



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

November 14, 2014

Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Policy and Strategy
Chief, Regulatory Coordination Division
20 Massachusetts Avenue NW
Washington, DC 20529-2140

Submitted via: www.regulations.gov
Docket ID No. USCIS-2006-0009

Re: OMB Control Number 1615-0045

USCIS 60-Day Notice and Request for Comments: Petition by Entrepreneur to Remove Conditions, Form I-829; Revision of a Currently Approved Collection.

To Whom It May Concern:

The American Immigration Lawyers Association (AILA) submits the following comments in response to the above-referenced 60-day notice and request for comments on the proposed changes to Form I-829, Petition by Entrepreneur to Remove Conditions, published in the Federal Register on September 15, 2014.¹

AILA is a voluntary bar association of more than 13,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on this notice and believe that our members' collective expertise provides experience that makes us particularly well-qualified to offer views that will benefit the public and the government. Toward that end, we offer the following:

Form I-829 General Comments:

- **“START HERE – Type or print legibly in black ink”:** The I-829 form and instructions should be amended to permit petitioners to complete and sign the form in either blue or

¹ 79 Fed. Reg. 55008 (Sept. 15, 2014).

black ink. Requiring black ink alone is unnecessarily restrictive. This change should be implemented for all USCIS forms.

- Form I-829 should be amended to enable the collection of data on job creation (see below).

Part 1. Information About Regional Center

- The petitioner should be able to provide either the “Regional Center Identification Number” in Item 2.b. or the “Receipt number for the approved Form I-924” in Item 2.c. to identify the Regional Center.

In addition, the form and instructions must take into account that many Regional Centers were approved by USCIS before the introduction of Form I-924 and may not have a Regional Center Identification number or a receipt number from an I-924 approval. Instructions should be added to provide guidance as to how petitioners should identify such Regional Centers. For example, the form could request the Regional Center’s Receipt Number for its original designation instead of referring to the “Receipt Number for the approved Form I-924.”

- Item 2.c. should also be amended (or a new item should be created) to allow the petitioner to indicate whether the Form I-829 and preceding Form I-526 were based upon an approved Form I-924 Exemplar. Space should also be provided to allow the petitioner to enter the USCIS receipt number for an Approved Exemplar Form I-924 (if any).
- The term “Pilot” should be removed from Item 2.c.

Part 2. Basis for Petition

- **Item 2:** The current wording is confusing. We suggest changing “but I am not included in the entrepreneur’s Form I-829” to “and I am filing Form I-829 separately from the entrepreneur’s Form I-829.”

In addition, if the spouse, former spouse, or child is filing Form I-829 separately from the entrepreneur, space should be provided to allow the petitioner to identify the entrepreneur by name and date of birth, and for the receipt number for the entrepreneur’s I-829, if available.

While the information requested in Part 4, “Information About Your Current Spouse or Your Former Conditional Permanent Resident Spouse” will cover some situations, it does

not provide the opportunity for a child of an entrepreneur who is filing separately to identify the name of the entrepreneur.

Part 3. Information about You

- **Item 5:** “Form I-526 Receipt Number (if any).” We note that there will always be an I-526 receipt number associated with the matter. By noting “if any” is it USCIS’s intention that dependent spouses and children who are filing Form I-829 separately should not list the principal’s I-526 receipt number, but should, rather, respond with “N/A”?

Part 4. Information About Your Current Spouse or Your Former Conditional Permanent Resident Spouse

and

Part 5. Information About Your Children

- We recommend that Questions 16 and 17 in Part 4, and the questions in Part 5, which seek information as to the criminal history of the petitioner’s spouse and children be removed. The petitioner / immigrant entrepreneur might not be aware of the criminal history of his or her spouse and children, and cannot swear under penalty of perjury, as is required when signing the form, that such information is true and correct.

Part 6. Your Biographic Information

- Given that biometrics are captured during the initial immigrant visa application process and following the filing of Form I-829, there appears to be little to be gained by including the detailed biometrics questions in Part 6 of the form. We recommend deleting all redundant biometric questions such as ethnicity, race, height, weight, and eye color.

