SUPPORTING STATEMENT

Petition for Nonimmigrant Worker

(Form I-129)

OMB No. 1615-0009

A. Justification:

1. This form is necessary for an employer to petition for an alien to come to the U.S. temporarily to perform services or labor, or to receive training, in the following categories: H-1B, H-1C, H-2A, H-2B, H-3, L-1, O-1, O-2, P-1, P-2, P-3, Q-1, or R-1 nonimmigrant worker.

   This form is also necessary for an employer to petition for an extension of stay or change of status for an alien as an E-1, E-2, E-3, and Free Trade H-1B1 Chile and Singapore applicants and TN applicants who are in the U.S. A petition is not required to apply for an E-1 or E-2 nonimmigrant visa or admission as a TN nonimmigrant. A petition is only required to apply for a change to one of these classifications.

   Authority: 8 CFR 214.2(e)(1), (h)(2)(i)(A), (l)(2)(i), (o)(2)(i), (p)(2)(i), (q)(3)(i), and (r)(3).

2. The data collected on this form is used by U.S. Citizenship and Immigration Services (USCIS) to determine eligibility for the requested immigration benefits. The form serves the purpose of standardizing requests for the benefit, and ensuring that the basic

information required to assess eligibility is provided by the applicant. This form is being revised. (See table of changes).

3. The use of this form provides the most efficient means for collecting and processing the required data. Currently USCIS allows for e-filing of the Form I-129. http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f3fe194d3e88d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=9059d9808bcbd010VgnVCM100000d1f1d6a1RCRD

4. A review of the Forms Inventory Report revealed no duplication of effort, and there is no other similar information currently available that can be used for this purpose.

5. This collection of information does not have an impact on small businesses or other small entities.

6. If the information is not collected, an employer would not be able to petition for an alien to come to the U.S. temporarily to perform services or labor, or to receive training, in the following categories: H-1B, H-1C, H-2A, H-2B, H-3, L-1, O-1, O-2, P-1, P-2, P-3, Q-1, or R-1 nonimmigrant worker.

7. The special circumstances contained in item 7 of the supporting statement are not applicable to this information collection.

8. On February 8, 2010, USCIS published a 60-day notice in the Federal Register at 75 FR 6212. On June 30, 2010, USCIS published a 30-day notice in the Federal Register at 75

FR 37822. USCIS received input from 54 commenters on the 60-day notice. The following is a discussion of the comments and USCIS' response.

Proposed Revisions to Instructions

Two commenters objected to requesting that petitioners submit a duplicate copy of the petition and all supporting documentation. The commenters stated that this requirement is unnecessary and wasteful. One of the commenters recommended coordination with the Department of State (DOS) to require duplicate copies of only those documents that are actually scanned into the Petition Information Management System (PIMS) by DOS.

Response: USCIS requests a duplicate copy of the petition and supporting documentation to assist in visa processing abroad. USCIS cannot specify the supporting documents required by DOS in duplicate by classification. USCIS hopes at some point in the future to be able to provide DOS with an electronic copy of an approved petition and supporting documentation once USCIS' business transformation project is implemented.

Twenty-five commenters expressed concern regarding the explanation provided on the draft instructions regarding when an amended petition is required. All of the commenters stated that they believe that the instructions conflict with USCIS policy/guidance as outlined in USCIS personnel responses to inquiries on the topic.

Response: USCIS has revised the wording of this section to address stakeholder concerns while the issue of additional guidance clarifying what constitutes a material change is under review.

Three commenters expressed support of the language in the instructions for H-1B petitions which state that the petitioner must submit evidence that a Labor Condition Application (LCA) has been filed with Department of Labor (DOL). They believe that the fact that the language has not been changed shows a shift in policy to allow for filing of an H-1B petition with an LCA that has not yet been certified by DOL.

Response: USCIS is not removing the requirement to submit a certified LCA at the time of filing the H-1B petition. USCIS has revised the form instructions to make it clear that the certified LCA is required at the time of filing.

One commenter objected to revisions to the instructions for the L-1A and L-1B nonimmigrant classification. The commenter indicated that the revised instructions appear to contain a typographical error in the definition of petitioner for the L-1A classification. The commenter also objected to the definition of an L-1B nonimmigrant as "an alien coming temporarily to perform services that require specialized knowledge." The commenter believes that the word "require" should be changed to "involve" or "entail."

Response: USCIS has revised the L-1A instructions to address stakeholders concerns. With regards to the L-1B instructions, 8 CFR 214.2(l)(1)(i) uses the word "require." As such, USCIS will keep the word "require" in the instructions.

