

USCIS Releases New Form I-129 Petition for Nonimmigrant Worker

December 20, 2010

The US Citizenship & Immigration Service (USCIS) has released a new Form I-129, Petition for Nonimmigrant Worker. One of the new questions on the form pertains to US Export Controls.

As background, the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) require US persons/companies to seek and receive authorization from the US government before releasing controlled technology or technical data to foreign persons, whether in the United States or otherwise. Under EAR and ITAR, release of such information to a foreign national, even by an employer, is deemed to be an export to that foreign national's home country or country of nationality. Therefore, the US company must obtain a license from the US government before it releases controlled technology or technical data to its nonimmigrant workers who are employed in the H-1B, L-1 or O-1A categories.

For the new version of Form I-129, the US government requires that each company certify that it has reviewed the EAR and ITAR, and determine whether it will require a US government export license to release controlled technology or technical data to the beneficiary. If an export license is required, then the company must further certify that it will not release such material to the beneficiary until the appropriate license has been obtained.

This provision should only impact a small percentage of petitioners. To determine if your company is impacted by this provision, you should review the lists of controlled technology or technical data. They are the US Munitions List (USML) for ITAR and the Commerce Control List (CCL) for EAR.

If Miller Canfield is completing an H-1B, L-1 or O-1A petition for one of your employees, we will be contacting you directly to obtain the answer to the question.

For any questions regarding the immigration aspects, please contact Miller Canfield's immigration team.

For any questions regarding ITAR, EAR and export controls generally, please contact Miller Canfield's international practice team at international@millercanfield.com.