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[Docket \(/docket/USCIS-2006-0009\)](/docket/USCIS-2006-0009) / [Document \(USCIS-2006-0009-0070\) \(/document/USCIS-2006-0009-0070\)](/document/USCIS-2006-0009-0070)
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Comment Submitted by American Immigration Lawyers Association

Posted by the **U.S. Citizenship and Immigration Services** on Feb 23, 2023

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Comment

The American Immigration Lawyers Association (“AILA”) respectfully submits the attached comments to the Department of Homeland Security (“DHS”) and U.S. Citizenship and Immigration Services (“USCIS”) Agency Information Collection Activity: Revision of a Currently Approved Collection: Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status, (USCIS OMB Control No. 1615-0045; Docket ID USCIS-2006-0009) published in the Federal Register on December 27, 2022.

Attachments 1



AILA Comment_Form I-829.2.23.23



[Download \(https://downloads.regulations.gov/USCIS-2006-0009-0075/attachment_1.pdf\)](https://downloads.regulations.gov/USCIS-2006-0009-0075/attachment_1.pdf)

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AMERICAN
IMMIGRATION
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ASSOCIATION

February 22, 2023

Samantha L. Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Ave. NW,
Washington, DC 20529-2240

Submitted via www.regulations.gov
OMB Control Number 1615-0045
Docket ID USCIS-2006-0009

**Re: Agency Information Collection Activities: Revision of a Currently Approved Collection:
Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status.**

Dear Ms. Deshommes:

The American Immigration Lawyers Association (“AILA”) respectfully submits the following comments (collectively the “Comment”) to the above-referenced Department of Homeland Security (“DHS”) and U.S. Citizenship and Immigration Services (“USCIS”) Agency Information Collection Activity: Revision of a Currently Approved Collection: Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status, (USCIS OMB Control No. 1615-0045; Docket ID USCIS-2006-0009) (hereinafter “Proposed Form I-829”) published in the Federal Register on December 27, 2022.

Established in 1946, AILA is a voluntary bar association of more than 16,000 attorneys and law professors practicing, researching and teaching in the field of immigration and nationality law. 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, including on the requirements of the EB-5 Immigrant Investor Visa program. Our members’ collective expertise and experience makes us particularly well-qualified to offer views that will benefit the public and the government.

Please see below our comprehensive comments to the proposed revisions to Form I-829:

AILA National Office

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Comments to Form I-829 Instructions

1. Form I-829 Instructions: Page 1 General Instructions/Heading “Effect of Filing”

The instructions state that, upon USCIS acceptance of a timely filed Form I-829 (within 90 days of the two-year anniversary of green card issuance), conditional resident status will be automatically extended for 18 months.

- **AILA Comment**

USCIS alert dated January 23, 2023, titled: *USCIS Extends Green Card Validity for Conditional Permanent Residents with Pending Form I-751 or Form I-829*, states starting January 23, 2023, USCIS is extending the time receipt notices can be used to show evidence of status from 24 to 48 months for petitioners who properly file Form I-829. This alert contradicts the now proposed instruction of a timely filed Form I-829 granting an 18-month extension. This language should be modified to incorporate the most recent guidance. While this is generally a positive change, with current USCIS Form I-829 processing times of 61 months, combined with the continuing difficulty, when required, in scheduling field office appointments for I-551 renewal stamps, or DMV appointments for driver’s license extensions, it must be noted that neither 18 nor 48 months are sufficient automatic renewal periods.

Moreover, USCIS should update guidance regarding the use of the Form I-829 Petition receipt notices. Currently, to use the 48-month receipt notice as proposed by USCIS, the investor or dependent must still be in possession of the expired conditional permanent resident card (Form I-551). The Form I-829 receipt notice itself is not a Form I-551, and on its own, cannot be used for international travel or for purposes of employment verification on Form I-9. In many instances, USCIS previously collected expired conditional permanent resident cards from investors and their dependents in connection with the issuance of an I-551 stamp. USCIS should provide clear guidance in its Policy Manual that investors and their dependents who have previously surrendered the conditional permanent resident card (Form I-551) are eligible to use the 48-month receipt notice extension of their status, regardless of whether they possess a Form I-551.

Finally, while the language of the RIA seems to mandate much faster processing times, and Chief Emmel initiated a robust Form I-829 scanning and general hiring initiative, the proposed form instructions are not congruent with the reality of IPO production. As of September 30, 2022, IPO had 11,150 pending Form I-829’s and had completed 459 I-829 adjudications over the previous quarter with a published processing time of 61.5 months. This section of the instructions must be modified to accurately state that lawful permanent residence will be extended for the period of time listed on the receipt notice and to note that the receipt notice may be used with either a Form I-551 or a previously issued Form I-551 stamp.

