



January 22, 2019

VIA ELECTRONIC MAIL

Jill Eggleston, FOIA Officer
U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010

Re: Freedom of Information Act Request

Dear FOIA Officer:

The American Immigration Council ("Immigration Council" or "Requester") submits this request for records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.* We also request a fee waiver.

1. REQUEST FOR INFORMATION

The Immigration Council requests a complete dataset containing information about all Forms I-140, Immigrant Petition for Alien Workers ("I-140 Petition" or "Petition") filed from October 1, 2008 to the present.

Specifically, Requester seeks a full dataset (or spreadsheet) containing the following information for *each* I-140 Petition filed with USCIS during the period identified above:

General information about the Petition:

- (1) Date of receipt
- (2) Unique identifier (a numeric or alphanumeric code that is associated with a single I-140 Petition filed with USCIS. The identifier could be a random number and would not need to contain any of the beneficiary's identifying information).¹
- (3) Was the Petition approved?
 - a. If yes, date of Petition approval
- (4) Was the Petition denied?
 - a. Date of denial
 - b. Reason(s) for denial
- (5) Is the Petition still pending?
- (6) Is the Petition in any other status?

¹ We are requesting a unique identifier in case the information provided is not presented all in one spreadsheet and we need to merge information from different spreadsheets.

- a. If yes, identify status.

Part 1: Petitioner information²

- (1) Specify whether petitioner is an individual or a company or organization:
 - a. Individual
 - b. Company or organization
- (2) If petitioner is a company or organization, name of company or organization
- (3) Mailing address of petitioner:
 - a. City or town
 - b. State or province
 - c. Postal code or ZIP code
 - d. Country
- (4) IRS Employer Identification Number (FEIN) of petitioner

Part 2: Petition type

- (1) This Petition is being filed for:
 - a. An alien of extraordinary ability
 - b. An outstanding professor or researcher
 - c. A multinational executive or manager
 - d. A member of the professions holding an advanced degree or an “alien of exceptional ability” (who is not seeking a national interest waiver)
 - e. A professional (at a minimum possessing a bachelor’s degree or a foreign degree equivalent to a U.S. bachelor’s degree).
 - f. A skilled worker (requiring at least two years of specialized training or experience).
 - g. Any other worker (requiring less than two years of training or experience)
 - h. An “alien” applying for a national interest waiver (who is a member of the professions holding an advanced degree or a foreign national of exceptional ability).

Part 3: Beneficiary information (Information about the person for whom petitioner is filing)

- (1) Mailing address:
 - a. City or town
 - b. State or province
 - c. Postal code or ZIP code
 - d. Country
- (2) Date of birth (or age at the time of filing, or year of birth)
- (3) Gender
- (4) Country of citizenship or nationality
- (5) Place of birth
 - a. City or town or village

² Parts 1-7 listed here reflect the titles of Parts 1-7 on the Form I-140. This FOIA request does not ask for all of the information included in each of the fields within Parts 1-7, excluding for example, fields that request beneficiaries’ identifying information.

- b. State or province
 - c. Postal code or ZIP code
 - d. Country
- (6) If the beneficiary was in the United States when the Petition was filed, provide the following:
- a. Date of last arrival (mm/dd/yyyy)
 - b. Expiration date of authorized stay shown on Form I-94
 - c. Status/class of admission shown on Form I-94 (for example, class of admission, or paroled if paroled)

Part 4: Processing information

- (1) Will beneficiary apply for a visa abroad at a U.S. embassy or consulate?
- (2) If yes, what is the location of the embassy or consulate?
 - a. City or town
 - b. Country
- (3) Is the beneficiary in the United States and will the beneficiary apply for adjustment of status to lawful permanent resident?
- (4) "Alien's" residence at the time the Petition was filed or, if in the United States, last country of permanent residence abroad
- (5) Is the petitioner filing any other petitions or applications with this Form I-140?
 - a. If yes, which ones?
 - i. Form I-485
 - ii. Form I-131
 - iii. Form I-765
 - iv. Other – Provide an explanation
- (6) Is the person for whom you are filing this Petition in removal proceedings?
- (7) Has any immigrant visa Petition ever been filed by or on behalf of this person?
- (8) Is petitioner filing this Petition without an original labor certification because the original labor certification was previously submitted in support of another Form I-140?

Part 5: Additional information about petitioner

- (1) Type of petitioner
 - a. Employer
 - b. Self
 - c. Other. Specify the type.
- (2) If company or organization is filing Petition, provide the following information:
 - a. Type of business
 - b. Date established
 - c. Number of U.S. employees (at time Petition was filed)
 - d. Gross annual income
 - e. Net annual income
 - f. NAICS code
 - g. Labor certification DOL case number

h. Labor certification DOL filing date

- (3) If individual is filing Petition, provide:
- a. Occupation
 - b. Annual income

Part 6: Basic Information About the Proposed Employment

- (1) Job title
- (2) SOC code
- (3) Nontechnical job description
- (4) Is this a full-time position?
- (5) If not full-time, how many hours per week for the position?
- (6) Is this a permanent position?
- (7) Is this a new position?
- (8) Wages (specify hour, week month, or year)
- (9) Worksite location
 - a. City or town
 - b. State
 - c. Zip code

Part 7: Information About Spouses and Children of Person for Whom Petition is Being Filed

- (1) For each person, provide:
- a. Date of birth
 - b. Country of birth
 - c. Relationship
 - d. Is he or she applying for adjustment of status?
 - e. Is he or she applying for a visa abroad?

The Immigration Council seeks this data in a workable format, such as Excel. ***Requester also seeks a glossary or other records containing definitions of acronyms or terms contained in data responsive to this request, if those terms are not in the form template and/or are not defined in the Instructions for Petition for Alien Workers (also known as the Form I-140 Instructions)***. Please contact Guillermo Cantor, Ph.D., Research Director at gcantor@immcouncil.org or 202-507-7521 if you need additional information concerning the dataset(s)/spreadsheet(s) and/or the workable format requested.