Part 7. Information About the New Commercial Enterprise (NCE)

- **Question 10:** “Included Industries.” This question is confusing because it does not explain whether the NAICS codes requested are for the New Commercial Enterprise (NCE) or the Job Creating Enterprise (JCE). It is not uncommon for an NCE associated with a regional center to raise EB-5 capital for the purpose of providing financial support to several job creating entities in a variety of industries. Does USCIS seek the NAICS code(s) that correlate with the NCE alone, or those that correlate with the activities of the JCE associated with the entrepreneur’s I-526 petition?

- If NAICS codes for the JCE are sought for data collection purposes additional space should be provided.
- In addition, Item 10, “Included Industries” and Item 7 “Nature of Business” seems a bit redundant. At a minimum, these two items should be placed next to each other since they appear to be soliciting the same or similar business/industry information.
- The draft Form I-829 separates questions regarding the **initial investment** (Items 13, 14, and 15) from questions regarding **subsequent investments** (Items 20, a, b, and c). We recommend that all questions about the petitioner’s total investment be consolidated into a single, unified section. Similarly, we recommend creating a separate section on job creation (including Items 17, 18, and 19, and other questions related to job creation discussed below).
- USCIS should add questions about the total investment to include:
 - Has the entrepreneur sustained the minimum required capital investment in the NCE during the 24 month period of conditional residency or as of the date of filing this petition? YES/NO. If no, explain.
 - Has the NCE redeemed or transferred back to the entrepreneur any portion of his or her minimum capital investment during the 24 month period of conditional permanent residency or as of the date of filing this petition? YES/NO. If yes, explain.
- It is unclear whether the text following Item 16, regarding “Full-time Positions and Qualifying Employees,” applies only to troubled businesses. However, as described below, we recommend creating a separate section on job creation, with clear labeling and distinct sections.

Create New Part 8 Dedicated to Questions on Job Creation

- We urge USCIS to create a separate section in Form I-829 addressing job creation in the three traditional EB-5 program segments and include questions tailored to each. Sub-section headings should include:
 - **For New Commercial Enterprises Not Associated with a Regional Center**
 - **For New Commercial Enterprises Associated with a Regional Center**
 - **For Troubled Businesses**

- Because economists and USCIS interpret the term “direct jobs” differently, we recommend that USCIS clearly explain whether references to “direct jobs” refer to “direct jobs” employed directly by the NCE or “direct jobs” determined based on the project’s economic methodology.
- We also recommend adding a section requesting information on a job allocation agreement, if any. For example, the question could read: “If multiple immigrant entrepreneurs are investing in the same capital investment project, is there an agreement pursuant to 8 CFR §204.6(g)(2) regarding the allocation of jobs created among immigrant entrepreneurs? If yes, please explain the terms of the job allocation agreement (including any agreement between multiple NCEs investing in the same project) and attach a copy of such agreement.”
- The form should request the following information regarding investment in the NCE:
 - Total amount of EB-5 capital invested from in the NCE.
 - Total number of EB-5 immigrant entrepreneurs who have invested or are projected to invest in the NCE.

Part 8. Petitioner’s Certification

- The text in paragraph 2 of the Petitioner’s Certification is so broad that it permits the release of the Petitioner’s information and documents to any branch of the U.S. Government, private companies, and even the governments of foreign countries. This release of information must be revised to protect the privacy interests of the conditional permanent resident, and to also protect business records and business information related to the JCE and its capital investment projects.

Part 8 - Acknowledgement of Appointment at USCIS Application Support Center

- This acknowledgement is unnecessary and redundant. It is certainly not necessary to include a box for the petitioner to print his or her name.

Comments to Proposed Form I-829 Instructions

Page 1: What Is the Purpose of Form I-829?

The instructions state:

“Form I-829 is for immigrant entrepreneurs to petition to remove the conditions on their, and certain dependents’ [conditional] permanent resident status which they obtained based on investment in a new commercial enterprise.”

Add the word “conditional” (as indicated in red) in front of “permanent.”

Page 2: How To Fill Out Form I-829

- Allow Form I-829 to be completed and signed in blue or black ink, as described above.

Page 8: Job Creation (Item Numbers 18.a. – 19.b.)

- In the job creation description, the instructions should be amended to add references to “Induced Jobs” (jobs calculated through an economic model that are created when direct and indirect employees spend their increased income on consumer goods and services), and “Saved Jobs” for troubled businesses.

Conclusion

AILA appreciates the opportunity comment on this notice, and we look forward to a continuing dialogue with USCIS on these issues.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION