

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 3008
Washington, D.C. 20529-2210

Re: OMB No. 1615-0009 Virginia Polytechnic Institute and State University Comments on the 60-Day Notice of Information Collection Under Review: Form I-129, Petition for Nonimmigrant Worker

Dear Mr. Tarragon,

Virginia Polytechnic Institute and State University (Virginia Tech) submits these comments in response to the proposed collection of information notice published in the February 8, 2010 Federal Register concerning the proposal by U.S. Citizenship and Immigration Services (USCIS) to revise Form I-129, Petition for Nonimmigrant Worker. Virginia Tech is a public land-grant university serving the Commonwealth of Virginia, the nation, and the world community. The discovery and dissemination of new knowledge are central to its mission. Through its focus on teaching and learning, research and discovery, and outreach and engagement, the university creates, conveys, and applies knowledge to expand personal growth and opportunity, advance social and community development, foster economic competitiveness, and improve the quality of life.

Virginia Tech supports the comments and conclusions separately filed by the Council on Government Relations (COGR) and Association of American Universities (AAU), the Association of Public and Land Grant Universities (APLU), and the Association of University Export Control Officers (AUECO) in response to the USCIS proposal to add a "Deemed Export Acknowledgement" question to the Immigration petition Form I-129.

Virginia Tech also provides comments relating to this case. Upon review of this proposed "Deemed Export Acknowledgement" change, Virginia Tech has serious concerns regarding form, function, and applicability to certain aspects of the reporting requirements, which, in the academic setting, would create a substantial burden on the day-to-day activities of multiple offices across campus. These concerns are provided in detail in accordance with the four criteria for comments requested by 75 CFR 6212.

Invent the Future

Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility

USCIS's mission is to "secure America's promise as a nation of immigrants by providing accurate and useful information to our customers, granting immigration and citizenship benefits, promoting an awareness and understanding of citizenship, and ensuring the integrity of our immigration system." The information sought in regards to deemed exports from a petitioner and his/her organization does not have practical utility or corresponds to USCIS's mission statement. Specifically, information regarding deemed export licensing is collected by the US Department of Commerce's Bureau of Industry and Security (BIS) when and if it is necessary to file for such permission. In the academic setting, it is common to hire foreign national faculty to educate students and perform research that is not subject to the Export Administration Regulations (EAR) in accordance with 15 CFR 734.7, 734.8, and 734.9. In addition, such individuals may have access to equipment subject to the EAR in these activities; however, the release of technology seldom if ever reaches the threshold of a licensable export of technology requiring a deemed export license. For most technologies, BIS does not require exporters to report the ECCNs of technologies exported by deemed export- unless an export license is required. If such information is not reportable to the agency responsible for compliance with export laws, Virginia Tech does not feel it is necessary—or has any practical utility—for USCIS to require organizations to report such information under the above-described circumstances.

Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used

To satisfy the reporting requirements per these proposed changes, within Virginia Tech's university structure, two separate offices (Office of Export and Secure Research Compliance and the International Support Services (ISS) must coordinate efforts in order to comply with this new requirement at a larger scale than is currently required because immigration and export-control compliance generally do not intersect at the point-of-hire of a foreign national. The level of interaction and co-dependency will vary depending on the constraints of the authorized change in Form I-129, but the fact remains there will be additional administrative burdens on both offices—as well as our faculty and staff—that does not exist today.

Virginia Tech estimates implementing the proposed Deemed Export Acknowledgement can take up to 14 man-hours of work per petition from the all appropriate parties, and not the estimated 2.75 hours per the USCIS analysis. Depending on the final scope and format of the Form I-129 changes, it is highly likely that additional reviews and subsequent filing costs for amended petitions will increase, with little useful information obtained. The vast majority of these petition amendments will be utterly unrelated to reporting technologies that require a deemed export license for the foreign national employee, rather these amended petitions will be filed because of the requirement to report to USCIS technologies

which an employer can lawfully release to an employee, with no export license required and no reporting to BIS required.

Enhance the quality, utility, and clarity of the information to be collected

The Deemed Export Acknowledgement Instructions promulgated in USCIS-0030-0195 are not clear. The instruction states:

” If the technology is subject to the licensing requirements of the EAR, identify the beneficiary Export Control Classification Number (ECCN) of the technology the beneficiary will have access to as a result of employment with your organization.”

The term “beneficiary Export Control Classification Number (ECCN)” has no apparent meaning. Can the USCIS clarify what is meant by the term?

Additionally, the instruction is confusing. It requires reporting an ECCN if “the technology is subject to licensing requirements of the EAR”. EAR 99 technology is subject to the EAR but is not an ECCN. Can the USCIS clarify: is the intent of the instruction to capture EAR99 technology, which is only a deemed export for nationals of Cuba? If not, then the form or instructions need to be clarified to exclude reporting of EAR99 technology.

Finally, there is no room on the form to report multiple ECCNs.

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

There are two significant ways in which USCIS could minimize the burden of the collection of information on respondents. First, USCIS can amend the Deemed Export Acknowledgement to require collection of information only related to the ECCNs for technologies the release of which requires a deemed export license and reporting to the agency of jurisdiction (BIS). In this regard, it is more appropriate to move the criteria currently listed as 1.b-d as a requirement under Option 2 Deemed Export License Required. The proposed change would drastically reduce the collection of unnecessary information as described in detail throughout earlier sections of this correspondence.

Second, USCIS should be able to obtain copies of the export license from the Department of Commerce electronically, rather than requiring employers to copy and provide information already in possession of the United States Government. The employer can report the license number as indicated on the form.

Conclusion

Per the comments herein, Virginia Tech respectfully requests changes to the proposed Deemed Export Acknowledgement currently under consideration within USCIS for the Form I-129 to enhance the efficiency of information and minimize burden on respondents. In closing, Virginia Tech appreciates the opportunity to comment on these proposed changes to the Form I-129, and urges USCIS to seriously consider revising the Form I-129 from its current state to minimize the burden caused by the changes due to the collection of unnecessary information.

Sincerely,



Robert W. Walters