Forty-six commenters indicated opposition to the inclusion of the Deemed Export Acknowledgement to the instructions. Almost all of the commenters believe that the inclusion of the Deemed Export Acknowledgement goes beyond the authority of USCIS as Department of Commerce (DOC) and DOS have regulatory authority over export

control. Twenty-one of the commenters stated that the Export Administration Regulations and the Commerce Control List need to be clarified before this section is added to the instructions. A number of commenters stated that USCIS should not add the Deemed Export Acknowledgement while the Administration is reviewing current export control policies. Four of the commenters mentioned that the proposed instructions appear to include a loophole as they fail to request information on the International Traffic in Arms Regulations. Response: USCIS has worked with DOC's Bureau of Industry and Security to modify the Deemed Exports Acknowledgement section of the instructions, taking into account concerns raised by the commenters.

One commenter indicated support of inclusion of the Deemed Export Acknowledgement to the instructions.

Response: USCIS thanks the commenter.

Twenty-one commenters oppose requesting W-2s as evidence of maintenance of status. They state that there are situations in which a beneficiary may change jobs before a W-2 is issued and that the W-2 may lead the adjudicator to conclude that a beneficiary who has taken extended trips abroad was not paid the proper wage.

Response: USCIS is not requiring the W-2 in all instances. The form instructions state that a copy of the W-2 should be submitted "if applicable." Furthermore, the petitioner should provide documentation regarding any extended trips abroad that the beneficiary may have taken during the validity of the prior petition.

Proposed Revisions to Form

Three commenters noticed typographical errors on the form.

Response: USCIS thanks the commenters and has made the necessary corrections.

One commenter objected to removal of the G-28 attachment block. The commenter is concerned that removal of this block may result in USCIS not acknowledging an attorney of record for filing.

Response: USCIS must acknowledge the attorney of record as listed on the properly filed Form G-28 regardless of whether the Form G-28 attached block is filled out or not. USCIS removed the FormG-28 attachment block to provide adequate space for USCIS to properly notate the petition during adjudication.

One commenter recommended removing either "change in previously approved employment" or "amended petition" from question 2 in part 2 of the Form I-129.

Response: USCIS believes that both the change in previously approved employment and the amended petition boxes are necessary. USCIS has provided clarification as to the purpose of each choice in the form instructions.

One commenter requested a new section be added to the Form I-129 to ask whether the beneficiary has any dependents. The commenter also requested that a directive/instruction be included to remind petitioners to communicate with their employees to advise them that dependents must change/extend status if already in the United States.

Response: USCIS already includes language in the form instructions regarding the treatment of dependents.

Three commenters expressed concern about inclusion of questions 11a and 11b in part 4 of the Form I-129. Two of the commenters recommended revising the form to indicate that the questions should only apply if the petitioner is filing a new petition or if the beneficiary is currently subject to section 212(e) of the Immigration and Nationality Act. One of the commenters stated that the questions are unnecessary and should be

removed.

Response: There are instances in which the beneficiary is in a status other than J-1 in which it is necessary for the petitioner to demonstrate the beneficiary's compliance with the terms of previous J-1 status. USCIS needs to include these questions as each petition must stand on its own merits.

Thirty commenters indicated opposition to including a section on the form requesting the name, address, and point of contact information from petitioners seeking to employ a beneficiary offsite under a third-party contract. Many commenters stated that inclusion of this request on the form is duplicative as adjudicators routinely request this information. They also expressed concern that a change in a point of contract at the third party worksite could result in revocation at a later date. Nine of the commenters indicated that they believe USCIS has no authority to collect this information. A number of commenters expressed concern that requesting this information requires petitioners to violate confidentiality agreements with clients or risk denial of the petition.

Response: USCIS has revised the draft form based on the commenter's concerns.

Forty-six commenters indicated opposition to the inclusion of the Deemed Export Acknowledgement on the form. Almost all of the commenters believe that the inclusion of the Deemed Export Acknowledgement goes beyond the authority of USCIS as Department of Commerce and Department of State have regulatory authority over export control. Twenty-two of the commenters stated that the inclusion of the Deemed Export Acknowledgement section of the form would place a large burden on U.S. companies and/or universities, and that obtaining the information required would be time-consuming.

Response: USCIS has worked with DOC's Bureau of Industry and Security to modify

the Deemed Exports Acknowledgement section of the form, taking into account concerns raised by the commenters.

