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Additional Employer Certification Required for Revised Form I-129, Petition for a Nonimmigrant Worker

As of December 23, 2010, the United States Citizenship and Immigration Services (USCIS) requires applicants submitting a *Petition for a Nonimmigrant Worker* (Form I-129) to use the revised Form I-129, which indicates a revision date of November 23, 2010 (Revised Form). The Revised Form includes a new Part 6, entitled *Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States*. In essence, the Revised Form requires applicants to certify that they understand their export control obligations and that they have systems in place to assure that controlled technology is not released to foreign nationals unless specifically authorized by the United States. Commencing February 20, 2011, applicants must complete Part 6 of the Revised Form, if applicable.

Background

Pursuant to the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR), the United States controls the export of certain technology and technical data. Controlled technology and technical data may be deemed to be exported when it is transferred or released in the United States to a foreign person, thus triggering EAR or ITAR licensing requirements. U.S. persons are required to obtain authorization from the Department of Commerce's Bureau of Industry and Security (BIS) or the State Department's Directorate of Defense Trade Controls (DDTC) prior to transferring such controlled technology or technical data to a foreign person. The release to a foreign person of controlled technology or technical data without first obtaining a license may subject the person responsible for the export to penalties in excess of \$250,000.00 per transaction.

Commencing February 20, 2011, applicants submitting Revised Forms for H-1B, H-1B1 (Free Trade aliens from Chile and Singapore), L-1 and O-1A visa types shall be required to certify that they have:

- reviewed the EAR and ITAR; and
- determined that either
 - a license is not required from either BIS or DDTC to release such technology or technical data to the foreign person; or
 - a license is required from BIS and/or DDTC to release such technology or technical data to the beneficiary and the petitioner

will prevent access to the controlled technology or technical data by the beneficiary until and unless the petitioner has received the required license or other authorization to release it to the beneficiary.

The EAR and the ITAR are lengthy and technical regulations that can be difficult to review and understand. Thompson Coburn LLP has developed a checklist to assist companies in assessing whether they have a Revised Form I-129 Part 6 issue. Please do not hesitate to contact us for further assistance or to receive a copy of the checklist.

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