



September 3, 2013

Submitted via www.regulations.gov

Attention: United States Citizenship and Immigration Services
Office of Policy and Strategy
Regulatory Coordination Division
20 Massachusetts Avenue NW.
Washington, DC 20529–2140

Re: Petition for a Nonimmigrant Worker, Form I-129; Revision of a Currently Approved Collection, published at 78 Fed. Reg. 40490- 40491 (July 5, 2013)

Dear Sir or Madam:

The American Council on International Personnel (ACIP) is pleased to submit these comments in connection to the proposed revisions of Form I-129, Petition for a Nonimmigrant Worker, and Instructions for Form I-129. ACIP is grateful for the continued opportunity to provide input to USCIS on updates and modernization of the forms our members use.

ACIP is an organization comprised of over 200 corporate and institutional members with an interest in the movement of personnel across national borders. Each of our members employs at least 500 employees worldwide, and in total, ACIP members employ millions of United States citizens and foreign nationals in all industries throughout the United States. ACIP sponsors seminars and produces publications aimed at educating human resource and legal professionals on compliance with immigration and employment verification laws, while working with Congress and the Executive Branch to facilitate the movement of international personnel.

ACIP is an affiliate of the Society for Human Resource Management (SHRM), the world's largest association devoted to human resource management. Representing more than 250,000 members in over 140 countries, the Society serves the needs of HR professionals and advances the interests of the HR profession. Founded in 1948, SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China and India.

With regard to Form I-129 and its instructions, ACIP recommends simplification of the Petitioner's Declaration to avoid unnecessary and burdensome processes for review and agreement by allowing the signatory simply to attest that the answers are truthful; focusing the instructions on the details of how to submit the petition rather than copying or paraphrasing legal requirements that can be found in the statute and/or regulations; ensuring that instructions clearly state what supplements need to be filed for each visa category; providing clarifications with regard to the instructions for O and Q visas; and including instructions for filing E-3 visas from inside the United States.

COMMENTS AND RECOMMENDATION REGARDING PREPARER'S DECLARATION

Simplify Petitioner's Declaration to avoid unnecessary and burdensome processes for review and agreement by allowing the signatory simply to attest that the answers are truthful.

The proposed revisions to Form I-129 include a preparer's declaration in Part 8, to be completed by outside counsel and other third-party preparers, (under the heading "The Declaration, Signature, and Contact Information of Person Preparing Form"). This declaration is repeated in the proposed revisions to the Trade Agreement Supplement to Form I-129.

The declaration reads, in part:

I completed the form based only on responses the petitioner provided to me. After completing the form, I *reviewed* it and all of the petitioner's responses with the petitioner, who *agreed* with every answer he or she provided for each question on the form and, when required, supplied additional information to respond to a question on the form. (Emphasis added)

This declaration is problematic for many ACIP members, who are large-volume filers of Form I-129. Our members construct Form I-129 filings by pulling information from different sources and processes within their operations. Typically, our members will provide this information to outside counsel, who will then prepare the form. While some standing information changes little in a short period of time (number of employees, the address of the petitioner, annual income) other information is particular to each case and must be obtained from various sources, such as the beneficiary, his or her manager and the human resources and legal departments.

For our members, the declaration's requirements could be burdensome to the point of impracticality depending on the interpretation of "review" and "agreement." This burden could be avoided by allowing the signatory simply to attest that the answers are truthful.

a. Interpretations of the "review" required by the petitioner

i. A practical interpretation of "review"

A practical approach to the "review" requirement would simply require our members to designate a person to have sufficient knowledge of standing information for preparation of Form I-129 to declare agreement with the answers. The person would not need to go through the formality of repetitive review of each petition.

- ii. An unnecessarily strict interpretation of “review”

A strict reading of the language would require the preparer of the form to go through its contents line-by-line with the petitioner, *ad nauseum*, for each Form I-129. This would be a repetitive, time-consuming and costly process that would be impractical for our members and their attorneys or representatives.

b. Interpretations of the “agreement” required by the petitioner

- i. A practical interpretation of the “agreed” by the petitioner

A practical interpretation of “agreement” would allow the signatory representing our member organizations to agree with the answers based on knowledge of standing information and that standard processes were followed and agree that the third-party preparer filled out the form correctly.