One commenter expressed concern regarding the language used in the signature block of the Form I-129. The commenter argued that nothing in statute or regulations provides USCIS with the authority to execute a warrantless search of the petitioner's records or premises or carry on communications in any form with a petitioner who is represented by counsel in the absence of counsel. The commenter recommends that USCIS amend regulations rather than amend the form.

Response: USCIS appreciates the commenter's concerns. However, USCIS believes that it is necessary to remind the petitioner that USCIS will verify information on the petition through independent audits, including the use of independently verified information and site inspections.

Two commenters recommended revision of the Free Trade Agreement Supplement to remove the item requesting information on whether the petition is a sixth consecutive request for an H-1B1 extension. The commenters believe that the relevance of the question is not currently apparent.

Response: USCIS includes this request as section 214(g)(8)(D) of the Immigration and Nationality Act states that the numerical limitation "shall be reduced by one for each alien granted an extension under subparagraph (c) during such year who has obtained five or more consecutive prior extensions."

One commenter requests revision of item 3 in the introductory section of the H Supplement to state that the petitioner should submit photocopies of Forms I-94, I-797, and/or other USCIS issued documents "if available" as there are instances in which the documentation may not be available.

Response: While USCIS notes that there may be instances in which such documentation

cannot be obtained, USCIS believes that revising the language to read "if available" is too vague, and it will not be used.

One commenter requests removal of question 1e on section 4 of the H Supplement. The commenter believes that the question regarding whether the H-3 beneficiary's training is "an effort to overcome a labor shortage" is irrelevant.

Response: USCIS does not believe that this question is irrelevant as it goes to whether the services that the H-3 beneficiary may perform are incidental to training.

Two commenters indicate that USCIS should use Standard Occupational Classification (SOC) codes rather than Dictionary of Occupation Titles (DOT) codes on the H-1B Data Collection and Filing Fee Exemption Supplement. SOC codes are utilized on the LCA. One of the commenters notes that Office of Management and Budget (OMB) has mandated the use of SOC codes as the standard for data collection purposes.

Response: USCIS's systems are not currently able to accommodate the format of the SOC codes. Until such a change can be made, USCIS must continue to use the DOT codes as the Agency is required to report information on job classifications to Congress.

Twenty commenters requested that the H-1B Data Collection and Filing Fee Exemption Supplement include a clear definition of the term "affiliate" as outlined in question 9 in part B.

Response: The term affiliate is otherwise defined as being connected or associated through shared ownership or control by the same board or federation or attached as a member, branch, cooperative or subsidiary. See 8 CFR 214.2(h)(19)(iii)(B). See the section of the form instruction on completing part B of the H-1B Data Collection and Filing Fee Exemption Supplement.

One commenter objects to the wording of item 3b in part C of the H-1B Data Collection and Filing Fee Exemption Supplement. The commenter believes that the

wording does not accurately reflect the regulatory language at 8 CFR 214.2(h)(19)(iii)(A).

Response: USCIS has amended the language to address the commenter's concern.

Two commenters expressed concern with the language used in item 3d in part C of the H-1B Data Collection and Filing Fee Exemption Supplement. They believe that the phrase "directly and predominantly further the normal, primary, or essential purpose, mission, objectives or function of the qualifying institution, names higher education or nonprofit or government research" goes beyond the regulatory and statutory language.

Response: Item 3c was intended to provide petitioners who will be employing the beneficiary to provide services at a cap-exempt institution with an avenue to identify the petition as exempt from the cap under the auspices of a June 6, 2006, Agency memorandum. The memorandum specifically states that the petition is only cap-exempt if the petitioner can establish that the beneficiary's job duties will "directly and predominantly further" the mission of the qualifying cap-exempt institution.

Two commenters recommend dividing item 3g in part C of the H-1B Data Collection and Filing Fee Exemption Supplement into three separate items.

Response: While USCIS appreciates the recommendation, USCIS will not be separating item 3g into three separate items at this time due to system limitations.

Thirty commenters oppose the inclusion of an attestation on the H-1B Data Collection and Filing Fee Exemption Supplement signed by both the petitioner and the beneficiary. The commenters object on the grounds that the attestation is part of the LCA process and is regulated by DOL. The commenters state that the language on the attestation is inaccurate and should either be removed entirely or amended to state "the beneficiary will be paid the higher of the actual or prevailing wage at any and all off-site locations." They also indicate that requiring the beneficiary's signature is overly

burdensome, especially as many H-1B beneficiaries are abroad at the time that the petition is filed. One of the commenters points out that the beneficiary should not be required to sign as he/she is not a party to the petition.

