7. **Human Resources**

This section addresses the I-129 certification process for visa applicants\(^4\) who may have access to export controlled items. It also addresses the process for using the bona fide employee license exemption for allowing foreign national PI access to ITAR applications.

**I-129 Certification**

As part of its I-129 visa application process, the [U.S. Citizenship and Immigration Service (USCIS)](https://www.uscis.gov/) requires a certification as to whether the beneficiary (visa applicant) will require an export license to access export controlled technology or technical data during the course of his/her professional position. If a license is required, the certification also requires the petitioner (CUNY) to state that it will prevent access or disclosure through a TCP until a license is approved by the Department of Commerce or State. Note that in certain cases, the U.S. Government might not issue a license for particular sensitive control reasons.\(^5\) As a result, it is critical to evaluate whether access will require an export license as well as the likelihood of obtaining a license, in advance of the I-129 visa petition being submitted to USCIS.

CUNY must assess precisely what controlled technology or technical data it has or plans to have, which could be accessed by the visa beneficiary. Toward this objective, HR Directors across all Colleges along with their respective faculty members and administrators shall complete [CUNY’s Export Control Form I-129 Questionnaire](#) and return the form to OVCR during the recruitment process. The OVCR will review the Questionnaire and evaluate the need for any license requirements or access restrictions.

As noted, where the visa beneficiary is required to work in an environment that is export controlled, but for which direct access (and therefore licensing) is not required or is required but must be deferred pending license approval, the OVCR, in collaboration with the host laboratory, shall develop and implement a TCP to be administered by all relevant functions, including Information Technology and/or Facilities Management.

**Bona Fide Employee Exemption**

Under certain circumstances where CUNY receives an ITAR defense article and/or data which is essential for background information purposes to launch or conduct fundamental research, the ITAR makes a limited exception available to bona fide, full time university foreign national employees to access the item or data without an export license, subject to certain documentary requirements. Assuming these requirements are satisfied, the foreign national employee is subject to the same ITAR restrictions that a U.S. person is with regard to restricting access to the item from all other foreign national individuals (i.e. foreign national students, visitors, post docs who are not employees) as governed by a TCP. During its evaluation of the I-129 Questionnaire, the OVCR will determine whether the criteria for an Exemption are met.

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\(^4\) Affected visa categories include H-1B, H-1B1 Chile/Singapore, L-1, and O-1A.

\(^5\) For example, under ITAR Part 126.1, China is a proscribed country for which DDTC will not issue an ITAR license; this prohibition and presumption of license denial extends to Chinese foreign nationals for whom ITAR items remain absolutely restricted.