If, under applicable law, any of the information requested is considered exempt, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld, and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided.

2. REQUEST FOR FEE WAIVER

The Immigration Council asks that the agency waive all fees associated with this FOIA request. Such a waiver is warranted because disclosure of the information is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6 C.F.R. § 5.11(k) (records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not primarily in requester’s commercial interest). In addition, the Requester has the ability to widely disseminate the requested information. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314-15 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received). *See also Cause of Action v. FTC*, 799 F.3d 1108, 1116 (D.C. Cir. 2015) (quoting *Carney v. USDOJ*, 19 F.3d 807, 815 (2d Cir. 1994)) (“the relevant inquiry . . . is whether the requester will disseminate the records to a reasonably broad audience of persons interested in the subject”).

A. Disclosure of the Information Is in the Public Interest

Disclosure of the requested information will contribute significantly to public understanding of the adjudication of immigrant Petitions and how the adjudication process has evolved over the last ten years. The data requested here is not publicly available. Analyzing agency data to better understand adjudication trends as well as affected petitioners, beneficiaries, and industries has become increasingly important as employers continue to sponsor foreign nationals. In addition, the requested data will allow us to understand if there are concentrations of certain types of workers in different regions of the United States or patterns as to certain nationalities working in certain industries. It will also allow us to estimate the effects of foreign-born skilled workers on firm productivity and the overall impact of immigration in the labor market.

The Immigration Council works to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America’s immigrants. Our research team conducts research, monitors and analyzes developments in the immigration arena, and regularly provides information to leaders on Capitol Hill, the media, and the general public. Our legal team works with other immigrants’ rights organizations and immigration attorneys across the United States to ensure that our immigration laws are enacted and implemented in a manner that protects fundamental rights.

Over the past several years, the Immigration Council has analyzed and disseminated information from FOIA requests with a broad public audience. *See, e.g., Behind Closed Doors: An Overview of DHS Restrictions on Access to Counsel*, a report summarizing certain key documents released by DHS agencies in response to FOIA requests regarding noncitizens’ access to counsel, *available at* https://www.americanimmigrationcouncil.org/sites/default/files/research/behind_closed_doors.pdf (last visited, Jan. 22, 2019); *Enforcement Overdrive: A Comprehensive Assessment of ICE’s Criminal Alien Program*, a report analyzing data obtained from ICE to provide a fuller picture of CAP’s evolution,

operations, and outcomes between fiscal years 2010 and 2013, all of which was previously unknown to the public, available at https://www.americanimmigrationcouncil.org/sites/default/files/research/enforcement_overdrive_a_comprehensive_assessment_of_ices_criminal_alien_program_final.pdf (last visited, Jan. 22, 2019); and *Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered*, a report examining records of alleged misconduct by Border Patrol agents and supervisors, available at https://www.americanimmigrationcouncil.org/sites/default/files/research/still_no_action_taken_complaints_against_border_patrol_agents_continue_to_go_unanswered.pdf (last visited, Jan. 22, 2019).

The Immigration Council will analyze information obtained through this FOIA request and produce reports and fact sheets that will be posted on its publicly accessible website. For calendar year 2018 (Jan. 1 - Dec. 31, 2018), the Council's website had over 3.1 million-page views from 1.8 million unique visitors. The Council also will disseminate any reports or fact sheets that result from the obtained data through its established networks. The Council also has regular contact with national print and news media and plans to share information gleaned from FOIA disclosures with interested media.

In addition, the Council will write about the information received in its online publication, Immigration Impact (www.ImmigrationImpact.com), which provides rapid-response analysis on current immigration events every weekday. For calendar year 2018, Immigration Impact received over 820,000-page views from 484,000 unique visitors. Moreover, information received on the website is regularly shared and re-posted on news outlets with large audiences, including The New York Times, The Washington Post, CNN, and PBS.

The Immigration Council has satisfied the factors for disclosure in the public interest set forth in 6 C.F.R. § 5.11(k)(2) as demonstrated above. The requested data concerns identifiable government activities and disclosure will be meaningfully informative as it is not currently available to the public. The requested information would significantly contribute to public understanding because data from individual Petitions will provide insights into the permanent employment of foreign nationals in the United States that cannot be obtained from aggregate data. And the Immigration Council has the demonstrated ability to analyze and disseminate the requested information to a broad public audience.

B. Disclosure of the Information Is Not Primarily in the Commercial Interest of the Requester

A "commercial use request" asks for information "that furthers a commercial, trade, or profit interest." See 6 C.F.R. § 5.11(b)(1). The Council is a not-for-profit organization. We have no commercial interest to be furthered by the disclosure, so the regulatory balance of public interest against "any identified commercial interest" clearly favors the public interest. See 6 C.F.R. § 5.11(k)(3)(i)-(ii). We seek the requested information for the purpose of disseminating it to members of the public and not for the purpose of commercial gain. Like all other reports and information available on the Council's website, information received in response to this FOIA request will be available to immigration attorneys, noncitizens and other interested members of the public free of charge.

Given that FOIA's fee waiver requirements are to "be liberally construed in favor of waivers for noncommercial requesters," a waiver of all fees is justified and warranted in this case. *See Judicial Watch*, 326 F.3d at 1312 (citation omitted).

Except as otherwise indicated above, please contact the undersigned by telephone or email if you have any questions. Thank you for your prompt attention to this request.

Sincerely,

A handwritten signature in black ink that reads "Leslie K. Dellon". The signature is written in a cursive, slightly slanted style.

Leslie K. Dellon
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