2. Form I-829 Instructions: Page 1 General Instruction/Heading “Who May File Form I-829?”

The instructions state you may use this form to request the removal of conditions on your permanent resident status if you were granted conditional permanent resident status as an investor.

- **AILA Comment**

As the Form I-526 is an individual investor application, the instructions should read *as an investor or dependent of an investor*.

3. Form I-829 Instructions: The Instructions to Proposed Form I-829 should clarify the supporting documents required for a standalone Form I-829 Petition filed by a dependent where petitioner is alive but is unwilling to add the dependent to Form I-829.

The Proposed Form I-829 Instructions state on page 2:

“NOTE: If you were not included in the investor’s Form I-829, you should file your own Form I-829. **If you are filing a separate petition from the investor, you should attach a copy of the investor’s Form I-797, Notice of Action, relating to his or her I-829 petition.** [Emphasis added].

- **AILA Comment**

AILA renews its previous comments from July 12, 2021, incorporated herein by reference, and notes that the Proposed Form I-829 does not include instruction with respect to what supporting documents must be included in the Form I-829 Petition by a dependent where the petitioner is unwilling to include the dependent in his or her own Form I-829 Petition.

Where the petitioner is unwilling to include the dependent in his or her own Form I-829 Petition, it is unlikely that the dependent would have access to petitioner’s investment documentation, sustainment of investment documentation, or job creation documentation. Privacy laws may prevent a Regional Center or a New Commercial Enterprise from sharing a petitioner’s financial or other information with a dependent. Moreover, the petitioner may refuse to share Form I-797C or Form I-797A with the dependent.

As a result, AILA urges DHS to outline the supporting documents that may be required by a dependent. AILA also urges DHS to modify the Proposed Form I-829 to include a section for petitioner’s name, date of birth, and other identifying biographic information to help match a petitioner to a dependent where the dependent may not have access to petitioner’s Forms I-797.

4. Form I-829 Instructions: The Instructions to Proposed Form I-829 should clarify the supporting documents required for a standalone Form I-829 Petition

filed by a dependent where the Petitioner has passed away and benefits are sought under INA 204(l).

The Proposed Form I-829 states on page 2:

“NOTE: If you were not included in the investor’s Form I-829, you should file your own Form I-829. If you are filing a separate petition from the investor, you should attach a copy of the investor’s Form I-797, Notice of Action, relating to his or her I-829 petition.”

Moreover, the Instructions to Proposed Form I-829 (at page 11) list the following evidence to be submitted where INA 204(l) benefits are sought:

“Evidence for Petitioners Filing as a Former Spouse or as a Spouse or Child Whose Investor Spouse or Parent has Died.

Submit the following with your petition:

- A. Your former spouse’s, current spouse’s, or parent’s Permanent Resident Card (Green Card);
- B. Your former spouse’s, current spouse’s, or parent’s divorce decree or death certificate if applicable; and
- C. Evidence listed above in “Evidence Related to the Investor’s Commercial Enterprise, Investments, and Job Creation.”

- **AILA Comment**

As was the case in our 2021 comment, AILA again urges USCIS to clarify section “C” above regarding evidence of the Investor’s sustainment of his or her investment. Specifically, USCIS should clarify that the sustainment of investment evidence is required only through the time of petitioner’s death.

5. Form I-829 Instructions: The Instructions to Proposed Form I-829 should clarify when Proposed Form I-829 should be filed by the dependent.

On the Proposed Form I-829 instructions on page 2, USCIS states the following under “When should I file Form I-829?”

“You must file Form I-829 to remove the conditions on your permanent resident status during the 90-day period immediately before your conditional permanent residence expires. The petitioner must submit this petition within the 90-day period immediately preceding the second anniversary of obtaining conditional permanent resident status.”

- **AILA Comment**

AILA urges USCIS to clarify when a dependent filing a standalone Form I-829 Petition must file Form I-829. Specifically, the regulation at 8 CFR 216.6(a) states, “The **investor** must file within the 90-day period preceding the second anniversary of the date on which the investor acquired conditional permanent residence.” [Emphasis added]. The regulation contemplates that the 90-day filing window is tied to the investor’s conditional permanent residence period, not the dependent’s conditional residence period.

Where a dependent is not included in petitioner’s Form I-829 because the petitioner is unwilling to include the dependent, USCIS should clarify in the Instructions to Proposed Form I-829 that a dependent can file at any time during his or her conditional permanent residence following the filing of petitioner’s Form I-829. In other words, dependents filing standalone Form I-829 Petitions need not wait until the expiration of *their own* conditional permanent residence period if the petitioner has reached the end of his or her conditional residence.

