

SUPPORTING STATEMENT

1125-0001 Application for Cancellation of Removal: Form EOIR-42A (Application for Cancellation of Removal for Certain Permanent Residents) and Form EOIR-42B (Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents)

Part A. Justification

1. Necessity of Information - Effective April 1, 1997, an individual who is removable from the United States may, pursuant to section 240A of the Immigration and Nationality Act (Act), request that the Attorney General cancel their removal. To be granted such relief from removal, the applicant must prove that they meet all the statutory prerequisites for such relief and that they are entitled to a favorable exercise of discretion. There are two application forms available for cancellation of removal: Form EOIR-42A, for Certain Permanent Residents; and Form EOIR-42B, Adjustment of Status for Certain Nonpermanent Residents. In turn, Form EOIR-42B may be used for two separate forms of relief: (1) cancellation of removal for nonpermanent residents; and (2) a form of relief called Special Rule for Battered Spouse or Child (“special rule cancellation”) as provided per the Violence Against Women Act.

Each applicant for cancellation of removal will file one application based on the individual facts and circumstances in their case. The form contains information, such as identifying characteristics, residence and employment history, and family information, which is necessary for the Attorney General, through his delegate, to decide whether to permit the applicant to remain in the United States.

EOIR has made several substantive changes to the forms. The gender field was changed to a fillable field; social security number was removed and replaced with a field for National ID/Passport number; Port of Return and Port of Departure were replaced with “Place or area or port or city and state” of departure or return as not all applicants arrive or depart from a designated port; a field was added to indicate if the individual is divorced; check boxes were added to indicate if the individual is married; a check box has been added to indicate if the applicant attached any criminal records; the signature fields were revised to require the applicant to sign the form before filing the application; the signature block for the immigration judge was removed; the address field in the proof of service section was changed to allow service by email on the opposing party.

EOIR has also created instructions available in Spanish, Simplified Chinese, Haitian Creole, Portuguese, and Eastern Punjabi to assist limited English proficient applicants. All other changes were non-substantive and intended to clarify already existing fields and instruction language.

2. Needs and Uses - The application for cancellation of removal (Form EOIR-42A or Form EOIR-42B) is filed and considered in the context of an immigration proceeding. Accordingly, information contained in the application is considered only to the extent necessary to process the application. The application is accepted into the official record of the immigration proceeding and is considered

by an Immigration Judge or, if the case is on appeal, the Board of Immigration Appeals, in determining whether to grant or deny the applicant's request for cancellation of removal. The authority to adjudicate the application for cancellation of removal has been delegated to EOIR by the Attorney General.

3. Use of Technology - The use of this form provides the most efficient means for collecting and processing the required data. The forms EOIR-42A and EOIR-42B are available as fillable pdfs on EOIR's website. An individual may either type the requested information into the fillable form online and then print the completed form for submission to the agency or print the blank form in its entirety and complete it by typing or printing legibly. If represented by counsel, applicant's attorney or accredited representative has the ability to complete and file the form electronically through electronic case filing system, EOIR's Courts & Appeals System (ECAS), available at <https://www.justice.gov/eoir/ECAS>.

4. Efforts to Identify Duplication - The only method for applying for cancellation of removal in immigration proceedings is for the applicant to file the Form EOIR-42A or Form EOIR-42B, as applicable. A review of EOIR's forms revealed no duplication of effort, and there is no other similar information currently available which can be used for this purpose.

5. Impact on Small Businesses - This collection does not have an impact on small businesses or other small entities.

6. Consequences of Less Frequent Collection - Failure to collect this information would deprive the individual of establishing their eligibility for cancellation of removal.

7. Special Circumstances Influencing Collection - None of the eight special circumstances identified in OMB instruction number 7 apply to this collection. The Immigration Judge presiding over the applicant's immigration proceedings has the discretion to set the period of time the applicant is given to respond to this collection. However, an applicant may request from the Immigration Judge an extension of time in which to file the collection and may appeal the decision of the Immigration Judge to the Board of Immigration Appeals.

