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DEPARTMENT OF STATE

[Public Notice 11122]

30-Day Notice of Proposed Information Collection: Public Charge Questionnaire

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State (“Department”) is seeking Office of Management and Budget (“OMB”) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995 and OMB procedures, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 30 days for public comment preceding submission of the collection to OMB.

DATES: Submit comments up to **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice may be submitted to Taylor Beaumont, who may be reached over telephone at (202) 485-7586 or email at PRA_BurdenComments@state.gov.

SUPPLEMENTARY INFORMATION:

The Department published a “Notice of Intent to Request Emergency Processing of Information Collection: Public Charge Questionnaire” (“DS-5540”), notifying the public of the Department’s intent to seek emergency processing of the DS-5540 on February 12, 2020. 85 FR 8087. Consistent with the Paperwork Reduction Act of 1995 (“PRA”) and OMB procedures, the Department requested approval after emergency processing of the DS-5540. On October 24, 2019, the Department had published a Notice of Request for Public Comment for the DS-5540, initiating a 60-day period for the public to submit comments on the information collection. 84 FR 5712. The 60-day comment period ended on December 23, 2019, and the Department received 92 comments. On February 12, in the Supporting Statement for the Department’s request for OMB emergency processing and approval of the DS-5540, the Department responded to public comments received during the 60-day comment period, as well as comments received in response to the emergency notice for the separate DS-5541, Immigrant Health Insurance Coverage (“DS-5541”) (84 FR 58199) that are pertinent to the DS-5540. On February 20, 2020, OMB approved the DS-5540, based on emergency processing. While the Department is currently enjoined from implementing Presidential Proclamation 9945 and therefore cannot utilize the DS-5541, *see Doe v. Trump*, 418 F. Supp. 3d 573 (D. Or. 2019), the health-insurance related questions in the DS-5540 are also relevant for the purposes of making a public-charge assessment.¹ The Department is completing the ongoing PRA process for three-year approval of the DS-5540, because the approval based on emergency processing under the PRA expires August 31, 2020.

¹ The government is also challenging the injunction of the Proclamation before the Ninth Circuit and is awaiting a ruling. See *Doe v. Trump*, No. 19-36020 (9th Cir.).

- Title of Information Collection: Public Charge Questionnaire
- OMB Control Number: 1405-0234
- Type of Request: Extension of a Previously Approved Collection
- Originating Office: Bureau of Consular Affairs, Visa Office (CA/VO)
- Form Number: DS-5540
- Respondents: Immigrant visa applicants, including diversity visa applicants, and certain nonimmigrant visa applicants
- Estimated Number of Respondents: 397,814
- Estimated Number of Responses: 397,814
- Average Time Per Response: 4.5 hours
- Total Estimated Burden Time: 1,790,163 hours
- Frequency: Once per respondent's application
- Obligation to respond: Required to Obtain or Retain a Benefit

We are soliciting public comments that assist the Department in:

- Evaluating whether the proposed information collection is necessary for the proper functions of the Department;
- Evaluating the accuracy of our estimate of the time and cost burden of this proposed collection, including the validity of the methodology and assumptions used;
- Enhancing the quality, utility, and clarity of the information to be collected; and,
- Minimizing the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Aliens who seek a visa, application for admission, or adjustment of status must establish that they are not likely at any time after admission to become a public charge, unless Congress has expressly exempted them from this ground of ineligibility or if the alien obtained a waiver. Consular officers will use completed DS-5540 forms to assess whether an alien is more likely than not to become a public charge, and consequently, whether the alien is ineligible for a visa under section 212(a)(4)(A) of the Immigration and Nationality Act (“INA”), 8 U.S.C. 1182(a)(4), and 22 CFR 40.41. This collection will assist applicants in meeting the burden of proof on aliens under section 291 of the INA, 8 U.S.C. 1361, to establish that they are eligible to receive a visa, including that they are not inadmissible under any provision of the INA. This information collection is consistent with the statutory requirement in section 212(a)(4)(B), 8 U.S.C. 1182(a)(4)(B), and regulatory requirement in 22 CFR 40.41, that consular officers must consider an alien's age; health; family status; assets, resources, and financial status; and education and skills in determining whether a visa applicant is more likely than not to become a public charge. The Department published an interim final rule amending 22 CFR 40.41 on October 11, 2019, to incorporate new standards for assessing eligibility on public charge grounds. The interim final rule invited public comment for 30 days. 84 FR 54996. The Department will separately address public comments to the interim final rule in the publication of the final rule. The DS-5540 collects information relating to the visa

applicant's age; health; family status; assets, resources, and financial status; and education and skills. The DS-5540 also will require visa applicants to provide information on whether they have received certain specified public benefits from a U.S. federal, state, territorial, or local government entity.

