



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

October 21, 2016

Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of the Director  
20 Massachusetts Avenue, NW  
Washington, DC 20529-2140

Submitted via e-mail: [scopsrfe@uscis.dhs.gov](mailto:scopsrfe@uscis.dhs.gov)

**Re: RFE Templates: Form I-129, Petition for a Nonimmigrant Worker for E-1s and E-2s**

To Whom It May Concern:

The American Immigration Lawyers Association (AILA) submits the following comments in response to the draft RFE templates for Form I-129, Petition for a Nonimmigrant Worker for E-1s and E-2s.

AILA is a voluntary bar association of more than 14,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on these RFE templates and believe that our members' collective expertise and experience makes us particularly well-qualified to offer views that will benefit the public and the government.

Note that these comments address all of the following RFE templates on which USCIS requested public feedback on October 6, 2016:

- Form I-129, Petition for a Nonimmigrant Worker, E-1 Treaty Trader
- Form I-129, Petition for a Nonimmigrant Worker, E-1 Employee of Treaty Trader
- Form I-129, Petition for a Nonimmigrant Worker, E-2 Treaty Investor
- Form I-129, Petition for a Nonimmigrant Worker, E-2 Employee of Treaty Investor

**VIBE Language**

On each of the four RFE templates, the first page of the template includes the following language related to the Validation Instrument for Business Enterprises (VIBE) tool:

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We check all petitions and applications filed for this classification in our Validation Instrument for Business Enterprises (VIBE) system. VIBE uses commercially available data to validate basic information about organizations requesting to employ foreign workers. For more information about this program, please visit our website at [www.uscis.gov/VIBE](http://www.uscis.gov/VIBE).

We are concerned adjudicators may interpret this language to mean a company must be in VIBE. The fact that a company is not listed in VIBE is not determinative; companies may prove their existence and validity through a variety of other means, including, but not limited to, the other evidence listed in each of the RFE templates. Additionally, it is important to point out that, by definition, many E-1/E-2 petitioning companies will be new and thus not yet in VIBE. As such, we suggest that this language either be removed or clarified to state that VIBE is used to enhance USCIS's adjudication of these petitions and applications but that USCIS will not deny a case based on information that is or is not in VIBE without giving petitioners the opportunity to respond to the agency's concerns.

### **Telephone Directory Listing**

The "enterprise's telephone directory listing" is included on p. 12 of the E-2 Treaty Investor RFE in the list of evidence that may be provided to establish that the enterprise is bona fide. Although such evidence could be helpful in showing that the enterprise is active and operating, modern businesses may not always have a telephone directory listing. If included, we recommend that this evidence be expanded to permit information from the company's website, such as a business directory or staff page. We also suggest that online reviews of the company, such as from the Better Business Bureau (BBB) or Yelp be considered acceptable evidence and included on this list.

### **F-2 Maintenance of Status**

USCIS should clarify to the reader why F-1 status documents are required to prove F-2 maintenance of status. See p. 16 on the E-2 Treaty Investor RFE and p. 12 on the E-2 Employee of a Treaty Investor. We suggest inserting the following language before the discussion regarding the F-1 student's status: "For an F-2 dependent to demonstrate maintenance of status, he or she must also demonstrate that the F-1 student was maintaining status."

### **Burden of Proof and Lists of Submitted Evidence**

We appreciate that USCIS included the "more likely than not," or preponderance of the evidence, standard in both the E-1 Employee of a Treaty Trader (p.5) and E-2 Employee of a Treaty Trader (p. 5) RFE templates when discussing how far back the officer should trace back to determine the ultimate owner(s) of the treaty enterprise. We also appreciate that the RFE templates state that the officer must list the evidence submitted, provide the specific reasons why the evidence provided is insufficient, and delete reference to evidence that was already submitted in the initial filing. See, for example, p. 4 of the E-2 Treaty Investor RFE. Such specificity will allow practitioners to more adequately address officers' concerns in their responses, without duplicating prior efforts or providing unnecessary evidence.

## **Conclusion**

AILA appreciates the opportunity to comment on these RFE templates and we look forward to a continuing dialogue with USCIS on these issues.

Sincerely,  
THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION