



Department of Homeland Security (DHS)  
USCIS  
Chief, Regulatory Products Division, Clearance Office  
111 Massachusetts Avenue, NW., Suite 3008  
Washington, DC 20529-2210

RE: Agency Information Collection Activities: Form I-129. OMB Control no. 1615-0009

Dear Sir/Madam:

The ITServe Alliance (ITServe) hereby submits comments to the Agency Information Collection of the Department of Homeland Security (DHS) proposing modification of Form I-129, Petition for a Nonimmigrant Worker (75 Fed. Reg. 6212 (Feb. 8, 2010)).

ITServe is a voluntary association of more than 35 IT consulting firms in Texas who deal with the Form I-129 on a daily basis in hiring foreign workers in the IT industry. Our mission is to serve as the voice of the industry, educate our members on best practices, and protect the U.S. economy by providing U.S. businesses with cost-effective alternatives to outsourcing and off-shoring. ITServe members regularly file Form I-129 Petitions in order to hire various foreign workers in the H-1B visa category. We appreciate the opportunity to comment on the proposed changes to Form I-129 and believe that our members' collective expertise provides experience that makes us particularly well-qualified to offer views that we believe will benefit the public and the government.

**Part 6. Additional Information about Employment under a Third Party Contract**

ITServe would first like to point out that information requested in this section should be required to be filled by all petitioners who have employees working offsite either its third party employment or not. Title being related to third party contract and information being requested on working offsite it is confusing. Therefore title of this Part 6 should be changed to "Additional Information about beneficiary work off-site" and all petitioners should supply this information.

Please also note however, that ITServe suggests that requiring the name of the company where the beneficiary will work, as well as the name, title, and phone number of the contact individual at the work site for any petition is duplicative and overly burdensome. USCIS Service Centers already routinely request a letter from the work site that is to include all of these details. Because this information would only be provided by the *Petitioner* on Form I-129, we expect that Service Centers will still require a confirmation of the same information in the form of a letter from the work site. Therefore, it is unnecessary to request the same information in a different format.

In addition, the work site may not be willing to release the requested information to USCIS. Many H-1B petitioners are required to sign confidentiality agreements confirming that they will not disclose any information regarding the project. These agreements could restrict the petitioner's ability to disclose the information requested. The petitioner would be forced to choose between violating the confidentiality agreement or possible denial of an H-1B petition if they choose not to disclose the information.



It is also important to point out that contact individuals at the work sites change frequently. Given that the typical H-1B visa application requests a three-year validity period, it is highly likely that the contact individual will change at some point over that three-year period. USCIS has not indicated how it will use the contact information. ITServe fears that USCIS may re-visit the petition after adjudication, such as during an FDNS site visit, with the possibility that a petition could be revoked if the contact individual listed on the petition is no longer available to answer any questions that may arise.

#### Part 7. Deemed Export Acknowledgement

ITServe urges that before any attempt to require information regarding Deemed Export license requirements be included in Form I-129, that the Export Administration Regulations (EAR) and Commerce Control List (CCL) be clarified and available to employers in a more user-friendly format. The FAQs listed at <http://www.bis.doc.gov/deemedexports/deemedexportsfaqs.html> have not been updated since 2004. The FAQs make mention of source code and software, however, it is difficult to determine whether the software used by our members in the IT industry for various projects falls under the CCL. In its current form, the CCL consists of Categories 0 through 9 with each one being listed on the internet in a separate pdf file. There appears to be no searchable index. The Alphabetical Index to the CCL appears on the internet in a 49-page pdf file that is also not searchable. A more user-friendly format of the CCL and EAR should be implemented prior to requiring this information collection to be included in Form I-129.

In addition, it is our understanding that both the Administration and Congress are undertaking an extensive review of export control policies, including deemed export control policies. We strongly believe that this review process should be completed in order to properly determine how immigration adjudications relate to deemed export controls. Linking the complicated requirements of export control rules to a form governed by an agency that is not involved in the administration of those rules is not an adequate way to bring the export control system into the 21st century. We also question the use of this form as an appropriate mechanism for collecting this type of information when the information is already collected by the Department of Commerce, the agency with authority over export control under the Export Administrative Act of 1979, and subsequent extensions. U.S. businesses more frequently turn to IT staffing and consulting firms to staff their projects involving cutting-edge technology. U.S. IT companies rely on the H-1B visa category to hire the best and brightest IT professionals from around the world, and this contributes significantly to the ability of U.S. businesses to innovate. In fact, many of the major problems facing our country—a troubled economy, a changing climate, a growing need for clean energy we produce at home—will be solved by science, technology, and innovation. Including a "deemed export acknowledgement" question to the I-129 form adds unnecessary complexity to the H-1B application process, and will seriously impact the ability of U.S. businesses to compete and innovate.

Furthermore, adding a blanket attestation to a general form that is used for all occupations is overbroad. In its response to a September 2002 report by the U.S. Government Accountability Office on export controls [GAO-02-972, p, 24], the Department of Commerce stated that "the vast majority of individuals applying for H-1B visas would not be employed in jobs that would give them access to technology controlled under U.S. export control laws. INS regulations specify that H-1B visas may be issued to foreign nationals seeking to work in such fields as fashion modeling, architecture, medicine and health, education, accounting, law, theology, and the arts. The likelihood of foreign nationals



working in such fields requiring deemed export licenses is remote." The change as proposed by USCIS would require a U.S. employer to determine applicability of the EAR to an architect or accountant just as it would have to make a determination for a biomedical scientist. This would burden the employer's human resources department with the time-consuming task of vetting positions that should have no reason to require such clearance.

