

April 9, 2010

Stephen Tarragon
Deputy Chief
Regulatory Products Division Clearance Office
U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Avenue, N.W.
Suite 30008
Washington, D.C. 20529-2210

RE: OMB Control Number 1615-0009

Dear Mr. Tarragon:

I write on behalf of the Howard Hughes Medical Institute (HHMI) in response to the February 8, 2010 Federal Register notice of the U.S. Citizenship and Immigration Services (USCIS) proposal to add a "Deemed Export Acknowledgement" section to Form I-129, Petition for a Nonimmigrant Worker.

By way of background, HHMI is a private non-profit medical research organization that ranks as one of the nation's largest philanthropies and spent more than \$730 million for research in 2009 alone. HHMI owns and operates the Janelia Farm Research Campus, a biomedical research complex in northern Virginia, and is also engaged in basic research in collaboration with non-profit universities, hospitals, and research institutes around the country. At Janelia Farm and in its approximately 400 laboratories at universities and other non-profit research institutions around the country, HHMI currently has over 250 foreign national employees on H-1B visas, with approximately 40 additional H-1B petitions pending.

HHMI supports the comments submitted by the Association of American Universities (AAU) and the Council on Government Relations (COGR) regarding the USCIS proposal to add a question to the Form I-129 filed by H-1B visa petitioners that requires them to state whether or not they will be required to have a deemed export control license. We agree with AAU and COGR that the proposal does little or nothing to augment national security, is poorly timed, and reflects a lack of understanding of the nature and scope of existing deemed export control requirements.

We would like in particular to stress our agreement with AAU and COGR on three points: first, that the proposal is poorly timed; second, that the fundamental research exception to the export control requirements needs to be taken into account in any proposal of this nature; and third, that USCIS is not the appropriate agency, or Form I-129 an appropriate mechanism, for collecting information regarding deemed export licenses.

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With respect to timing, as AAU and COGR note, the Emerging Technology and Research Advisory Committee established by the Department of Commerce is reviewing current deemed export control policies in light of the recommendations of the Deemed Export Advisory Committee. This review could result in potentially extensive changes to the current deemed export control rules. It would seem, therefore, to be a particularly inopportune time to extend the current deemed export control rules to the immigration arena.

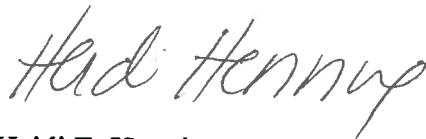
With respect to the fundamental research exception, as AAU and COGR note, because most academic research falls within this exception to the export control rules, it would likely be extremely rare for a deemed export license to be required for a foreign national employed on an H-1B visa in an academic laboratory. For this reason, the USCIS proposal as applied to academic laboratories would do little to improve national security. On the other hand, the proposal would, as AAU and COGR also point out, require academic employers to do significant additional work to confirm their response in the proposed new section of Form I-129. We would expect this additional work to delay the hiring process for highly-skilled foreign national researchers, hampering the progress of important basic research.

With respect to the authority of USCIS and the use of Form I-129 to collect deemed export control compliance information, we have the same questions as AAU and COGR. USCIS otherwise has no responsibility for export control enforcement or compliance, and it is not clear to us why it is appropriate and reasonable for USCIS to collect information concerning deemed export licenses. The purpose of Form I-129 is to petition for a foreign worker to come to the U.S. temporarily to perform services, and it is not clear to us why it is appropriate and reasonable for the form to be amended to include information regarding deemed export compliance.

Accordingly, we believe that the USCIS proposal should be dropped. If USCIS believes that it is necessary to proceed with the proposal notwithstanding the comments that have been submitted, we suggest that the proposal be limited to for-profit employers, and not apply to non-profit research institutions. If USCIS believes that it is necessary to proceed with the proposal and apply it to non-profit research institutions, then at a minimum it is critical to amend the proposal to allow non-profit research institutions to check a box indicating that no deemed export license is required because the research in which the beneficiary will be engaged is exempt under the fundamental research exception. It should also be clarified in the instructions that there is no obligation to go back and update the form once the petition has been approved.

We appreciate the opportunity to comment on the proposal and hope that you will take our views into consideration.

Sincerely,

A handwritten signature in cursive script, reading "Heidi Henning".

Heidi E. Henning