

On **September 15, 2014**, USCIS published a 60-day notice in the Federal Register at **79 FR 55008**. USCIS received one comment after publishing that notice. In a letter dated November 14, 2014, the American Immigration Lawyers Association (AILA) offered multiple comments and suggestions as follows.

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

- USCIS cannot accept this comment. USCIS can only accept black ink on its forms due to scanning and form publishing requirements. Blue ink does not scan consistently and cannot be read by the systems that we use to scan the forms.

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

- USCIS accepts some of the comments and cannot accept others (see below for details relating to specific comments).

### **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.

- USCIS cannot accept this comment because generally, providing the requested information for both data fields, instead of either data field, facilitates the adjudication process and helps to resolve potential discrepancies with the information provided.

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.”

- USCIS accepts this comment and has added clarifying language to that part of the form instructions.

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).

- USCIS cannot accept this comment because it may be confusing for the petitioners and the specific focus on an exemplar approval is not necessary.

The term “Pilot” should be removed from Item 2.c.

- USCIS accepts this comment and the word “Pilot” been deleted from both the form and instructions.

## **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.”

- USCIS accepts this comment with the specific wording as suggested.

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.

- USCIS cannot accept this comment because we believe that adding this PII information to the form is unnecessary and is otherwise available in USCIS records or electronic systems.

## **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”?

- USCIS accepts this comment and the words “if any” have been replaced with “on which this petition is based.”

## **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.

- USCIS accepts this comment and the applicable questions have been removed from the form.

## **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 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.

- USCIS cannot accept this comment. Currently, all applicants who appear for a biometrics appointment at a USCIS Application Support Center (ASC) must complete a FD-258, Fingerprint Card. The FD-258 asks for the applicant's biographic data (i.e. ethnicity, race, height, weight, eye and hair color), which the Federal Bureau of Investigation (FBI) uses this biographic information to categorize the applicant's information and run the applicant's background and security checks. To eliminate the manual paper process completed during the ASC appointment, and reduce the amount of time applicants are required to spend at an ASC, USCIS is collecting the biographic information up front so that applicants do not need to provide it at the ASC and, as a result, shortens the applicant's ASC appointment times, increasing efficiency for the ASC's and reducing burden on the applicant.

### **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?

- USCIS accepts this comment and has added clarifying language to that section of the form instructions.

If NAICS codes for the JCE are sought for data collection purposes additional space should be provided.

- USCIS accepts this comment and has added clarifying language to that section of the form.

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.

- USCIS accepts this comment and the order of the questions on the form in this section has been changed.

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 accepts this comment and the order of the questions on the form in this section has been changed.

USCIS should add questions about the total investment to include:

- o 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.
- USCIS cannot accept this comment because we do not believe that these questions are needed on the form.

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.

- USCIS accepts this comment and the order of the questions on the form in this section has been changed.

### **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. Subsection 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**

- USCIS accepts this comment, in part, and the order of the questions on the form in this section has been changed.

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.

- USCIS cannot accept this comment because we feel that this issue is sufficiently addressed in the form instructions. However, related to a different comment, additional language has been added to that section of the form instructions to provide additional clarification.

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.”

- USCIS cannot accept this comment because we believe that this information was previously collected with the Form I-924 or Form I-526 and is otherwise available.

The form should request the following information regarding investment in the NCE:

- o Total amount of EB-5 capital invested from in the NCE.
- o Total number of EB-5 immigrant entrepreneurs who have invested or are projected to invest in the NCE.
- USCIS accepts this comment and these questions have been added to the form.

### **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.

- USCIS cannot accept this comment. We do not believe the Petitioner's certification as drafted is too broad. The release of documents or information is limited to that information that is necessary for the administration and enforcement of U.S. Immigration laws. The release of information is also necessary so the agency can comply with Privacy Act requirements. Limiting how the information petitioners voluntarily submit to USCIS and information already contained in USCIS records that may be relevant to a petitioner's request would hamper our ability to adjudicate cases under current immigration laws and impede any law enforcement efforts that may flow from audits and investigations related to immigration benefit filings. We believe that limiting the purpose of the disclosure to administration and enforcement of the immigration laws provides the necessary protections to petitioner's business records and information submitted as part of a request for an immigration benefit while allowing for the Department the flexibility needed to protect the integrity of the U.S. immigration process.

### **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.

- USCIS cannot accept this comment. The Acknowledgement section is now required for all individuals who have their biometrics collected at a USCIS Application Support Center (ASC). The Acknowledgement notifies applicants, petitioners, and requesters who must submit biometrics that they will be required to re-affirm that the contents of their application, petition, or request, as submitted at the time of filing with USCIS, remain complete, true and correct. The Acknowledgement also notifies applicants, petitioners, and requesters in advance of their ASC appointment of the language that will be displayed when the ASC employee captures their fingerprints, photograph, and signature. The ASC Acknowledgement provides greater integrity to the immigration process by tying the applicant, petitioner, or requester who submit biometrics to the content of the original filing.

## **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.”

- USCIS cannot accept this comment because we believe the insertion of the word is redundant.

### **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.

- USCIS cannot accept this comment for the reasons previously articulated.

### **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.

- USCIS cannot accept this comment. However, additional language has been added to that section of the form instructions to provide additional clarification.