AILA notes that dependents currently attempting to file their own Form I-829 Petition prior to the 90-day window of expiration of conditional status are frequently rejected by USCIS for filing outside the dependent’s window of conditional permanent residence. Additional training should be provided to the Lockbox facility so as to not reject Form I-829 Petitions filed by dependents where petitioner has already reached the end of conditional permanent residence and filed Form I-829 with USCIS, consistent with the regulations.

Comments to Form I-829

The Form requires the petitioner provide information on the NCE as noted:

- 13.** Changes in Assets of the NCE. Has the commercial enterprise sold any assets, including but not limited to investment securities and real property, and distributed the proceeds of the sale to any of its equity holders or had any other capital distributions or withdrawals since the date of your **initial** investment? ☐ Yes ☐ No

The corresponding instructions are a re-statement of the question.

AILA Comment

The question seems to be asking two different questions and connecting them with “and.” Question (1) has the new commercial enterprise (“NCE”) sold any assets; (2) has the NCE distributed the proceeds of such sale. Each of which could happen within a NCE, however USCIS is only asking

if both occurred together. An example would be where the NCE is required to redeploy EB-5 investor funds to meet the “at risk” requirements of USCIS. In this situation, the NCE may receive repayment of the EB-5 loan proceeds after maturity of the EB-5 loan or a permitted sale or refinancing of the EB-5 project and then redeploy the proceeds of the EB-5 loan into another “at-risk” activity. Under such a scenario, the answer to question 13 would be “no,” as no distribution was made to individual investors. Under the same scenario however, some EB-5 investors may have filed Form I-829, and thus qualified to receive a return of capital. In such an event, the answer to question 13 would be “yes,” and the petitioner would be expected to know which investors received a distribution of capital and which did not. AILA is concerned that this level of granular detail would (1) more properly be answered in the regional center Form I-956G Annual Filing, and (2) not necessarily made available to the Form I-829 petitioner. If USCIS is using question #13 to determine if the petitioner’s EB-5 funds have been redeployed and/or distributed, the Service should ask the direct question to the petitioner, and not require the petitioner to account for funds of other EB-5 investors.

AILA suggests that USCIS consider this specific comment in the context of the requirements of the Plain Writing Act of 2010. The conjunction described above creates a confusing and potentially undue burden on the investor. Disjunction of the two questions will also be helpful for the policy and OCC officials to draft correspondence templates including RFE’s, Notices of Intent and RFC’s.

Form I-829: Part 8 Information About Job Creation / Questions 1a, 1b, 1c

The Form requires the petitioner provide information about NCE job creation as noted:

Information about direct job creation at the NCE:

1.a. Number of Full-Time Direct and Qualifying Employees
in the NCE at the Time of Your **Initial** Investment

1.b. Number of Full-Time Direct and Qualifying Employees
in the NCE at the Time of Filing This Petition

1.c. Difference in Number of Full-Time Direct and Qualifying
Employees

1.d. Amount of Capital Invested in the NCE That Was Not
Funded by EB-5 Investors

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AILA Comment

Form I-829 separates job creation into that of direct employment at the NCE, and economically modeled employment outside the NCE at question 2 (see insert below). This would appear to indicate that (1) the NCE and JCE are always separate entities; (2) Only the NCE can create direct jobs; and (3) only the JCE can create economically modeled jobs. USCIS should modify the form to request information on direct and indirect job creation created by both the NCE and JCE. This question structure appears to be a separation caused by recordkeeping and processing systems that need to be updated to properly reflect the program requirements. The limitations of these systems should not be reflected in the fields required in the form. Otherwise, USCIS will need to break down the form between direct investment jobs vs. regional center jobs, and even further breakdown the flow of the investment, to determine whether the NCE and JCE are one entity, or are multiple entities, and at which entity are the jobs being created. If USCIS wants to collect NCE and JCE specific information, the form needs a more sophisticated question structure to provide clarity.

In addition, with economically modeled jobs, jobs are created as money is spent. It would be impractical and costly to require a Regional Center to prepare a new report every time an investor makes an investment, (i.e. question 1.a). Without real time economically modeled reporting, a petitioner would not have an answer to question 1.a. Instead, the Service should delete 1.a., or at a minimum re-word the question to: “job creation as a result of investment.”

Information about indirect job creation outside of the NCE (if applicable)

**2.a. Number of Full-Time Economically Direct, Indirect and
Induced Jobs Created as a Result of EB-5 Investment**

**2.b. Amount of Capital From EB-5 Investors That Was
Transferred to the JCE**

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**2.c. Amount of Capital Invested in the JCE That Was Not
Funded by Investors Who Received or are Seeking
Classification as Alien Investors**

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Conclusion

We appreciate the opportunity to comment on the proposed revisions to Form I-829 and its instructions and look forward to a continuing dialogue with DHS on this important matter.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION