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Response of the Center for Immigration Studies, Washington, D.C., July 21, 2012
to

A Request for Comments by USCIS on
Form I-829, Extension of a Currently Approved Information Collection
Federal Register/ Vol. 77, No 110, Thursday, June 7, 2012/Notices pp 33758-59

By David North for the Center of Immigration Studies

The text of the comment is attached

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Gravity of Situation. Before discussing the details of the form, it may be useful to point out that it relates to a highly controversial, scandal-ridden but vigorously promoted (by the Obama Administration) portion of the immigration system. It involves the EB 5 program which grants batches of green cards to investors and their families after the short-term investment of (usually) half a million dollars.

It is a program for investors, not entrepreneurs; those sending the half million dollar checks do not even need to visit the site of the investment, much less run companies of their own.

According to a USCIS statement at a “stakeholders’ meeting” 70% of the EB-5 applications are for what is known in the trade as “tenant occupancy” transactions, in which the investment is not in an operating company, but in a commercial structure which will be used to house a business. Each half-million-dollar investment is supposed to produce ten jobs; how ten permanent, year-around jobs (none going to the investor’s family) can come from building a structure no more expensive than a nice house in the suburbs is more than a bit of mystery.

More specifically, the I-829 form is designed to remove the conditions which are initially applied to these investors, and their families. Earlier these aliens had secured, via the initial EB-5 process (involving Form I-526), conditional resident forms good for two years of legal status in the U.S. At the end of that period, they are eligible, if they fully qualify, to convert from conditional to full green card status.

The I-829 has been, unusually for USCIS, a form with very high denial rates, reflecting either errors or fraud (or both) on the part of the aliens filing. In the fiscal years 2005 through 2010 the denial rates for this form varied from 17% to 50%, usually in the 30-40% bracket. These are, in the USCIS context, astounding numbers, as the agency routinely says yes to 90-95% of the applications in front of it. In the last one and a half fiscal years there has been a higher percentage of approvals, apparently in response to Administration pressure on the staff to approve these applications, and/or a deliberate effort to place applications in limbo rather than to deny them. Agency data on this point can be seen here [<http://www.docstoc.com/docs/119849060/2012-EB-5-statistics>].

Given this background it is vital that the I-829 form provides the full information needed so that the USCIS staff can make appropriate decisions about these applications. The form is too sparse at the moment to allow staff to distinguish between valid applications and invalid ones.

Specifics of the I-829 Form. These comments are in response to the *Federal Register* notice which can be seen here [http://www.gpo.gov/fdsys/pkg/FR-2012-06-07/pdf/2012-13784.pdf#page=1].

The *Federal Register* notice indicates that the form will be used by 441 applicants a year. Since the previously cited USCIS statistics indicate 2,345 filings of the I-829 in FY 2011, this suggests that either DHS is projecting an 81% decline in this program in the future, despite Administration drumbeating, or the agency's not unusual clumsiness with numbers.

Title of Form. The form's title is: "Petition by Entrepreneur to Remove Conditions." This is a totally misleading title, as we have suggested above.

If you sold stringy squirrel meat as "luscious steaks" you would be, or at least should be, in trouble with the law. The word investor, or better "short-term investor" should be substituted for "entrepreneur." By law, one has to leave the money in the investment for no more than two years, though some developers demand more.

Part 2: box d. This now reads: "I am a conditional permanent resident spouse or child of an entrepreneur, and I am unable to be included in a Petition by Entrepreneur to Remove Conditions (Form I-829) filed by my conditional resident spouse or parent."

This, I suspect, rarely used, but if someone is going to check that box, there should be this additional text: "Explain on separate sheet." If that causes spacing problems, eliminate in Part 1 the unlikely-to-be-used "in care of" line; someone with half a million to invest would be unlikely to be living in a rooming house.

Part 3: "Maiden Name?" Here, in the "Information About Your Husband or Wife" section we encounter the old-fashioned, sexist term "maiden name" instead of "birth name." Does the totally enlightened Secretary of DHS know that her staff is using such an out-of-date terminology?

Part 4. Children. There is room for six (6!) children in this section which takes up more than half the second page of this form. There already is this a (totally appropriate) message at the top of the page saying "List all your children. Attach another sheet (s) of paper if necessary."

The lines for six children is a waste of space which should be used to secure more data on the investment; there should be room for no more than two or three children. Besides, at least half the applicants for this specific program will be from Mainland China, where government policy has limited the number of children in each family.

Part 5. Information About Your Commercial Enterprise. The point of this program is that for every half million investment there are to ten new, full-time, year-around jobs. There is a place in this part of the form to declare the number of full-time employees at the time of the initial investment, "presently" and "difference."

This is a crucial part of the form, but there is very little to help the USCIS staff member figure out if these are accurate statements or not. What we need is text saying:

“Provide the full name, social security number, weekly wages, and date of hiring of each worker hired since the initial investment that relate directly to your investment. If the worker(s) is no longer employed, note date(s) of termination. If you are claiming any indirect job creation, present your claim for this in complete detail.”

With these data, the USCIS staff member would be able to check with IRS to see if these workers were, in fact, hired. The current instructions for the I-829 on these variables are too vague and permissive to be useful.

Part 5. Subsequent Investment in the Enterprise.

There is no need for three boxes in this section, two will do if there is an instruction on the form, as there is for children “attached another sheet(s) of paper, if necessary.”

Immediately below the subsequent investment blocks there is a space to “provide gross and net incomes” for the current (incomplete) year, and two prior ones. These are laid out as follows:

Year	Gross Income	Net Income
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Following the word “income” in each case, there should be the phrase “if any” as many aliens secure no income at all from these investments, and this should be reported in such a way so that USCIS can tally these figures, and make them public. It looks, from the way the form is now designed, that USCIS assumes all investments will produce income; this is not the case.

There should be four columns, not the three shown above, and the last one should read: “Data Source”

The instructions should make it clear that only data on gross and net income from the appropriate IRS forms may be used, and complete copies of any such IRS forms should be attached to the application. It is important that the applicants not only report income, if any, but show that they have paid taxes on that income.

This requirement will not produce much paper for USCIS, as actual income from these investments, in the first two or three years, is highly unlikely.

If there are questions about any of this, please feel free to call me, David North, at (703) 241 1724.