



November 16, 2018

VIA ELECTRONIC MAIL

Jill Eggleston, FOIA Officer
U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010

Re: Freedom of Information Act Request

Dear FOIA Officer:

The American Immigration Council ("Immigration Council" or "Requester") submits this request for records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.* We also request a fee waiver.

1. REQUEST FOR INFORMATION

The Immigration Council requests a complete dataset containing information about all Forms I-129, Petition for a Nonimmigrant Worker ("I-129 Petition" or "Petition") filed during the time period from October 1, 2008 through the date of your final response to this request.

Specifically, Requester seeks a full dataset (or spreadsheet) containing the following information for each I-129 Petition filed with USCIS during the period identified above:

General information about the Petition:

- (1) Date of receipt
- (2) Unique identifier (a numeric or alphanumeric code that is associated with a single I-129 Petition filed with USCIS. The identifier could be a random number and would not need to contain any of the beneficiary's identifying information.)
- (3) Was the Petition approved?
 - a. If yes, date of approval
- (4) Was the Petition denied?
 - a. If yes, date of denial
 - b. Reason(s) for denial
- (5) Is the Petition still pending?
- (6) Is the Petition in any other status?
 - a. If yes, identify status

Part 1: Petitioner information¹

- (1) Company or organization name
- (2) City or town of company or organization
- (3) ZIP Code of company or organization
- (4) Federal Employer Identification Number (FEIN)

Part 2: Information about this Petition

- (1) Requested nonimmigrant classification
- (2) Basis for classification
- (3) Requested action
- (4) Total number of workers requested in this petition

Part 3: Beneficiary information

- (1) Date of birth
- (2) Gender
- (3) Country of citizenship or nationality
- (4) If the beneficiary was in the United States when the Petition was filed, provide the following:
 - a. Date of last arrival
 - b. Current nonimmigrant status
 - c. Date status expires/expired
- (5) If a current residential U.S. address is provided, provide the following:
 - a. City or town
 - b. ZIP Code

Part 4: Processing information

- (1) If the beneficiary(ies) named in Part 3 of the Petition is/are outside the United States, provide the following information from the beneficiary's(ies') foreign address:
 - a. City or town
 - b. State or province
 - c. Country
- (2) Is the petitioner filing any other petitions with this one?
 - a. If yes, how many?
- (3) Is the petitioner filing any applications for dependents with this petition?
 - a. If yes, how many?
- (4) Is any beneficiary in this petition in removal proceedings?
- (5) Has the petitioner ever filed an immigrant petition for any beneficiary in this petition?
- (6) Has the petitioner ever filed a nonimmigrant petition for any beneficiary in this petition?

¹ Parts 1-5 listed here reflect the titles of Parts 1-5 on the Form I-129. This FOIA request does not ask for all of the information included in each of the fields within Parts 1-5, excluding, for example, fields that request beneficiaries' identifying information.

Part 5: Basic information about proposed employment and employer

- (1) Job title
- (2) LCA or ETA Case Number, if applicable.
- (3) Provide the following information from the address where the beneficiary(ies) will work, if different from address in Part 1:
 - a. City or town
 - b. State
 - c. ZIP Code
- (4) Will the beneficiary(ies) work off-site at another company or organization's location?
- (5) Will the beneficiary(ies) work exclusively in the Commonwealth of the Northern Mariana Islands?
- (6) Is this a full-time position?
- (7) If it is not a full-time position, hours per week for the position
- (8) Wages per (specify hour, week, month, or year)
- (9) Other compensation (explain)
- (10) Dates of intended employment:
 - a. From (mm/dd/yyyy)
 - b. To (mm/dd/yyyy)
- (11) Type of business
- (12) Year established
- (13) Current number of employees in the United States
- (14) Gross annual income
- (15) Net annual income

The Immigration Council seeks this data in a workable format, such as Excel. ***Requester also seeks a codebook with definitions of each variable and categories for each variable included in the dataset(s)/spreadsheet(s).*** Please contact Guillermo Cantor, Ph.D., Research Director at gcantor@immcouncil.org or 202-507-7521 if you need additional information concerning the dataset(s)/spreadsheet(s) and/or the workable format requested.

If, under applicable law, any of the information requested is considered exempt, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld, and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided.

2. REQUEST FOR FEE WAIVER

The Immigration Council asks that the agency waive all fees associated with this FOIA request. Such a waiver is warranted because disclosure of the information is "likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6 C.F.R. § 5.11(k) (records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not primarily in

requester's commercial interest). In addition, the Requester has the ability to widely disseminate the requested information. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314-15 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received). *See also Cause of Action v. FTC*, 799 F.3d 1108, 1116 (D.C. Cir. 2015) (quoting *Carney v. USDOJ*, 19 F.3d 807, 815 (2d Cir. 1994)) ("the relevant inquiry . . . is whether the requester will disseminate the records to a reasonably broad audience of persons interested in the subject").

