

IMMIGRATION NEWS

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I-9/E-Verify Services:

- I-9/E-Verify consultations to determine how we can help you improve your compliance procedures
- I-9 and E-Verify Training
- I-9 Audits
- Assisting your company with E-Verify Registration
- Drafting I-9 and E-Verify Policies and Procedures or reviewing your company's written policies

H-4 Spouses May Become Eligible for EAD

On May 12, 2014, the U.S. Department of Homeland Security ("DHS") published a proposed regulatory change in the Federal Register, which would make certain H-4 dependent spouses eligible to apply for employment authorization. This proposal was subject to a sixty day public comment period which ended July 11, 2014. The DHS is now considering the comments submitted. While there is reason for optimism regarding this proposed rule, H-4s continue to be ineligible for employment unless and until the DHS proposal is finalized.

There would be two groups of H-4 spouses eligible to apply for employment authorization, should the rule go into effect as proposed. The first group would include H-4 spouses of H1B workers who are the beneficiaries of approved I-140 immigrant petitions. The

second group would consist of H-4 spouses of principals whose H1-B status was extended beyond the six-year limit under the H1B provisions of the American Competitive-

apply for employment authorization.

Assuming this rule is finalized and goes into effect, an eligible H-4 spouse would not automatically be granted employment authorization. The H-4 dependent would need to apply for an employment authorization document (EAD) and would not become authorized to work until the EAD application is approved. The adjudication of an

EAD generally takes ninety (90) days.

We will monitor this proposed regulation and let our H-1B clients know if it is finalized.



H-4 spouses may become eligible for EAD

ness in the Twenty-First Century Act.

The proposed rule would only apply to H-4 spouses who meet the aforementioned criteria. H-4 children, even those who are old enough to work, would not be eligible to

Janitorial Company Settles Over Employment Verification

A Denver janitorial company settled allegations that the company unlawfully required noncitizen employees to present specific documents to prove their work authorization, while U.S. citizens were allowed to present a choice of documents.

The anti-discrimination provisions of the Immigration and Nationality Act "prohibits employers from placing additional documentary burdens on work-authorized employees during the hiring and employment eligibility verification process based on their citi-

zenship status or national origin" the DOJ said.

The company paid \$75,000 in civil penalties, was required to attend training sessions, amend its written hiring policies and be subject to 1 year of DOJ monitoring.

DACA Renewal Period Announced

The Homeland Security Secretary, Jeh Johnson has announced that those individuals who were granted Deferred Action for Childhood Arrivals ("DACA") may now apply to have that status and work authorization renewed for another two years. In addition, the U.S. Citizenship and Immigration Services ("USCIS") said it will continue to accept DACA applications from applicants who are eligible, but have not previously applied.

The first DACA approvals will start expiring this month, and individuals with DACA status must apply for renewal before that expiration to avoid a

lapse in deferral and work authorization.

USCIS is encouraging individuals to reapply for DACA 120 days before the expiration of status to allow sufficient processing time.

DACA is available for children who were brought into the country illegally by their parents and meet several criteria, including continuous presence in the U.S., no serious criminal record and educational requirements.



USCIS accepting DACA renewal applications

If you need assistance with your DACA extension or believe you qualify for an initial application, please call our office.

"Form I-9 rules prohibit re-verifying lawful permanent resident work eligibility, even after their green cards expire."

DOJ Settles With Texas Supermarket Over I-9 Discrimination

The Department of Justice ("DOJ") reached a settlement with a Texas supermarket chain over allegations that the company engaged in improper documentary practices during the employment eligibility verification process.

According to the DOJ, its investigation, initiated based on a referral from the U.S. Citi-

zenship and Immigration Services, revealed that the company required lawful permanent residents to present new employment eligibility documents after their green cards had expired. Form I-9 and E-Verify rules prohibit re-verifying lawful permanent resident work eligibility, even after their green cards have ex-

pired, because they have permanent authorization to work in the United States.

The company was required to pay civil penalties, back pay to employees who suffered economic damage from the policy, undergo training and submit to DOJ monitoring for 18 months.

Are You In A Target Industry For An I-9 Audit?

Although Immigration and Customs Enforcement ("ICE") conducts random audits of businesses to inspect their Form I-9s, ICE also targets certain industries. It targets 18 critical infrastructure sectors where unauthorized workers would have access to sensitive facilities and information. These industries are: agriculture and food; banking and finance; chemical; com-

mmercial facilities; communications; critical manufacturing; dams; defense industrial base; emergency services; energy; government facilities; health care and public health; information technology; national



Are you a target for a Form I-9 audit by ICE?

monuments and icons; nuclear reactors; materials and waste; postal and shipping; transportation systems; and water.

If you are in one of these industries, make certain your Form I-9s are ready for an audit!

Employers Can Refuse To Hire Students on OPT

International students on F-1 visas who are pursuing Occupational Practical Training ("OPT") aren't protected from citizenship status discrimination under the Immigration and Nationality Act ("INA"), and so employers may be able to refuse to hire them, according to the Justice Department's Office of Special Counsel ("OSC") for Immigration-Related Unfair Employment Practices.

The OSC's technical assistance letter issued earlier this year addressed the question of whether an employer lawfully can refuse to hire an F-1 student whose OPT was scheduled to expire three

months after the employment application and was not eligible for an extension. The OSC said that F-1 students aren't listed under the INA'S anti-discrimination protection



Recent graduates with OPT are not protected from citizenship status discrimination

as being protected from citizenship status discrimination, so, "an employer that asks whether an applicant would require sponsorship now or in the future is unlikely to implicate the anti-discrimination provision's prohibition against citizenship status discrimination." An employer would also be unlikely to commit citizenship status discrimination if it informs an F-1 student that its unwillingness to sponsor the student for an employment visa was the reason for not hiring the applicant.

FORM I-9 Q & A

Question: How do I handle completing the Form I-9 with a remote hire ?

Answer: Employers may designate an authorized representative to complete Form I-9s on behalf of their company, including personnel officers, foremen, agents or a notary public. A notary public must perform the same re-

quired actions as any authorized representative.

Recently, many states have banned notary publics from acting as an authorized agent with respect to completion of the Form I-9. This has made it difficult for employers who hire remote employees. Another option that we suggest to our clients is to contact a

local law firm that specializes in immigration law.

Regardless of who is designated, the employer is responsible for ensuring that the Form I-9 is completed correctly, so, you must work with the designated agent and review the Form I-9 upon completion so that any errors can be corrected.

"An Employer may designate an authorized representative to complete the Form I-9."

E-Verify Receives Award

Earlier this year, the United States Citizenship and Immigration Services ("USCIS") was awarded the 2014 *Annual Government Satisfaction Award* by the Federal Consulting Group of the U.S. Department of Interior. This award recognized the E-Verify section of USCIS for its responsiveness to customer satisfaction surveys and performance metrics to improve its ser-

vices. In response to survey feedback, USCIS improved the navigation and content layout of the E-Verify website—both the English and Spanish versions.

For example, in response to E-Verify user comments, E-Verify instituted



E-Verify receives customer satisfaction award

the following changes:

- Duplicate Case Alert: A pop up window now appears if you enter a duplicate case;
- E-Verify no longer prepopulates the E-verify Employer Agent name.

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Just A Note...

Although it appears that immigration reform is not likely to pass, there is still much that is continually changing with immigration law. Regulations are changed, agencies make decisions to interpret the law or regulations differently from the past, policy memorandums are issued which reflect new procedures for adjudicating petitions or dealing with issues related to the adjudication of petitions and the administrative and judicial courts rule on cases and those decisions affect how we handle the same issues in the future. Some of these changes are highlighted in this newsletter.

At the Bollman Firm, we monitor these changes so that we are ready to properly advise you on all of your immigration needs—from the filing of employment or family-based visas to I-9 and E-Verify compliance. We are here to guide you through the process. Please don't hesitate to contact us if there is anything that we can do for you, now or in the future.

Patricia

Start Planning For Your FY2016 H-1Bs

The expectation, once again, is that the H-1B quota will be filled on the first five days that filings are permitted (April 1 through 7, 2015). Thus, employers who have a candidate for a FY2016 H-1B should begin the process by the end of this year so that



FY2016 H-1B filings are expected to exceed the quota

the petition can be timely filed. Employers should evaluate **now** whether they have any employees who would need an H-1B for the fiscal year beginning October 1, 2015.

There is an annual quota of 65,000 visas per year with an additional 20,000 H-1B visas available for beneficiaries who have obtained a Masters Degree or higher from a United States educational institution. Federal regulations require that if sufficient petitions are received on the first filing day then all petitions received on the first five filing days are placed in a random lottery and a sufficient number are chosen to fill the quota.

An H-1B petition is a specialty

occupation visa and requires that the job require, at a minimum, a bachelor's degree to perform the job duties. The H-1B petition requires a three step process and substantial documentation. It is important to evaluate your needs now and consider whether any OPT employees or potential new hires will require a FY2016 visa.

In order to allow sufficient time to prepare the petition for filing, you should begin the process in December of this year so that the petition can be ready for filing on April 1, 2015.

If you are interested in filing a petition or have any questions please call our office.