U.S. Citizenship and Immigration Services

Frequently Asked Questions about Part 6 of Form I-129, Petition for a Nonimmigrant Worker

Introduction

On Nov. 23, 2010, U.S. Citizenship and Immigration Services (USCIS) revised Form I-129, Petition for a Nonimmigrant Worker. The revised Form I-129 and subsequent editions contain Part 6, Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States. Part 6 must be completed for certain Form I-129 petitions postmarked on or after Feb. 20, 2011.

Questions & Answers about Part 6 of Form I-129

Q1. What is Part 6 of Form I-129?
A1. Part 6 of Form I-129 is an attestation regarding the release of controlled technology or technical data to foreign persons in the United States. Part 6 requires petitioners to affirm that they have reviewed the export control regulations. It further requests petitioners to indicate whether a license is required from either the Department of Commerce (DOC) or the Department of State (DOS) to release technology or technical data to the beneficiary of the petition. If a license is required, the petitioner must certify that the beneficiary will not access such technology or data until the license has been obtained.

Q2. What is the purpose of Part 6?
A2. In 2002, the U.S. Government Accountability Office (GAO) reported that vulnerabilities in the deemed export licensing system could allow technology transfers to countries of concern (GAO-02-972). The GAO reported that DOC was not sufficiently coordinating its efforts with those of INS (now USCIS) to identify and follow up on foreign nationals who change their immigration status to obtain jobs that could involve dual-use technology controlled under the Export Administration Act.

In addition, an April 2004 report (OIG-04-23) issued by the Inspectors General of several departments -- including DOS, DOC and Homeland Security found that USCIS did not include the protection of controlled technology as part of its process of adjudicating change-of-status applications submitted by foreign nationals in the United States.

Part 6 of Form I-129 was a solution for addressing the issues raised in these two reports.

Q3. What are the export control requirements?
A3. The Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) require U.S. persons, including companies, to seek and receive authorization from the U.S. government before releasing controlled technology or technical

AILA InfoNet Doc. No. 11042890. (Posted 04/28/11)

data to foreign persons in the United States (15 CFR Parts 770-774 and 22 CFR Parts 120-130). U.S. companies must seek and receive a license from DOC and/or DOS before releasing controlled technology or technical data to nonimmigrant workers.

Q4. Are these export control regulations new?
A4. No. These export control regulations are not new. However, Form I-129 was revised on Nov. 23, 2010, to include Part 6, Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States. Part 6 must be completed for certain Form I-129 petitions postmarked on or after Feb. 20, 2011.

Q5. Is Part 6 required for all Form I-129 petitions?
A5. No. Part 6 must be completed only for petitions seeking H-1B, H-1B1, L-1, or O-1A nonimmigrant status for the beneficiary.

Q6. Will a petition be rejected if Part 6 is required but has not been completed after Feb. 20, 2011?
A6. No. USCIS will not reject Form I-129 if Part 6 is not completed. USCIS will issue a Request for Evidence (RFE) to provide the petitioner with the opportunity to complete Part 6.

Q7. What will happen to a petition if Part 6 is required but the petitioner declines to respond to the RFE?
A7. The petition will be denied should the petitioner decline to respond to Part 6 in response to an RFE.

Q8. Will USCIS require a copy of the export control license if one is necessary?
A8. No. At this time, USCIS does not require a copy of the export control license as part of the nonimmigrant visa petition process.

Q9. Will a petition be denied if an export control license is required but has not been obtained prior to filing the petition?
A9. No. USCIS will not deny the petition on the basis that a license is required but has not been obtained prior to the filing of the petition. However, the certification on Form I-129 includes a statement that the petitioner will prevent access to the controlled technology or technical data until and unless the petitioner has received the required license or other authorization to release it to the beneficiary. Failure to do so, where required under applicable law, may constitute a basis for revocation of the Form I-129 petition.

Q10. Where can I obtain additional information about the export control regulations?
A10. DOC's Bureau of Industry and Security (BIS) administers the Commerce Control List (CCL) and is responsible for issuing licenses under the EAR. Information about EAR and how to apply for a license from BIS can be found at www.bis.doc.gov. Specific information about EAR's requirements pertaining to the release of controlled technology can be found at www.bis.doc.gov/deemedexports.

DOS's Directorate of Defense Trade Controls (DDTC) administers the U.S. Munitions List (USML) and is responsible for issuing licenses under the ITAR. Information about the ITAR and how to apply for a license from DDTC can be found at www.pmddtc.state.gov. Specific information about the ITAR's requirements pertaining to the release of controlled technical data can be found at www.pmddtc.state.gov/faqs/license_foreignpersons.html.

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Last updated:04/28/2011

Plug-ins

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