



AILA National Office
Suite 300
1331 G Street, NW
Washington, DC 20005

Tel: 202.507.7600
Fax: 202.783.7853

www.aila.org

September 3, 2013

Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Policy and Strategy
Chief, Regulatory Coordination Division
20 Massachusetts Avenue, NW
Washington, DC 20529-2140

Submitted via www.regulations.gov
Docket ID: USCIS-2005-0030

**Re: 60-Day Notice of Revision of a Currently Approved
Collection: Form I-129, Petition for a Nonimmigrant
Worker (OMB Control No. 1615-0009)
78 Fed. Reg. 40490 (July 5, 2013)**

Dear Sir or Madam:

The American Immigration Lawyers Association (AILA) submits the following comments in response to the Department of Homeland Security's (DHS) Notice of Revision of a Currently Approved Collection: Form I-129, Petition for a Nonimmigrant Worker, published in the Federal Register on July 5, 2013.

AILA is a voluntary bar association of more than 13,000 attorneys and law professors practicing, researching and teaching in the field of immigration and nationality law. The organization has been in existence since 1946. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on the proposed revisions to Form I-129 and the accompanying instructions.

PROPOSED CHANGES TO FORM I-129

Page 6, Part 8—Declaration, Signature, and Contact Information of Person Preparing Form, If Other Than Above

Preparer's Declaration

Though Part 8 requires several revisions, we are most concerned with the expanded language of the preparer's declaration. The proposed language reads:

I understand that preparing this form on behalf of the petitioner, at his or her request, and with his or her express consent, does not grant the petitioner any immigration status or benefit. By my signature, I certify, swear, or affirm, under penalty of perjury, that I prepared this form on behalf of the petitioner, or another individual authorized to sign this form pursuant to form instructions. I prepared this form at his or her request, and with his or her express consent. I completed the form based only on responses the petitioner provided to me. After completing the form, I reviewed it and all of the petitioner's responses with the petitioner, who agreed with every answer he or she provided for each question on the form, and, when required, supplied additional information to respond to a question on the form.

This language is repetitive, confusing, and imposes a burdensome and unnecessary process for preparing and reviewing the I-129 petition. Preparers are already required, under applicable regulations, to attest to the veracity and truth of what is submitted. Under 8 CFR §103.2(a)(2), “[b]y signing the benefit request, the ... petitioner ... certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct.” Moreover, under 8 CFR §1003.102(j)(1), “[t]he signature of a practitioner on any filing [or] application ... constitutes certification by the signer that the signer has read the filing [or] application ... and that, to the best of the signer's knowledge, information, and belief, formed after inquiry reasonable under the circumstances, the document is well-grounded in fact” An attorney who engages in frivolous behavior or who knowingly or with reckless disregard makes a false statement of material fact or law, is subject to disciplinary sanctions including disbarment or suspension. *See generally* 8 CFR §1003.101–108.

Any concerns about fraud detection and prevention are more than adequately covered in the existing regulations cited above. Moreover, it is beyond the authority of USCIS to stipulate a specific review procedure for attorneys and their clients and require that it be followed. The Preparer's Declaration, therefore, unnecessarily impinges on the rights of petitioners and their legal representatives to determine their own legitimate procedures in the preparation of petitions for immigration benefits. As such, we ask USCIS to remove the following language from the Preparer's Declaration:

I completed the form based only on responses the petitioner provided to me. After completing the form, I reviewed it and all of the petitioner's responses with the petitioner, who agreed with every answer he or she provided for each question on the form, and, when required, supplied additional information to respond to a question on the form.

In addition, the remaining language of the Preparer's Declaration should be amended to eliminate repetition and avoid confusion. We suggest that the language be changed to read:

By my signature, I certify, swear, or affirm, under penalty of perjury, that I prepared this form on behalf of the petitioner, or another individual authorized to sign this form pursuant to form instructions. I prepared this form at his or her request, and with his or her express consent, and I understand that the preparation of this form does not grant the petitioner or beneficiary any immigration status or benefit.

It is also unclear as to who is required to complete Part 8. The “Note” at the top of Part 8 states: “If you are an attorney or accredited representative, DO NOT complete this section. Complete the Preparer’s Declaration below.” However, Item #2 instructs accredited representatives to provide the name of their BIA recognized organization and the Preparer’s Declaration is within the referenced section, so this instruction contradicts itself. It is unclear why attorneys or accredited representatives would not complete this section if they are in fact the preparers.

Page 1, Part 1, Item #5:

The heading “Federal Identification Number” should be changed to “Federal Employer Identification Number (FEIN),” which is the term used on the current version of the form. “Federal Employer Identification Number” is the standard term for an employer federal tax identification number as issued by the Internal Revenue Service. Petitioners will not be familiar with the term “Federal Identification Number” and its use will likely cause confusion. Similarly, the term “Individual IRS Tax Number” should be changed to “Individual Taxpayer Identification Number (ITIN).”

Finally, some petitioners might not be familiar with a “DUNS Number” so it would be helpful to indicate exactly what that is. We suggest relabeling that item “Dun & Bradstreet (DUNS) Number (if applicable).”

Page 2, Part 2, Item #4(a)

The “NOTE” in this item should be edited to read:

NOTE: A petition is not required for E-1, E-2, E-3, H-1B1 Chile/Singapore, or TN visa beneficiaries.

(remove “an”)

Page 2, Part 2, Item #4(b)

This item should be changed so that the phrasing is consistent with 4(c), 4(d), 4(e) as follows:

Change the status and extend the stay of each beneficiary since the beneficiary(ies) are now in the United States in another status (see instructions

for limitations). This is available only when you check “New Employment” in Item Number 2, above.

Page 4, Part 4, Item #6

The current version of the I-129 simply asks if any beneficiary is in removal proceedings and if so, to explain in an attachment. However, USCIS proposes to amend this question to read, “Is any beneficiary in removal proceedings? Y/N. If yes, how many?” Rather than asking how many beneficiaries are in removal proceedings, it would appear to be most helpful to USCIS to receive the names of the individuals in proceedings, along with an explanation in Part 9 of the I-129. We suggest that the language in the current form be retained as it pertains to this question.

Page 4, Part 4, Item #7

This question as amended reads, “Have you ever filed an immigrant petition for any beneficiary in this petition? Y/N. If yes, how many?” However, it is not clear if the question is asking how many immigrant petitions have been filed or for how many beneficiaries. Rather than asking how many (petitions or beneficiaries) it would appear to be most helpful to USCIS if the form directed the petitioner to provide an explanation in Part 9 of the I-129, similar to the language of the current form.

Page 4, Part 4, Item #9:

This question, as currently phrased, is partially redundant as it pertains to Item #7 in Part 4:

Have you ever previously filed a petition for this beneficiary?

To avoid any redundancy, we suggest that this question be rewritten to read:

*Have you ever previously filed a **nonimmigrant** petition for this beneficiary?*

Page 8, Part 9—Additional Information About Your Petition for Nonimmigrant Worker

We question whether this new layout will improve upon the layout of the comparable section on the current I-129. Most problematic is that this format limits each explanation to seven lines. We recommend that the current format be retained for this section, providing more flexibility for petitioners to use this page as they deem necessary to provide adequate and complete information to USCIS.

Page 12, Trade Agreement Supplement, Section 3

Please refer to the comments to Page 6, Part 8—“Declaration, Signature, and Contact Information of Person Preparing Form, If Other Than Above.” The same comments to that section apply here.

Page 16, H Classification Supplement, Section 2, Item 8(a)

The language relating to what does and does not constitute “fees or other compensation” is separated between the two parts to this question and is confusing. We suggest amending the language to read:

... The phrase “fees or other compensation” includes, but is not limited to, petition fees, attorney fees, recruitment costs, and any other fees that are a condition of a beneficiary’s employment that the employer is prohibited from passing to the H-2A or H-2B worker by statute or under U.S. Department of Labor rules. “Fees or other compensation” does not include reasonable travel expenses and certain government-mandated fees (such as passport fees) that are not prohibited from being passed to the H-2A or H-2B worker by statute, regulation, or any other law.

...

If yes, list the types and amounts of fees that the worker(s) paid or will pay

Page 16, H Classification Supplement, Section 2, Item 8(b) and 8(c)

These two items as currently written are confusing and 8(c) appears to contradict itself. They should be amended to read:

8.b *If the workers paid any fee or compensation, were they reimbursed?*

Y/N

If yes, submit evidence of reimbursement

8.c. *If the workers agreed to pay a fee that they have not yet paid, was the agreement terminated?*

Y/N

If yes, submit evidence of termination of the agreement.

Page 20, H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement, Section 2, Item 8

This item currently instructs petitioners to “answer Item Number 9 of Form I-129” if they answered no to all of the preceding questions 1 through 8. However, the relevant Item Number 9 is not on Form I-129, but is rather the next question on the H-1B/H-1B1 Data Collection and Fee Supplement. This should be amended to read, “If you answered no to all questions, answer the following **Item Number 9.**”

Page 22, L Classification Supplement, Section 1, Item #2

While we understand that USCIS needs to know how much time the principal beneficiary has spent in H or L status in order to determine the petition validity, the history of the derivative family members is irrelevant to this calculation. We recommend removing this requirement for derivative family members.

Page 24, L Classification Supplement, Section 1, Items 13(b) and 13(c)

All other sections of the form reference Part 9 of Form I-129 when the petitioner needs additional space to explain an answer. Items 13(b) and 13(c), however, instruct the petitioner to attach a separate sheet of paper and include the petitioner’s name, the page number, part number, and item number. If this is an error, it should be corrected. If not, it would seem to make more sense for the process to be consistent throughout the form and supplements.

PROPOSED CHANGES TO THE I-129 INSTRUCTIONS

The proposed revisions to the I-129 instructions will increase the page count from 24 to 29 pages. USCIS should seek to reduce the length of the instructions by eliminating redundant and lengthy explanations and replace them with applicable citations to the Immigration and Nationality Act and Title 8 of the Code of Federal Regulations. Form instructions in general should focus on tips for answering individual questions and each section of the form, and procedural aspects of filing such as where to file, calculating filing fees, etc. Practical aspects of filing should also be highlighted, such as how to label and attach exhibits, acceptable forms of payment, and other useful tips to help ensure proper receipt by the USCIS lockbox and to ease the adjudication process. This would help improve the quality of filings and reduce the rate of Request for Evidence (RFE) issuance. Along with the list of supporting evidence required for each visa category, the form instructions should also clearly delineate the required form supplements.

Thank you for the opportunity to comment on the proposed revisions to Form I-129 and accompanying instructions.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION