

# **Guidelines for Preparing Export License Applications Involving Foreign Nationals**

## **I. Introduction**

BIS has prepared these guidelines for exporters to use in submitting license applications for foreign nationals pursuant to the “deemed export” rule.

Section 734.2(b)(ii) of the Export Administration Regulations (EAR) defines “export” to include a release of technology or software to a foreign national and considers such release to be a “deemed export” to the home country of the foreign national. Licenses are required for release of controlled technology or software to a foreign national only if a license is required for the export of such items to the home country. License applications, when submitted, are reviewed by BIS under the licensing policies that apply to the actual export of the technology or software in question to the country of the foreign national.

The “deemed export” rule is most often encountered in the employment context where a company will release controlled technology or software to a foreign national. These guidelines are designed for the employment situation, and may not be fully applicable to license applications submitted for releases to foreign nationals in other contexts. It is important to note that the “deemed export” rule does not apply to the release to persons lawfully admitted for permanent residence in the United States, and does not apply to persons who are “protected individuals” under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)).

The basis guidance for filling out license applications is set forth in Part 748 of the EAR. The following guidelines supplement the basic guidance and are intended to facilitate processing of applications involving the “deemed export” rule. BIS encourages companies to follow these guidelines to assist us in processing your license application more efficiently. Due to regulatory time limits for processing license applications, it is in the interest of each exporter to provide all information needed to analyze the transaction when the application is submitted.

Applications under the “deemed export” rule should include the basic information included in the Form BIS-748P (Section II), a letter of explanation (Section III A), and a resume (Section III B).

## **II. Basic Requirements**

In addition to the instructions included with the license application, form BIS-748P, we recommend the following when completing the form:

- |                              |   |
|------------------------------|---|
| Block 2: Telephone           | Provide the telephone extension of the applicant to be contacted.                               |
| Block 6: Documents Submitted | Check the box labeled “letter of explanation”.<br>Check the box labeled “other” and add resume. |

Block 7: Documents on File	Certify retention of required documents.
Block 9: Special Purpose	Transfer of controlled technology to foreign national pursuant to Section 734.2(b)(ii) of the EAR.
Block 14: Applicant	No acronyms. No P.O. Box Numbers.
Blocks 16, 17, 18, 19 (Purchaser, Ultimate Consignee, Intermediate Consignee, End-User)	No acronyms. No P.O. Box numbers (geographical location may be used in lieu of the street address). Provide English translations of names.
Block 19: End-User	Provide evidence of the United States immigration status of the end-user. Enter full address in the United States and list the foreign national's home country in the country box.  List additional end-users on the End-User Appendix, Form BIS-748P-B.
Block 21: Specific End-Use	Specify how the controlled technology and/or software that the foreign national receives is to be used in the employ of the applicant. This section should include a one sentence description of the end-use. For example, "for research purposes" is not sufficient. Explain the nature of the research.
Block 22(j): Technical Description	Identify the item in Commerce Control List terms, the Export Control Classification Number (ECCN), not by trade name.  List additional specifications, where appropriate.
Block 23: Dollar Value	List dollar value for transfer, usually a nominal \$1 per foreign national, per license.
Block 24: Additional Information	Request license validity period consistent with Visa time frame.

### **III. Technical Information**

In addition to the basic information included in Form 748-P, applications to transfer controlled technology to a foreign national should include: A) a letter of explanation; and B) a personal resume, as set forth below:

## **A. Letters of Explanation**

- (i) The identities of all parties to the transaction

For individuals, BIS requires their full names, their citizenship, passport number, permanent address (in their home country), local U.S. address (if they are in the U.S.), visa type with date and place issued, and I-94 number and date issued.

- (ii) The exact project location where the technology or software will be used.

The location the foreign national (FN) will be working . If you anticipate transferring the FN within the normal two year period of the license, list the transfer location, as well. If the FN will be on a rotational program through several locations, all should be listed.

- (iii) The type of technology or software.

The type of technology will be based on the type of product the firm designs, develops, fabricates, manufactures, produces, or otherwise has contact with. It will have an Export Control Classification Number (ECCN) and can normally be described in a couple of lines.

Example:       The foreign national will be working in the development and production of “whatis” widgets, which are listed on the Commerce Control List under ECCN 3A001 and will be in charge of the manufacturing line which uses machinery classified under ECCN 3B002, 3B003, and 3B004. Technology for the development, and use of such items are classified under ECCN 3E001.

- (iv) The form in which the data or software will be released.

Technology or software is released for export through: 1) visual inspection by foreign nationals of U.S.-origin equipment and facilities; 2) oral exchanges of information in the United States or abroad; and 3) the application to situations abroad of personal knowledge or technical experience acquired in the United States (Section 734.2(b)(3)).

- (v) The uses for which the data or software will be employed.

The applicant should identify the uses for which the foreign national will employ the technology or software. They generally include design, development, and production of items.

- (vi) An explanation of the process, product, size and output capacity of all items to be produced with the technology or software, if applicable, or other description that delineates, defines, and limits the controlled technology or software to be transmitted (the technical scope).

This, along with paragraph III above, is the critical section of the letter of explanation. Within the context of the applicant's business, this should explain precisely the FN's job responsibilities in what they will be doing with the controlled technology or software they will have received. It should explain what products/services he will be working with, and what benefit the applicant intends to derive from the FN in terms of product improvements, production line benefits, new technical processes and/or other services. This information may include, but not necessarily be limited to: the products he will be working with, the industrial processes he will be working with, the improvements/designs/services he is expected to provide in the product design/production cycle, the work environment he will be working in (factory floor, design team, experimental laboratory, etc.), and the kind of interaction he will have with others who have controlled technical knowledge.

- (vii) The availability abroad of comparable foreign technology or software.

Here, a brief statement is all that is required, and you may simply state, N/A.

- (viii) The applicant's internal Technology Control Plan.

The applicant should describe any measures it intends to undertake to prevent unauthorized access by foreign nationals to controlled technology or software. The measures may include the applicant's internal control program to prevent unauthorized access to controlled technologies or software.

## **B. Resume**

The license application should include a resume containing the information set forth below. Accurate and complete information is essential to the application. Such information is considered in the licensing process to assess the risk that the technology or software in question would be diverted to unauthorized uses or users. Any gaps need to be fully explained. Incomplete information is likely to delay the processing of the application.

- (i) Personal background information

BIS requires name and place of birth. If the foreign national holds dual citizenship from other countries, please list the countries and the national's legal status.

- (ii) The educational and vocational background.

The college degrees earned by each candidate, dates of attendance, the schools attended, the name, address, cities, and countries for each school. If the candidate did not attend college, please list the name, address, and location of the high school or technical school attended, and degree obtained, if any.

(iii) Employment history

Please list in chronological order the jobs held by each applicant since graduation. This should include: the name of the employer, street address, and city. There should also be a brief description of the tasks performed on each job and the technical skills acquired.

(iv) Military service

Please list the dates and place of service, the rank attained, and activities performed.

(v) Special information

This optional section is for the applicant to list any special considerations that they believe BIS should take into account in reviewing the application. For example, the applicant may want to cite the “unique” technical skills of the foreign national candidate and explain the benefits that would result from the individual becoming a permanent employee.

### **Foreign Nationals - Application Checklist**

- Review your application carefully to ensure that requirements in Sections I and III have been met.
- Have you properly noted supporting documentation in Blocks 6 and 7?
- Have you described the specific end-use in Block 21?
- Have you provided the appropriate data in the letter of explanation and the personal resume covering the background information?
- If there are multiple foreign nationals, have you listed the end-users on Form BIS-748P-B?
- Make sure you sign the application.

## Attachment #1

### **Standard License Conditions for Applications Involving Foreign Nationals**

The Bureau of Industry and Security's policy is to approve "deemed export" license applications provided: 1) the EAR licensing policy applicable to the technology or software allows approval of the application to the home country of the foreign national; 2) there is no unacceptable risk that the items in question will be diverted to unauthorized uses or users; and 3) the applicant agrees to comply with the applicable conditions related to the licenses.

The standard conditions set forth in this attachment cover technical data and software pertaining to items listed in the Commerce Control List. BIS may attach these and other conditions to a license when approved.

#### Standard License Conditions for Deemed Export cases

1. As outlined and/or constrained by the conditions placed on this license, the applicant is authorized to release to the foreign national technology and software controlled under the following ECCNs: 1E001, 1E002, 1E101, 1E102, 1E103, 1E104, 1E201, 1E202, 1E203, 1E350, 1E351, 2D001, 2D002, 2D101, 2E001, 2E002, 2E003, 3E001, 3E002, 4D002, 4D003, 4E001, 5E001, 6E001, 7E001, 9E001 (as applicable) for the applicant's commercial products. The transfer of controlled technology and software shall be limited to the minimum needed by the foreign national in his/her role as described in the license application. Any further request for access to controlled technical data or software subject to the Export Administration Regulations (EAR) not authorized under this license would require the prior approval of the U.S. Government.
2. The validity period of this license is limited to two (2) years from the date of issuance providing the end-user maintains a valid visa and does not violate the work restrictions, if any, associated with the visa class or any other work authorization issued by DHS.
3. The applicant shall maintain a record of when the foreign national obtains his/her permanent resident status (i.e., green card), or changes his/her visa status (i.e., between B-1, L-1, F-1, H-1B, etc.), or leaves the company prior to obtaining permanent resident status. The applicant shall maintain this information on file and provide it on request to the Deemed Exports and Electronics Division, Bureau of Industry and Security, 14th St. & Pennsylvania Avenue NW, Washington DC, 20230.
4. Prior to transfer of technology, the applicant shall inform the foreign national in writing of all license conditions and his/her responsibility not to disclose, transfer or re-export any controlled technology, without prior U.S. Government approval. The foreign national will certify in writing that he/she has been advised of and understands the terms and conditions of this license and that he/she will not disclose, transfer or re-export any licensed technology without authorization from BIS, if such authorization is required under the EAR.

5. The applicant will establish procedures to ensure compliance with the conditions of this license, particularly those regarding limitations on access to technology by foreign nationals. The applicant's key export control management officials will ensure that the foreign national complies with conditions 1- 5. A copy of such procedures will be provided to DOC/BIS.

**Standard License Conditions for 3E001/3E002 Technologies for Deemed Exports.**

1. As outlined and/or constrained by the conditions placed on this license, the applicant is authorized to release to the foreign national technology and software controlled under the following ECCNs: A) Design technology controlled under 3E001 (for items controlled under 3A001.a.3 only) and 3E002. The transfer of controlled technology and software shall be limited to the minimum needed by the foreign national as described in the license application. Any further request for access to controlled technical data or software subject to the Export Administration Regulations (EAR) not authorized under this license would require the prior approval of the Department of Commerce's Bureau of Industry and Security (BIS).
2. ECCN 3E001/3E002 technical data transferred to the end-user shall not be in advance of the international technology roadmap for semiconductors 65 nanometers technology node.
3. Involvement in the design of information technology products with an adjusted peak performance (APP) level above 0.4 Weighted TeraFLOPS (WT), or components to support aggregation above 0.4 WT, is not authorized. "Use" of computers with an APP above the current Tier III use levels (0.75 WT) must be controlled and monitored to ensure that only job-related work is performed.
4. No access to technology for the design, development or production of x-ray, e-beam, euv, or laser lithography equipment.
5. The transfer of manufacturing process software and technology for integrated circuits is limited to the minimum required to enable design engineers to coordinate with process engineers on circuit layout, design/design rules, and lithography design, to achieve process/production compatibility.
6. Access is limited to most technology, including Bi-polar, Bi-MOS, Bi-CMOS, and CMOS. Access to compound semiconductor technology (e.g., gallium arsenide (GaAs)) and silicon-on-sapphire (SoS) is not authorized. Access to silicon-on-insulator (SoI) is limited to development and production of integrated circuits for commercial applications. Release of SoI technology will not include that for the design or development of integrated circuits that are radiation hardened to the degree defined in the International Traffic in Arms Regulations (ITAR) Part 121.1, Category XV (d).
7. The applicant will ensure that the foreign national does not have access to controlled technology required for the design or development of analog-to-digital converters controlled by ECCN 3A001.a.5.a.4 or ECCN 3A001.a.5.a.5.
8. Access to radiation hardened integrated circuits and technology associated with their



development or production, as defined by ECCN 3A001.a.1 and 3E001 is not authorized.

9. No access to technology for the design or development of items controlled by ECCN 3A001.b.2 or ECCN 3A001.b.4.
10. Access to optical computer technology or neural network technology is not authorized.
11. The validity period of this license is limited to two (2) years from the date of issuance providing the end-user maintains a valid visa and does not violate the work restrictions, if any, associated with the visa class, or any other work authorization issued by DHS.
12. The applicant shall maintain a record of when the foreign national obtains his/her permanent resident status (i.e., green card), or changes his/her visa status (i.e, between B-1, L-1 F-1, H-1B, etc.), or leaves the company prior to obtaining permanent resident status. The applicant shall maintain this information on file and provide it on request to the Deemed Exports and Short Supply Division, Bureau of Industry and Security, 14th St. & Pennsylvania Avenue NW, Washington DC, 20230.
13. Prior to transfer of technology, the applicant shall inform the foreign national in writing of all license conditions and his/her responsibility not to disclose, transfer or re-export any controlled technology, without prior U.S. Government approval. The foreign national will certify in writing that he/she has been advised of and understands the terms and conditions of this license and that he/she will not disclose, transfer or re-export any licensed technology without authorization from BIS, if such authorization is required under the EAR.
14. The applicant will establish procedures to ensure compliance with the conditions of this license, particularly those regarding limitations on access to technology by foreign nationals. The applicant's key export control management officials will ensure that the foreign national complies with conditions 1- 13. A copy of such procedures will be provided to DOC/BIS.