A. Disclosure of the Information Is in the Public Interest

Disclosure of the requested information will contribute significantly to public understanding of the adjudication of nonimmigrant petitions and how the adjudication process has evolved over the last ten years. The data requested here is not publicly available. Given significant changes in adjudication patterns during this administration, such as increased numbers of requests for information and denials of nonimmigrant petitions, analyzing agency data to better understand adjudication trends as well as affected petitioners, beneficiaries, and industries has become increasingly important. In addition, the requested data will allow us to understand if there are concentrations of certain types of temporary workers in different regions of the United States or patterns as to certain nationalities working in certain industries. It will also allow us to estimate the effects of temporary skilled workers on firm productivity and the overall impact of immigration in the labor market.

The Immigration Council works to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants. Our research team conducts research, monitors and analyzes developments in the immigration arena, and regularly provides information to leaders on Capitol Hill, the media, and the general public. Our legal team works with other immigrants' rights organizations and immigration attorneys across the United States to ensure that our immigration laws are enacted and implemented in a manner that protects fundamental rights.

Over the past several years, the Immigration Council has analyzed and disseminated information from FOIA requests with a broad public audience. *See, e.g., Behind Closed Doors: An Overview of DHS Restrictions on Access to Counsel*, a report summarizing certain key documents released by DHS agencies in response to FOIA requests regarding noncitizens' access to counsel, available at https://www.americanimmigrationcouncil.org/sites/default/files/research/behind_closed_doors.pdf (last visited, Nov. 8, 2018); *Enforcement Overdrive: A Comprehensive Assessment of ICE's Criminal Alien Program*, a report analyzing data obtained from ICE to provide a fuller picture of CAP's evolution, operations, and outcomes between fiscal years 2010 and 2013, all of which was previously unknown to the public, available at https://www.americanimmigrationcouncil.org/sites/default/files/research/enforcement_overdrive_a_comprehensive_assessment_of_ices_criminal_alien_program_final.pdf (last visited, Nov. 8, 2018); and *Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered*, a report examining records of alleged misconduct by Border Patrol agents and supervisors, available at

https://www.americanimmigrationcouncil.org/sites/default/files/research/still_no_action_taken_complaints_against_border_patrol_agents_continue_to_go_unanswered.pdf (last visited, Nov. 8, 2018).

The Immigration Council will analyze information obtained through this FOIA request and produce reports and fact sheets that will be posted on its publicly accessible website. For this year (through October 2018), the Council's website had over 2.5 million pageviews from 1.4 million unique visitors. The Council also will disseminate any reports or fact sheets that result from the obtained data through its established networks. The Council also has regular contact with national print and news media and plans to share information gleaned from FOIA disclosures with interested media.

In addition, the Council will write about the information received in its online publication, Immigration Impact (www.immigrationimpact.com), which provides rapid-response analysis on current immigration events every weekday. For this year (through October 2018), Immigration Impact has received over 710,000 pageviews from 423,000 unique visitors. Moreover, information received on the website is regularly shared and re-posted on news outlets with large audiences, including *The New York Times*, *The Washington Post*, *CNN*, and *PBS*.

The Immigration Council has satisfied the factors for disclosure in the public interest set forth in 6 C.F.R. § 5.11(k)(2) as demonstrated above. The requested data concerns identifiable government activities and disclosure will be meaningfully informative as it is not currently available to the public. The requested information would significantly contribute to public understanding because data from individual Petitions will provide insights into the temporary employment of foreign nationals in the United States that cannot be obtained from aggregate data. And the Immigration Council has the demonstrated ability to analyze and disseminate the requested information to a broad public audience.

B. Disclosure of the Information Is Not Primarily in the Commercial Interest of the Requester

A "commercial use request" asks for information "that furthers a commercial, trade, or profit interest." See 6 C.F.R. § 5.11(b)(1). The Council is a not-for-profit organization. We have no commercial interest to be furthered by the disclosure, so the regulatory balance of public interest against "any identified commercial interest" clearly favors the public interest. See 6 C.F.R. § 5.11(k)(3)(i)-(ii). We seek the requested information for the purpose of disseminating it to members of the public and not for the purpose of commercial gain. Like all other reports and information available on the Council's website, information received in response to this FOIA request will be available to immigration attorneys, noncitizens, and other interested members of the public free of charge.

Given that FOIA's fee-waiver requirements are to "be liberally construed in favor of waivers for noncommercial requesters," a waiver of all fees is justified and warranted in this case. See *Judicial Watch*, 326 F.3d at 1312 (citation omitted).

Except as otherwise indicated above, please contact the undersigned by telephone or email if you have any questions. Thank you for your prompt attention to this request.

Sincerely,

A handwritten signature in cursive script that reads "Leslie K. Dellon".

Leslie K. Dellon
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