We are particularly concerned with regard to those U.S. IT staffing and consulting companies that use the H-1B category and are not involved in areas of sensitive research or technology. In order to accurately respond "no" to the proposed deemed export acknowledgement, employers would still be required to go through the complicated assessment required by the EAR, regardless of whether they are in an industry or occupation that is likely to be subject to the EAR. ITServe strongly believes that the I-129 form is not an appropriate mechanism for collecting deemed export license compliance information, and that placing a deemed export attestation on the form will yield little or no measurable benefit to national security.

#### Part C, Line 9, of the H1B Data Collection and Filing Fee Supplement

ITServe requests that a clear definition of "affiliate" be provided in order for employers to make a determination of the total number of full-time equivalent employees for purposes of determining the proper filing fees required. For example, if one individual owns two separate businesses with two separate FEINs, will the two businesses be considered affiliates, such that a petitioner must count the employees of both businesses to determine the proper fee? What about if one person is a majority shareholder of two separate businesses? What if a group of individuals owns both businesses, but in differing percentages? Etc. Therefore, ITServe requests that additional guidance be issued to help petitioners make the proper determination before this can be inserted into the form.

#### Part D. Attestation Regarding Off-site Assignment of H-1B Beneficiaries

ITServe would first like to point out that requiring the Beneficiary's signature only for petitions involving off-site assignments is discriminatory and creates an additional burden that will mainly impact the IT consulting and staffing industry. If USCIS intends to require the beneficiary's signature on the petition, they should do so for all petitions to afford all beneficiaries with an opportunity to affirmatively accept the terms of the employment being offered. It appears that the intention of this requirement is to protect the worker from unscrupulous employers who may describe the position offered in one way to the sponsored employee, but then indicate something different in the petition filed with USCIS. Therefore, we suggest that if USCIS determines that the beneficiary's signature should be required, you should then consider requiring all petitioners to comply.

Furthermore, ITServe proffers that the requirement of the beneficiary's signature on the H-1B petition is overly burdensome. In New Employment and Consular Processing situations, the beneficiaries are often abroad at the time the I-129 petition is filed. Because original signatures are required on the form, this places an undue burden on H-1B beneficiaries to pay for postage to mail an original form from overseas to his or her employer in the U.S. It should be sufficient that the petitioner attests that the beneficiary has been advised of the off-site placement.



#### Changes to Instructions:


##### Amended Petition

The proposed instructions regarding the use of the Form I-129 for filing an amended petition indicate that a change of geographic location of the position is one of the reasons a petitioner would file an amended petition. This is troublesome in that the current guidance indicates that a mere location change where all other aspects of the employment relationship remain the same will *not* be considered a material change in employment and therefore an amended petition would *not* be required. In the IT staffing/consulting industry, work locations can change quickly and often as new projects become available or a work site moves its principal place of business. Requiring an amended petition for such a minor change will cost the employer additional filing fees and attorney fees and will increase the amount of applications to be adjudicated by USCIS. This will serve only to increase processing times and create instability for the H-1B workers who will likely always have a petition pending.

In addition, ITServe suggests that the Form W-2 not be required as evidence of maintenance of status. There are situations in which an H-1B worker may change jobs before a W-2 is issued by relying on the portability provisions of AC21. In addition, many H-1B workers take extended trips outside the United States. Because of this, the Form W-2 may lead an adjudicator to conclude that a beneficiary was not paid the proper wage prior to filing a petition, when in fact the proper wage was paid for the time while the beneficiary was in the country. The current reliance on paystubs as evidence of maintenance of status should continue without change.

Once again, we appreciate this opportunity to provide input in this process of revising Form I-129. It is our hope that the Agency's careful consideration of all submitted comments will produce a more efficient and well-informed visa application process that benefits all parties involved.

Sincerely,

  
Satish Mandava, President  
ITServe Alliance

#### IT Serve Member Companies:

Adept Computer Consultants, Inc	Alberg Software	Amensys, Inc
Anblicks, Inc	Anveta, Inc	Bridge Logix Solutions
Business Intelli Solutions, Inc	Camelot Integrated solutions	Centaurus Technology Partners LLC
Cigniti	Corpus Media Labs	Dynamic Soft
E Computer Technologies, Inc	ePace Technologies, Inc	ePower, Inc
First Object, Inc	I2Solvers	Infotech Dnamics, inc
Intellisoft Technologies	IT Cell	Lucid Technologies, Inc
Nemo IT Solutions, Inc	Novedea Systems, Inc	Peritus, Inc
Perk Systems, Inc	Premier IT Solutions, Inc	Primus Global Services, Inc
Redsalsa Technologies, Inc	S&R Professionals L.P.	Sapot Systems, Inc
Techgene Solution	Techstar Consulting	Tekpros, Inc
United IT Solutions, Inc	Veritis Group	Xenosoft Technologies, Inc
Xprudent Corp	Xtreme Technical Solutions	Yasmesoft, Inc