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:

Vensiti Inc. 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)). Vensiti Inc. is a private consulting firm which has been providing information technology and software solutions to a range of industries since 2004. Our company regularly uses Form I-129 in order to file petitions to temporarily employ foreign workers in the H-1B visa category, many of whom may be assigned to projects at third-party locations. We appreciate the opportunity to comment on the proposed changes to Form I-129.

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

Vensiti Inc. 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, is duplicative and overly burdensome. USCIS Service Centers already routinely request a letter from the work site that includes these details. Because this information is 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. It is therefore unnecessary to request the same information in a different format.

It is also important to point out that contact individuals at the work sites change frequently. As the typical H-1B visa application provides a three-year validity period, it is highly likely that the contact individual will change at some point over that three-year period. USCIS's re-visiting the petition after adjudication, such as during an FDNS site visit, can result in possible revocation if the contact individual listed on the petition is no longer available to answer questions that may arise.

Part 7. Deemed Export Acknowledgement

Furthermore, before requiring information regarding Deemed Export licenses on Form I-129, the Export Administration Regulations (EAR) and Commerce Control List (CCL) should be clarified. The FAQs listed on the DOC's website have not been updated since 2004, and it is difficult to determine whether the software used by our employees for various projects falls under the CCL because it includes no searchable index. A more user-friendly format of the CCL and EAR should be implemented prior to requiring this information in Form I-129. Furthermore, employers would still be required to undergo the complicated assessment required by the EAR while yielding little or no measurable benefit to national security.

Data Collection

Vensiti Inc. requests that a clear definition of "affiliate" be provided in order for employers to make a determination of their total number of full-time equivalent employees for purposes of determining the

proper filing fees required. It is unclear at this time, for example, whether companies are considered affiliates if the majority shareholder of each is the same individual, or if a group of individual owns both businesses in differing percentages. We therefore request that additional guidance be issued to help petitioners make the proper determination before this requirement is added to the form.

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

Vensiti Inc. 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, and undue burden is therefore placed on H-1B beneficiaries to pay for postage to mail an original form from overseas to his employer in the U.S. We believe that the petitioner's attestation that the beneficiary has been advised of the off-site placement is sufficient.

Changes to Instructions: Amended Petition

The proposed instructions regarding the use of Form I-129 for filing an amended petition indicate that a change in the position's geographic location is one scenario in which a petitioner would file an amended petition. This is troublesome in that the current guidance indicates that a mere location change will *not* be considered a material change, and an amended petition will therefore not be required, if all other aspects of the employment relationship remain the same. In the IT staffing/consulting industry, work locations may change quickly and frequently 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 increase costs to employers and will significantly increase the volume of applications to be adjudicated by USCIS, serving only to increase processing times and create instability for these H-1B workers.

In addition, we suggest that USCIS not require the submission of Form W-2 as evidence of maintenance of status, as it does not always accurately reflect whether an H-1B worker has been paid the proper wage. An H-1B worker may change jobs before a W-2 is issued by relying on the portability provisions of AC21, for example, or a worker may be out of the country for extended periods of time. An adjudicator may therefore incorrectly conclude that a beneficiary was not paid the proper wage. 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,

Hiral Shah
HR Manager
Vensiti Inc.