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BY EMAIL

Samantha Deshommes
Acting Chief, Regulatory Coordination
Division, Office of Policy and Strategy
US Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529

Re: Docket ID USCIS2005-0030
OMB Control Number 1615-0009
Petition for a Nonimmigrant Worker, Form I-129

Dear Ms. Deshommes:

Thank you for the opportunity to comment on the proposed revisions to Form I-129, Petition for Nonimmigrant Workers. As general matter, we commend the Service for the general layout of the form and for avoiding use of two column formatting. One column is easier to follow and is consistent with the current form.

We have 11specific comments to the proposed form, which are as follows:

1. Under the header for Part 1, the instruction asks to use the mailing address of the petitioner's "primary" address. The draft instructions, however, do not define what is meant by "primary." It would be helpful if the Service would provide guidance on what it believes to constitute a "primary" office.

2. Part 1, Question 5 "Other Information" contains a field for "Federal Identification Number". It is unclear what Federal Identification Number refers to. If the petitioner is being asked to list its Internal Revenue Service issued "Employer Identification Number", the form should so state.

3. Part1, Question 5 "Other Information" contains a field for "DUNS Number (*if any*)." The form instructions should provide detailed instructions to petitioners who may be unfamiliar with the "Data Universal Numbering System" on how to secure a DUNS Number free of charge from Dunn and Bradstreet, a private company. Furthermore, since

USCIS adjudicators are said to use the DUNS Number in conjunction with a tool to verify the legitimacy and existence of petitioners, the time and effort petitioners expend in securing a DUNS Number and verifying information contained in the Dunn & Bradstreet database should be accounted for in the USCIS's calculation of the public reporting burden of the I-129.

4. Header for Part 2 may contain a typographical error. It reads "Information About This Petitioner". Should it be "Information About This Petition"?

5. Part 3, Question 6 requests the Beneficiary's "Current Physical U.S. Address (*if applicable*)". It is unclear what is being requested and its relevancy. The form should clarify whether it seeks the beneficiary's *residential* address or if the correct response is literally the beneficiary's "current" whereabouts on the date the petition is signed by the petitioner or its representative.

6. Part 4, Question 12 is overly broad and burdensome. It is unclear what the utility of a positive or negative response would be to the adjudication of the benefit sought. A response would relate to state of affairs as of the time of filing the petition and would seem to be of little use to determining whether a bona fide employer-employee relationship will exist during the requested petition validity dates. If the Service, after review of the evidence presented with the petition, has questions about whether a bona fide employer-employee relationship will be established upon the beneficiary's admission to the United States in an employment based nonimmigrant classification, it is certainly able to issue a focused Request for Evidence on that subject. In addition, a foreign national may have ownership in mutual funds, which, in turn may own shares in the Petitioner. It would be disruptive and time consuming, especially for publicly traded companies, to ask foreign national's to review their entire investment portfolio and to predict whether on the date of filing any they had any interest in the petitioner. Furthermore, the question would put petitioners in the untenable position of verifying under penalty of perjury the truth of a matter over which they have no control or first-hand knowledge.

7. Part 6 "Certification regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States" should be eliminated from the Form I-129. The USCIS has not provided adequate justification as to how a petitioner's response relates to its adjudication of a benefit under the Immigration and Nationality Act (INA). The form instructions provide that the "U.S. Government requires each company or other entity that files a Form I-129" to certify its review and compliance with the EAR and ITAR. There is no citation to any provision of the INA, Title 8 of the Code of Federal Regulations, or any other provision of law for the proposition that the Form I-129 is the vehicle to capture this information. In addition, based on this logic, the USCIS could ask a petitioner about it compliance with *any* matter over which some component of the U.S. Government has jurisdiction. The inclusion of Part 6 is inconsistent with the spirit, if not the terms, of efforts to reduce and eliminate unnecessary data collection. The

information collected by Part 6 has not been shown to be necessary to the "proper performance of the functions of the" USCIS and should therefore be eliminated.

8. Part 8, Preparer's Declaration should be modified. The proposed declaration needlessly requires attorney's to affirm under penalty of perjury that the form was prepared "on behalf of the petitioner" and intrudes on the attorney-client relationship. An attorney's role in the visa petition process is governed by state and federal rules of professional conduct. Those rules make clear that attorneys are to treat administrative adjudication with the same candor and truthfulness as judicial tribunals. Having attorneys make a declaration under penalty of perjury therefore is unnecessary. Furthermore, the proposed declaration interferes with the attorney-client relationship by requiring attorneys to disclose the contents and details of privileged and confidential attorney-client communication. Unless ordered by a tribunal of competent jurisdiction, an attorney is duty bound to keep confidential his or her communication with a client.

In addition, there is no provision in the INA or Title 8 of the Code of Federal Regulations which prohibits a beneficiary of a visa petition from retaining his or her own counsel to advise and assist a petitioner in the preparation of an I-129. Rules of professional conduct may deem such assistance as creating an attorney-client relationship between the attorney and the petitioner. However, the creation of such putative relationship would not change the essential fact that the attorney prepared the form on behalf of the beneficiary. It is of little relevance on whose behalf the attorney prepared the form and the declaration should be modified.

9. E-Supplement, p. 10 , Section 3: Preparer's Declaration--Please see comments above (#7) as they are applicable to this section also.

10. Page 17, H-1B Data Collection Supplement: Section 3, Numerical Limitation Information, part g: This section's wording is better than the current version regarding those that may have received a cap exempt number versus a cap subject.
10. Page 20, Supplement L, Section 1: It appears that this section does not request proof of time spent in H or L status via I-94, I-797, unlike the H-Supplement which remains unchanged. This is inconsistent and would possibly require more work for those requesting additional H-time or would provoke a Request for Evidence for those that are trying to show L and H time used for an L-1 extension.

11. The proposed new attestation of the R-1 supplement has been greatly expanded to include this statement: "Copies of documents submitted are exact photocopies of unaltered original documents, and I understand that as a petitioner, I may be required to submit original documents to US Citizenship & Immigration Services (USCIS) at a later date. Furthermore, I authorize the release of any information from my records that USCIS may need to make a decision on my petition. I furthermore authorize release of information contained in this form, any supporting documents, and my USCIS records to other entities and persons where necessary for the administration of US immigration

laws." This is the only Form I-129 supplement that has language regarding certification of photocopies.

The Adjudicator's Field Manual at Chapter 11-1 states:

> "Effective immediately, the Service will no longer routinely require submission of original documents or "certified copies." Instead, ordinary legible photocopies of such documents (including naturalization certificates and alien registration cards) will be acceptable for initial filing and approval of petitions and applications. At the discretion of the adjudicator, original documents may still be required in individual cases. In addition, whenever a personal interview is required, original documents will be presented for review and comparison and returned to the applicant or petitioner at the time of the interview. Instructions on all forms will be amended and conforming regulations, operations instructions and other materials will be similarly changed."

Therefore, this statement appears unnecessary to the R-1 supplement. The statement is also overly broad regarding release of information and should indicate that USCIS will take care in its use of private information in compliance with the Privacy Act of 1974 and to consult with established codes of Fair Information Practice to balance the need for information to carry forth US immigration laws while protecting privacy. See Executive Office of the President, Office of Management and Budget, Jeffry D. Zients, Deputy Director for Management and Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, Memo M-11-02, November 3, 2010, entitled: "Sharing Data While Protecting Privacy."

Thank you for your consideration of our comments. If you have any questions, please do not hesitate to contact us.

Respectfully submitted,

Iandoli & Desai, P.C.

By: _____
Prasant D. Desai, Esq.