TechServe ALLIANCE

Advancing Excellence in the IT Services Industry
Formerly NACCB

April 9, 2010

VIA ELECTRONIC MAIL
DHS-USCIS
Chief, Regulatory Products Division
Clearance Office
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Rfs.regs@dhs.gov

RE: Form I-129, Revision of an Existing Information Collection - OMB Control No. 1615-0009

Dear Sir or Madam:

I am writing to submit the following comments to the above-referenced proposed revisions to the Form I-129 published February 3, 2010.

I am the Chief Executive Officer of the TechServe Alliance ("TechServe"). TechServe, formerly known as the National Association of Computer Consultant Businesses (NACCB), is a national trade association representing approximately 350 U.S.-based information technology (IT) staffing and solutions companies. The IT staffing and solutions industry is a multi-billion dollar U.S. industry (the IT staffing segment alone represents approximately $19 billion in annual revenue).

TechServe member companies provide highly skilled computer professionals to clients who need IT technical support and/or services by placing their employees at client sites. IT staffing firms provide essential functional and numerical flexibility to an IT workforce. IT work for businesses (like software development) often consists of discrete projects that may require a wide range of different skills. Because of the limited duration of most projects, it would not make sense for an organization to be permanently staffed with IT professionals possessing all of the skills that may or may not be needed (there are hundreds of different IT skill sets). To do so would be like permanently employing all of the trades that comprise a construction workforce because an as-yet unidentified and undefined construction project may exist in the future. Companies need different skill sets at different times. Like a construction worker, an IT consultant works on a project of limited duration then moves on to the next project (most often at a different organization). IT staffing firms help assemble all or part of the team that is needed for these projects.

Some of our members' clients include: the federal government, government contractors, defense industry businesses, manufacturing businesses, pharmaceutical companies, and other businesses from across the industry spectrum. TechServe's member companies utilize the H-1B visa program as petitioners for H-1B visas. The H-1B visa program allows TechServe

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member companies to access highly qualified IT professionals for their clients that are frequently not otherwise available in the labor marketplace. Without access to the H-1B talent pool, clients in many cases would have to outsource the project offshore depriving all team members of work including U.S. citizens and permanent residents.

Introduction

TechServe notes at the outset that the proposed revisions to the Form I-129 regarding third-party worksite information collection and attestations lack a basis in the regulatory requirements for the H-1B visa program. Additionally, if enacted, these revisions would impose new burdens on IT staffing companies and hinder their participation in the H-1B visa program.

I. The Proposed Revisions Regarding Third-Party Worksites Exceed USCIS's Statutory and Regulatory Authority under the H-1B Program.

The proposed revisions to the Form I-129 and its Instructions require third-party worksite information collection and attestations beyond the information-gathering authorized by the underlying H-1B statute and USCIS regulations. As such, the proposed Form I-129 itself is not authorized.

The regulations state that if an H-1B employee will be performing services in more than one location, the petition "must include an itinerary with the dates and locations of the services or training and must be filed with USCIS as provided in the form instructions." 8 C.F.R. § 214.2(h)(2)(i)(B) USCIS has proposed that if the beneficiary will work off-site pursuant to a third party contract that, in addition to the itinerary requirement, the Form I-129 shall require the name and address of the company where the beneficiary will work as well as the name, title and phone number of a contact person where the beneficiary will work. Because the regulations do not require these data points from petitioners, the Form I-129 should not collect this information either.

In terms of the revisions regarding third-party worksite attestations, USCIS proposes that the petitioner and beneficiary make five attestations in Part D of the Form I-129 H-1B Data Collection Supplement "regarding off-site assignment of H-1B beneficiaries." Similarly, USCIS proposes that the petitioner sign an attestation in Section 1 of the Form I-129 Supplement H that "[i]f I assign the beneficiary to work at a third party worksite, I certify that I will maintain a valid employer-employee relationship with the beneficiary at all times." In general, these attestations lack a basis in the relevant H-1B statute and regulations. Beyond the itinerary requirement, neither the underlying statute nor the accompanying regulations authorize USCIS to distinguish between petitioners who place H-1B workers at their own worksites and those who place H-1B workers at third-party worksites. In effect, the proposed Form I-129 reflects an effort to target a particular class of petitioners without statutory or regulatory authority.

The proposed attestation stating that "[t]he beneficiary will be paid the prevailing rate of pay at any and all off-site locations" is improper for two reasons. First, the attestation is misplaced because enforcement of the prevailing wage requirement is the responsibility of

the Department of Labor (DOL). The H-1B petitioner already makes the prevailing wage attestation by filing the Labor Condition Application (LCA) with DOL under a statutory and regulatory framework. USCIS lacks legal authority to require this attestation. Second, the attestation is inconsistent with DOL regulations, which require that the petitioner pay the H-1B worker the actual or the prevailing wage, whichever is higher. Similarly, the proposed attestation in Section 1 of the Form I-129 Supplement H that "[i]f the beneficiary is assigned to a position in a new location it will obtain and post an LCA for that site prior to reassignment." USCIS is again exceeding its authority as DOL has jurisdiction over enforcement of LCAs.

The proposed Form I-129 also improperly requires beneficiaries who will be placed at third-party worksites to sign the attestations. Again, distinguishing between employment at the petitioner's place of business and employment at a third-party worksite is not authorized by statute or regulation. Given that Form I-129 likely requires the beneficiary's original signature, this new requirement adds a significant burden to IT staffing and consulting firms as beneficiaries are often overseas at the time the petition is being prepared.

II. The Proposed Form I-129 Revisions Establish Burdensome and Excessive Information Collection Requirements.

The majority of TechServe member companies are small businesses and the proposed data collection imposes undue and expensive burden on these businesses. Our members rely on the H-1B visa program to access a wide pool of qualified IT professionals to meet client demand. If enacted, these requirements would place a new expensive burden on our members and all companies within the industry. These additional costs would put them at a competitive disadvantage in a low margin industry and could threaten their overall viability. These effects would be direct and immediate and would have an adverse impact on productivity and their ability to serve their clients.

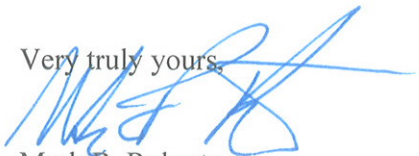
Conclusion

On behalf of our 350 member companies and the IT staffing industry, I urge you to withdraw the proposed revisions to Form I-129 and associated instructions regarding placement of H-1B beneficiaries at third-party worksites. These proposed revisions which exceed USCIS's statutory and regulatory authority, unfairly target IT staffing companies by imposing a new and undue burden not authorized by law. Despite being compliant and utilizing the H-1B program in good faith, many IT staffing companies will be hindered from accessing this essential talent pool causing them significant economic hardship.

USCIS should refocus its efforts on rooting out fraud based on demonstrable evidence, rather than profiling and targeting companies merely because they are IT staffing and consulting companies. IT staffing is a wholly legal and legitimate business model that provides jobs to tens of thousands of workers, the majority of whom are U.S. citizens and permanent residents. Further, it significantly enhances the efficiency of performing U.S.-based IT work---work, which in many cases, would not otherwise be performed at all or would be

"offshored." Accordingly, for the reasons set forth above, we urge you to withdraw the proposed changes.

Very truly yours,



Mark B. Roberts
Chief Executive Officer