Among the purposes of the public charge ground of inadmissibility is to ensure that aliens entering the United States are self-sufficient and will not rely on public resources to meet their needs, but rather, will rely on their own capabilities, as well as the resources of sponsors. Through the DS-5540, as approved on an emergency basis, the Department collects information in a standardized format regarding applicants' ability to financially support themselves following entry into the United States, without depending on government assistance. Fields in the DS-5540 primarily pertain to the applicant's health; family status; assets, resources, and financial status; education and skills; health insurance coverage; and tax history. The DS-5540 also requires applicants to provide information on whether they have received certain specified public benefits from a U.S. Federal, state, local or tribal government entity on or after February 24, 2020. Consular officers use the completed forms in assessing whether an applicant is likely to become a public charge, and is thus ineligible for a visa under section 212(a)(4)(A) of the INA. This collection will assist applicants in meeting the burden of proof on applicants under section 291 of the INA to establish that they are eligible to receive a visa, including that they are not inadmissible under any provision of the INA.

Sponsors of immigrant visa applicants must currently provide information regarding their ability to financially support the applicant on the I-864, Affidavit of Support, which consular officers use in considering whether the applicant is likely to

depend on certain forms of government assistance. Visa applicants provide limited optional input on the I-864 regarding their assets. The DS-5540 collects more detailed information on an applicant's ability to support himself or herself. Consular officers use the information to assess whether the applicant is likely to become a public charge, based on the totality of the circumstances.

Applicants for immigrant visas, including diversity visas, are required to complete the DS-5540, except for categories of applicants that are exempt from the public charge ground of inadmissibility. The exempted categories are listed in 8 CFR 212.23(a). Exempted categories include applicants seeking immigrant visas based on qualified service to the U.S. government as an interpreter in Afghanistan or Iraq, visas based on a self-petition under the Violence Against Women Act, and visas for special immigrant juveniles. Additionally, a consular officer has discretion to require a nonimmigrant visa applicant to complete the DS-5540, when the officer determines the information is needed, for example, if the officer is not satisfied, based on other available information, that the applicant would be self-sufficient during his or her period of stay. In the 60-day notice, the Department explained that a consular officer could also request any immigrant visa applicant not subject to public charge, but subject to *The Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System* (“Presidential Proclamation 9945”) (Oct. 4, 2019), to complete questions 4 and 4A from Form DS-5540 to establish that the applicant will be covered by an approved health insurance plan within 30 days of entry into the United States, or that the applicant possesses sufficient financial resources to cover reasonably foreseeable medical costs. As noted above, the Proclamation is currently enjoined, but the

Department has retained those questions in the DS-5540 because they are also relevant for making a public charge assessment. As long as the injunction exists, officers will be instructed that they can rely on the answers to these questions only to the extent that it is relevant to the public charge assessment and not to implement Presidential Proclamation 9945.

Ongoing PRA Process

On October 24, 2019, the Department published a notice in the *Federal Register* to announce that it was seeking OMB approval of the DS-5540, and invited public comment for a 60-day period. The 60-day comment period ended on December 23, 2019, and the Department received 92 comments. The Department's responses to those comments are in the associated Supporting Statement for this notice.

On February 12, 2020, the Department published a notice of intent to request emergency processing and OMB approval in the *Federal Register* for the DS-5540, because the Department needed to align its standards with those that the Department of Homeland Security (“DHS”) was set to implement on February 24, 2020. The Department of Homeland Security announced that it would begin implementation of its final rule on the public charge ground of inadmissibility on February 24, 2020. Following conclusion of the 60-day public comment period for the DS-5540, there was insufficient time for the Department to complete the ongoing process for OMB approval of the DS-5540 under standard procedures pursuant to 5 CFR 1320 prior to February 24, 2020. OMB granted emergency processing and approval of the DS-5540 pursuant to 5 CFR 1320.13 in order for the DS-5540 to be used by consular officers beginning 12:01 a.m. Eastern Standard Time February 24, 2020. OMB granted approval for six months,

until August 31, 2020. On March 9, 2020, the Department published a second notice in the *Federal Register* announcing approval of the DS-5540 to the public.

The Department now seeks three-year approval of the DS-5540 to ensure continued alignment of the Department's standards with those of DHS, to avoid situations where a consular officer will evaluate a visa applicant's circumstances and conclude that the applicant is not likely at any time to become a public charge, only to have a DHS officer subsequently evaluate the same individual under the same facts and find the individual inadmissible on public charge grounds when he or she seeks admission to the United States.

Methodology

The DS-5540 will be available online in fillable PDF format. Immigrant visa applicants will download the completed form and then upload and submit the completed DS-5540 and other supporting documentation as a part of their immigrant visa application through the Consular Electronic Application Center (CEAC). Nonimmigrant visa applicants who are required to submit this form will be able to do so via email or in hard copy.

Carl C. Risch,

Assistant Secretary,

Bureau of Consular Affairs,

Department of State.

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