, and fees to obtain passport-style photos and mailing costs. USCIS estimates that respondents may pay an estimated \$165.37 to cover these additional costs, for a total of \$346,621,127. The total estimated annual cost to respondents is \$367,581,127.

- 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:

a. Collection and Processing Cost: \$ 859,360,000

- b. Biometrics Cost: \$ 3,602,895
- c. **Total Cost to Government:** \$ **862,962,895**

Government Cost

USCIS establishes its fees using an activity-based costing model to assign costs to an adjudication based on its relative adjudication burden and use of USCIS resources. Fees are established at an amount that is necessary to recover these assigned costs, plus an amount to recover unassigned overhead (which includes the clerical, officer, and managerial time with benefits and printing costs) and immigration benefits provided for free. As a consequence of USCIS immigration fees being based on resource expenditures related to the benefit in question, USCIS uses the fee associated with an information collection as a reasonable measure of the collection’s costs to USCIS. USCIS has established the fee for Form I-765 at \$410, and the fee for biometric processing at \$85. The cost to the government is calculated by multiplying the \$410 fee times the total number of respondents (2,096,000), which equals \$859,360,000, and adding that to the \$85 fee times the total number of respondents subject to biometrics processing (42,387), which equals \$3,602,895, for a total of \$862,962,895.

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

Data collection Activity/Instrument	Program Change (hours currently on OMB Inventory)	Program Change (New)	Difference	Adjustment (hours currently on OMB Inventory)	Adjustment (New)	Difference
Application for Employment Authorization, Form I-765				7,327,223	9,432,000	2,104,777
Biometric processing				473,928	49,593	(424,335)
Form I-765WS				125,000	20,956	(104,044)
Passport-Style Photographs				1,071,232	1,048,000	(23,232)
Total(s)				8,997,383	10,550,549	1,553,166

There has been an increase in the estimated annual hour burden for this collection of information due to an increase in the average time burden per response. USCIS increased the estimated time per response from 3.42 hours to 4.5 hours to account for the addition of new questions on the form and new language in the instructions. New fields added to the form

request a U.S. physical address; a USICS online account number; all countries of citizenship or nationality; detailed arrival information; SEVIS number; a specific question regarding eligibility category (c)(8); and updates to the applicant, interpreter, and preparer information sections. The instructions were updated to provide more detailed information and clearer instructions for the various eligibility categories.

Data collection Activity/Instrument	Program Change (cost currently on OMB Inventory)	Program Change (New)	Difference	Adjustment (cost currently on OMB Inventory)	Adjustment (New)	Difference
Application for Employment Authorization, Form I-765				\$629,884,122	\$344,621,127	
Biometric processing				0		
Form I-765WS				0		
Passport-Style Photographs				\$21,424,630	\$20,960,000	
Total(s)				\$651,308,752	\$365,581,127	

There has been a decrease in the estimated annual cost burden for this information collection. Form I-765 is filed concurrently with a number of other USCIS forms, and many of the costs associated with filing the I-765 would be covered under the primary form filed by the respondent.

- 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.**

This information collection will not be published for statistical purposes.

- 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.**

USCIS 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.

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

B. Collections of Information Employing Statistical Methods.

There is no statistical methodology involved with this collection.