8. Federal Register Publication and Consultation - A 60-day notice covering this collection has been published in the Federal Register. *See* 87 FR 52417 (Aug. 25, 2022). A 30-day notice covering this collection will be published in the Federal Register. Copies of these notices are attached. No comments were received during the 60-day comment period. If comments are received during the 30-day comment period, 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.

10. Assurance of Confidentiality - The original application is maintained by the EOIR in the official court record of proceeding (ROP) and is accessed by staff members processing the ROP. The confidentiality of the contents of the Form EOIR-42A and Form EOIR-42B 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 - Any question that seeks sensitive information is necessary for the Immigration Judge to consider an applicant's statutory and discretionary eligibility for cancellation of removal and to determine his/her legal right to remain in the United States. See number 10 immediately above.

12. Estimate of Hour Burden

a. Number of Respondents	31,788
b. Number of Responses per Respondent	1 each
c. Total Annual responses	31,788
d. Hours per response	5 hours, 50 minutes
e. Total annual hourly reporting burden	185,430

The total annual reporting burden is derived by multiplying the number of respondents (31,788) by the frequency of response (1) by the number of hours per response (5 hours, 50 minutes or 5.8):

31,788 respondents x 1 response per respondent x 5.8 hours per respondent =
185,430 burden hours.

13. Estimate of Cost Burden

There are no capital or start-up costs associated with this information collection.

The estimated total public cost is a maximum of \$14,590,162. This estimate is derived by multiplying the burden hours of 185,430 by the estimated practitioner cost of \$61.54/hr., plus a filing fee of \$100 per respondent.

185,430 burden hours x \$61.54/hr. (estimated practitioner cost) = \$11,411,362.

\$100 filing fee x 31,788 respondents = \$3,178,800.

\$11,411,362 + \$3,178,800 = \$14,590,162.

The total amount listed above (\$14,590,162) represents the maximum estimated cost burden to the public. The practitioner fee represents the median hourly wage for lawyers, as reported by the Bureau of Labor Statistics.

The actual costs may vary depending on a number of factors. For example, some applicants for cancellation of removal will not retain a practitioner to assist them in filling out the form and, therefore, will not incur practitioner fees. For such individuals, there is an estimated cost of \$10 per hour for completing the form (the individuals' time and supplies) in lieu of the practitioner cost. EOIR has not included this amount as it is less than the estimated practitioner cost and would not add to the maximum estimate of \$14,590,162. Additionally, applicants may

seek to have the \$100 filing fee waived by requesting a waiver from an Immigration Judge or submitting Form E-26A.

14. Estimated Cost to the Federal Government - EOIR estimates that the annual government cost for printing, distributing, stocking, processing and maintaining the Forms EOIR-42A and EOIR-42B is \$569,208. This amount includes printing costs of \$41,324, which was derived by multiplying the 13 pages of the Form EOIR-42B¹ by an estimated \$.10 per copy by the estimated 31,788 respondents per year. This amount also includes stocking, processing and maintenance costs of \$527,884, which was derived by calculating the personnel and overhead costs to EOIR for processing the form.

15. Reasons for Change in Burden - The difference in burden is due to an agency adjustment, specifically an increase in the number of respondents. Previously, EOIR estimated 27,999 respondents annually. At present, there are approximately 31,788 respondents annually. As the number of hours per response remained the same (5 hours and 50 minutes), the total burden hours increased from 162,394 to 185,430 burden hours, for a difference of 23,036 burden hours.

16. Plans for Publication - EOIR does not intend to employ the use of statistics or the publication thereof for this collection of information.

¹ The Form EOIR-42A has 12 pages. EOIR based its calculations on the 13 pages of the EOIR-42B to generate a maximum estimated cost.

17. Exceptions to the Certification Statement- EOIR does not request an exception to the certification of this information collection.

Section 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.

10/24/22

Christina Baptista
Senior Counsel for Immigration
Executive Office for Immigration Review

Date