- ii. An unnecessarily strict interpretation of the “agreed” by the petitioner

A strict interpretation of “agreed” could require the signatory for our member organizations to personally verify and extensively proofread standard information in Form I-129 before providing agreement.

c. Impact

Unless a reasonable, practical interpretation is given to both the “review” and “agreed” requirements, the proposed Declaration in Part 8 will impose unnecessarily burdensome and unworkable requirements on petitioners. Specifically, strict interpretations would create tedious and redundant requirements for petitioners to do a line-by-line review and analysis of each Form I-129 and re-confirm all the facts they had provided in the first place before each petition can be filed with USCIS.

A recent survey of ACIP members shows that our members filed an average of 153 Forms I-129 in 2012. For many of our members, the number is much higher. For instance, one member reports that they filed approximately 1500 Forms I-129 in 2012 (including extensions), and have already filed approximately 1,700 in 2013. This number could easily reach 2,000 by the end of the year.

One ACIP member estimates that individual review of each petition would take a minimum of 10 minutes. For our average member in 2012, this would amount to 25.5 hours of repetitive, perfunctory review. For a member who files 2,000 Forms I-129, this would add over 300 hours (or 3.5 weeks of full-time work) to perform such reviews.

Further, if the reviewer must independently confirm each piece of data gained from other sources for the petition, then the additional time needed required would be literally several hours *per petition*.

d. Proposed alternative

Our members need clarification on the type of “review” and “agreement” required. If the review required by the signatory merely requires confirmation that reasonable, established processes were in place and followed, then the Preparer’s Declaration in Part 8 and in the Trade Agreement Supplement should be amended to allow the signatory simply to attest that the answers are truthful.

One possible wording would be the following, with or without the bracketed language:

“I completed the form based only on responses the petitioner provided to me, and the petitioner has agreed to the contents of the form [based on the internal processes established by the petitioner to gather such information.]”

This is similar in scope to the type of declaration a financial officer provides when signing an organization’s tax return. The financial officer does not complete the tax return nor double-check the work of every person who contributes information to the return; by signing the return, the financial officer is attesting to the answers based on knowledge of the processes that created the return.

COMMENTS AND RECOMMENDATIONS FOR INSTRUCTIONS

We respectfully suggest the following with regard to the proposed changes to the Instructions for Form I-129:

1. **Focus the instructions on the details of how to submit the petition rather than copying or paraphrasing legal requirements that can be found in the statute and/or regulations.**

The existing Instructions for Form I-129 are 24 pages long for a 35-page form (including all supplements). The proposed revisions would increase the length of the instructions to 29 pages and increase the form itself to 36 pages (including all supplements). We believe that adding more detail to the instructions will lead petitioners to rely more upon the instructions and less on the regulations. There is no “short-cut” to learning the rules; a fundamental understanding of the statute, regulations and relevant policy guidance is required to complete Form I-129. Extensive instructions could well leave a petitioner with the impression that all necessary information is contained in the instructions.

We recommend that USCIS eliminate redundant, and often confusing, explanatory information from the instructions when that information can be found in existing regulations and policy guidance. Aside from furthering the goal of paperwork reduction, this recommendation minimizes the risk of instructions which contain inaccurate or outdated explanations and summaries; instead, USCIS could provide links in the instructions to the USCIS website where the current statute, regulations, policy memoranda and online policy manual are available.

The filing instructions, fee information and other technical information on pages 1 through 7 and 26 through 29 of the proposed instructions should be the heart of the instructions. This information can be enhanced by providing filing tips, such as the recommended order of document submission, how to attach checks, how to fasten documents together, and other practical instructions that will aid service centers and lockboxes in processing the filings. This information is not readily available elsewhere and would presumably enhance the quality of submissions and, consequently, reduce the need for Requests for Evidence (RFEs).

The instructions regarding specific visa categories, (pages 7 through page 25 of the proposed instructions) can and should be reduced significantly. It is unlikely that a petitioner filing Form I-129 is completely unaware of the visa category for which he or she will be applying or the fact that each visa category is subject to extensive regulations. Even if this were the case, the instructions are simply not the appropriate place for a petitioner to learn all the requirements of any visa classification: again, he or she should be consulting the statute, regulations and agency policy guidance.

