

Practice Areas

BUSINESS

L-1 Visas

H-1B

H-1B Transfers

Visas

TN Visas (NAFTA)

Special Visas for Other Countries:

- Australia
- Chile / SingaporeE-1

E-1 Visas

E-2 Visas

PERM Labor Certification

HOSPITALS /HEALTHCARE

H-1C Visas

H-1B Visas for Doctors

FAMILY

Spouse / Fiancée Visas

Permanent Residence for Family
within U.S.

Naturalization /Citizenship

AMNESTY

Technology Export Certifications by Employers of Foreign Workers

Posted: January 20th, 2011

As part of an effort to crack down on technology and technical data leaks to foreign countries, the U.S. Citizenship and Immigration Services (“USCIS”) mandated in late November the filing of a new Form I-129 to be completed by employers of foreign workers.

But numerous employers complained that the export control attestations required by the new form are imposing due diligence exercises on the employers that necessitate compliance efforts that take time to develop.

Thus, the USCIS announced recently that domestic employers petitioning for foreign workers seeking visas that might involve technology license certification will not be required to complete Part 6 of Form I-129 (containing the technology license certifications) until Feb. 20, 2011.

To complete Form I-129 and comply with the law, an employer must determine the nature of the technology and technical data to which a foreign worker will be exposed, and must further determine if a technology export license will be required in order to sponsor such a worker.

The new form specifically requires an affirmation that:

- A technology export license is not required from the Department of Commerce or the Department of State to release any technological or technical data the employer has; or
- The employer will prevent access by any foreign worker to any of its controlled technology or technical data (as defined by federal regulations) until a technology export license or other appropriate authorization has been received.

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Under the Export Administration Regulations (“EAR”) and International Traffic in Arms Regulations (“ITAR”) an export of controlled technology is deemed to have occurred when a foreign national employee has been given access to source code, blueprints or other technical data that is subject to EAR, ITAR or other federal regulations. Such an export, if unauthorized, can constitute a federal crime.

Those responsible for completing Form I-129 should therefore consult with counsel to determine whether their company needs to procure a technology export license and/or needs to implement appropriate technology disclosure safeguards.

If you are an employer or agent of an employer responsible for compliance with immigration rules, please do not hesitate to contact our office for help at (847)564-0712. You are also welcome to visit the pertinent section of [our Website](#) for additional information about our services.