Response: Based on stakeholder concerns, USCIS is removing the requirement that the beneficiary sign the form. USCIS has replaced the attestation requirement with yes/no questions to the petitioner regarding whether the beneficiary will be assigned to work at a third party off-site location, whether the work assignment will be in compliance with the statutory and regulatory requirements of the H-1B classification, and whether the beneficiary will be paid the higher of the prevailing or actual wage.

Three commenters express support of the inclusion of an attestation on the H-1B Data Collection and Filing Fee Exemption Supplement signed by both the petitioner and the beneficiary. Two of the commenters believe that the attestation will remove the need to issue RFEs to request contracts to document third party placement. The remaining commenter states that requesting the signature of the beneficiary is an improvement to the form since the request for extension and the employer's request for classification are combined on one form.

Response: USCIS does not intend for the revisions to the form to remove the requirement to submit documentation to establish eligibility for the H-1B classification. USCIS has removed the language requiring the beneficiary's signature.

One commenter objected to the wording on the Form I-129 for the Fraud Prevention and Detection Fee for H-1B and L-1 petitions. The commenter believes that the proposed wording assumes that the fee must be paid for every petition.

Response: The Fraud Prevention and Detection fee must be paid by the petitioner if the petitioner is seeking the nonimmigrant classification for the first time or if the beneficiary is already in the nonimmigrant status but the petition is seeking authorization

to change employer. USCIS has revised the language on the form to clarify this point.

Two commenters express concern with the wording of item 6 in section 1 of the L Supplement. They indicated that requesting the beneficiary's job duties for the 3 years prior to the filing of the petition is overly inclusive and may be irrelevant to the adjudication of the petition.

Response: USCIS requests information for the 3 years prior to the filing of the L petition to determine whether the beneficiary has the requisite one year of specialized knowledge or executive/managerial background in the 3 years prior to filing of the petition.

Four commenters oppose inclusion of an acknowledgement of responsibility for return transportation on the O and P Supplement. All of the commenters indicated that the acknowledgement is unnecessary as return transportation in the event of early termination is already a regulatory requirement. Two of the commenters state that H-1B petitioners are also required to provide return transportation but H-1B petitioners are not required to sign an acknowledgement.

Response: USCIS notes that H-1B petitioners are required to acknowledge responsibility for return transportation on page 9 of the H Supplement of the version of Form I-129 that is currently in circulation. The inclusion of an acknowledgement of responsibility for return transportation on the O and P Supplement is, therefore, not inconsistent with H-1B petitioner requirements.

One commenter recommended revising item 1a of the R Supplement as the term "members" is not defined in regulations or on the form.

Response: Although the term "members" is not defined in the regulations or the form, it is used in the regulations to describe membership in the religious denomination. Hence, it is inferred from the regulations that the number of members of the prospective employer's organization means the number of congregation or the members of the

religious denomination at the petitioner's organization. Accordingly, this question applies to all petitioners filing for R classification.

One commenter makes numerous suggestions regarding the wording of the R Supplement. The commenter expressed concern that the wording of item 1c on the R Supplement is unclear and requested revisions. The commenter recommends revising the language of item 4 by changing the word "organization" to "denomination." The commenter believes that the relevance of item 8 is unclear and that the wording of item 9 is confusing. The commenter states that item 10 is currently difficult to answer. The commenter further recommends amending the language of item 11 to read "same type of religious denomination" and the language of item 12 to more accurately state the regulatory requirement.

Response: The wording for item 1c comes directly from regulations. Item 1c simply asks the petitioner to provide the "number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years." Special immigrant religious worker status means either a special immigrant minister (SD) or special immigrant non-minister (SR). Likewise, nonimmigrant religious worker status means an R-1 classification. For item 4, the terms "employing organization" and "religious denomination" may not necessarily be interchangeable as the employing organization is the petitioner and the denomination is that with which the petitioner is affiliated. USCIS believes that the relevance of item 8 is clear. The main point of item 10 of the Employer Attestation is that the beneficiary will be employed at least a total of 20 hours per week. Whether the beneficiary works solely for one petitioner or multiple petitioners, this item seeks information on whether the beneficiary's combined total hours are 20 hours per week or not. The second sentence, which pertains to a self-supporting alien, is a statement which requires the petitioner to

submit additional documentation if the alien will be self-supporting and is not an attestation. Item 11 of the Employer Attestation states, "The beneficiary has been a member of the petitioner's denomination for at least 2 years immediately before Form I-129 was filed and is otherwise qualified to perform the duties of the offered position." This statement is clear as to what denomination the beneficiary must have been a member of. The term "same type of religious denomination" is subject to interpretation and should not be used. Item 12 has been amended based on the commenter's suggestion.

One commenter recommends using the term "employing organization" throughout the Religious Denomination Certification instead of using both the terms "employing organization" and "attesting organization." The commenter suggests revising the language of the Religious Denomination Certification to request the full address of the religious denomination and submission of a Google map and photograph of the location of the religious denomination.

Response: The "employing organization" may not necessarily be the same as the "attesting organization." There may be cases where the employing organization is a religiously affiliated hospital or school, but the attesting organization is a church. Hence, the two terms should remain unchanged. Additionally, the Religious Denomination Certification only requires the name of the religious denomination with which the employing organization is affiliated because it may not necessarily have an address. Since on-site inspection is conducted prior to an approval of a religious worker petition, a Google map and photograph of the premises, though they may be helpful, are not necessary.

9. The USCIS does not provide payments or gifts to respondents in exchange for a benefit

sought.

10. There is no assurance of confidentiality.

11. There are no questions of a sensitive nature.

12. Annual Reporting Burden: Form I-129 Religious Workers

a. Number of Respondents	364,048	18,500
b. Number of Responses per Respondent	1	1
c. Total Annual Response	364,048	18,500
d. Hours per Response	2.75	3
e. Total Annual Reporting Burden	1,001,132	55,500

Annual Reporting Burden

Total annual reporting burden hours is 1,056,632. This figure was derived by multiplying the number of respondents (364,048) x (1) frequency of response x 2.75 hours per response (2 hrs. and 45 minutes) per response; plus the number of respondents for religious workers (18,500) x (1) frequency of response x 3 hours per response.

13. There are no capital or start-up costs associated with this information collection. However, there is a fee of $320 for this information collection. Also as previously mentioned in item 8 of this supporting statement there is a Fraud Prevention and Detection Fee for H-1B and L-1 petitions of $500. Any cost burdens to respondents as a

result of this collection are identified in question 14.

14. Annualized Cost Analysis:

Printing Cost	$	100,000
Collecting and Processing	$	222,315,360
Total Cost to Program	$	222,415,360
Fee Charge	$	222,415,360
Total Annual Cost to Government	$	0

Government Cost

The estimated cost of the program to the Government is calculated by multiplying the estimated number of respondents (382,548) x $320 the suggested base fee charge (The fee includes the suggested average hourly rate for clerical, officer, and managerial time with benefits, plus a percent of the estimated overhead cost for printing, stocking, distributing and processing of this form); plus a Fraud Prevention and Detection Fee for H-1B and L-1 petitions (200,000) respondents x $500 fee.

Public Cost

The estimated annual burden cost is $31,582,730.

- This estimate is based on the number of respondents (364,048) x (1) number of responses x 2.75 hours (2 hours and 45 minutes) per response x $29.89 (average hourly rate) = $29,923,835; plus
- The number of respondents for religious workers (18,500) x (1) number of responses x 3 hours per response x $29.89 (average hourly rate) = $1,658,895

The estimated annual fee cost is $222,414,360.

- The total number of respondents (382,548) x $320 fee; plus

- A Fraud Prevention and Detection Fee for H-1B and L-1 petitions (200,000) respondents x $500 fee.

15. There has been an increase of 36,277 in the annual burden hours previously reported for this information collection. On November 26, 2008, USCIS published a Final Rule: Special Immigrant and Nonimmigrant Religious Workers; RIN 1615-AA16 in the Federal Register, which increased the number of respondents submitting Form I-129 to account for an increase in the number of petitions filed for religious workers. However, the increase was never added to the OMB inventory. In addition there is an annual increase of $103,683,200 in the annual burden cost. In previous submissions USCIS did not include the Fraud Prevention and Detection Fee for H-1B and L-1 petitions. Accordingly this supporting statement reconciles those omissions.

16. USCIS does not intend to employ the use of statistics or the publication thereof for this collection of information.

17. USCIS will display the expiration date for OMB approval of this information collection.

18. USCIS does not request an exception to the certification of this information collection.

B. Collection of Information Employing Statistical Methods.

Not applicable.

C. Certification and Signature

D. PAPERWORK CERTIFICATION

In submitting this request for OMB approval, I certify that the requirements of the Privacy Act and OMB directives have been complied with including paperwork regulations,

statistical standards or directives, and any other information policy directives promulgated under 5 CFR 1320.

_____ _____

Sunday Aigbe, **Date:**

Chief,

Regulatory Products Division,

U.S. Citizenship and Immigration Services.