By way of example, the proposed instructions for H-1Bs run four pages (pages 8 through 11). They include details regarding ACWIA and other laws pertaining to fees and exemptions (which is redundant, as the fees are outlined again at the end of the instructions and on the form itself) and instructions on the meaning of every field on the H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement. The instructions for H-1Bs could be reduced to about one page by providing the appropriate links to current regulations and policy guidance and simply instructing which supplements and supporting documents need to be filed with the petition and what order is preferred by USCIS.

If these and similar changes were made to the instructions for each visa category, the length of the instructions could be reduced dramatically, petitioners would be provided with necessary (and non-redundant or conflicting) information, the quality of filings would be improved, adjudicators would benefit and the sheer volume of unnecessary paperwork would be reduced.

2. Ensure that instructions clearly state what supplements need to be filed for each visa category.

The proposed instructions list the supporting evidence required for each visa category, but fail to state what supplements are required. For instance, the instructions for H-1Bs list six pieces of supporting documentation that should be filed with an H-1B, but fail to mention that the H Classification Supplement must be filed with a standard H-1B; further, references to the required H-1B1 Data Collection and Filing Fee Exemption Supplement are only found later in

the instructions. In this example, a petitioner should be able to consult the instructions and find one list of all required evidence and documentation, including the two separate supplements. We recommend that the instructions be revised to read “The petition must be . . . filed with the H Classification Supplement, the H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement and the following supporting documents” followed by documents 1 through 6. We recommend similar revisions for all other visa types and their corresponding supplements.

3. Make the following material changes to the instructions.

As stated above, ACIP urges USCIS to simplify, not complicate, Form I-129 by eliminating the detailed, but incomplete, descriptions of visa classifications and filing requirements in the proposed Form I-129 instructions. However, if USCIS chooses to include such detailed information in the instructions, we recommend the following specific changes:

a. Clarify the written consultation requirements for O-1A and O-1B visas.

The written consultation requirements for O visas continue to be confusing in both the regulations and in the Form I-129 instructions. For instance, the requirements for O-1A continue to reference consultations from “management organizations,” even though these consultations are required only for O-1B petitions.

Furthermore, the instructions regarding the requirements for O-1B consultations remain extremely difficult to understand. To the best of our knowledge, for an O-1B in Arts, a consultation is required from a peer group (which may include a labor organization) or a person with expertise in the area of the alien's ability. By contrast, for an O-1B in motion pictures or television, consultations are required from *two* organizations: the appropriate labor organization (if one exists) representing the alien's occupational peers and a management organization in the area of the alien's ability.

We realize the modification of regulations is outside the scope of the revision of the Form I-129 instructions. However, USCIS must be careful not to exacerbate confusing regulatory requirements with equally confusing, but inconsistent, instructions.

We thus recommend a wider process to clarify the requirement for written consultations.

b. Clarify that there is no separate approval process for cultural exchange programs for Q-1 visas.

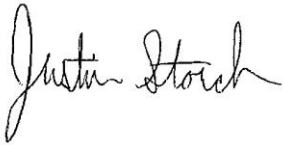
The proposed instructions on page 20 regarding Q-1 visas state that the classification is for aliens participating in exchange programs “approved by USCIS for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien’s nationality.” This language is misleading as it implies that a separate approval process exists for the exchange program itself. The language should be modified to clarify that the qualifications of both the program itself and the beneficiary are reviewed simultaneously as part of the Form I-129 adjudication process.

c. Information on filing E-3s from inside the United States should be included in the instructions.

While the instructions note the form can be used to file for E-3 status for a beneficiary who is physically present in the United States, there are no instructions regarding how to do so. If detailed instructions remain for other visa categories, we recommend that similarly detailed instructions be added for E-3s.

ACIP once again thanks USCIS for the opportunity to comment on the proposed revisions to Form I-129 and its Instructions. We would be pleased to provide additional information and feedback at any time.

Sincerely,

A handwritten signature in black ink that reads "Justin Storch". The signature is written in a cursive, flowing style.

Justin Storch
Manager or Agency Liaison
American Council on International Personnel