Immigration News

Patricia A. Bollman, A Professional Law Corporation

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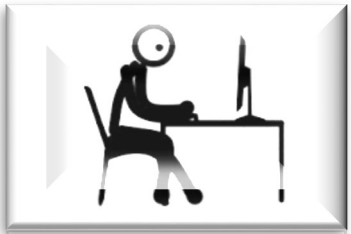
USCIS Proposes Changes To The Form I-9

In late 2015, the United States Citizenship and Immigration Services ("USCIS") published a notice in the Federal Register to inform the public of proposed changes to the Form I-9. Many of the proposed changes are designed to help reduce technical errors and help employers complete the Form I-9 on their computer after they have downloaded it from USCIS's website. The new form would:

- Check certain fields to ensure information is entered correctly;
- Provide additional spaces to enter multiple preparers and translators;
- Include drop down lists and calendars;
- Provide instructions on the screen that users can access to complete each field;
- Include buttons that will allow users to access the instructions electronically, print the form and clear the form to start over;
- Require employees to provide only last names used in Section 1, rather than all other names used;
- Streamline the certification in Section 1 for certain foreign nationals; and
- Separate the instructions from the form to bring the form in line with USCIS's practices.



The Form I-9 changes are aimed at enhancing completion of the form online.

When finalized, this will be the 12th revision of the Form I-9, with the last revision having occurred in March, 2013. We will notify our clients when the new Form I-9 is implemented.

Check Out The New Bollman Firm Website

The Bollman Firm has launched a new and improved website. The website was redesigned and updated to provide a more user friendly experience for clients and others visiting our website.

The new website features:

- Mobile friendly access so that you can view the website easily from your smart phone or tablet.
- A blog page where we regularly post articles and information on important immigration topics; and
- The ability to pay fees and costs due the firm via credit card.

Check out the new website at www.bollmanfirm.com.

Inside this issue:

I-9/E-Verify Services:

- I-9/E-Verify consultations to determine how to improve your compliance procedures
- I-9 and E-Verify Training
- Audit your Form I-9s
- Assist your company with E-Verify Registration
- Draft I-9 and E-Verify Policies and Procedures or review your company's existing written policies
- Represent your business in the defense of a Notice of Inspection (ICE I-9 Audit)

Final Rule Increasing OPT for STEM Students Released

In early March, the U.S. Department of Homeland Security ("DHS") unveiled a final rule that will allow certain foreign students with science and technology degrees to extend their Optional Practical Training ("OPT") period by 24 months. The final regulation will go into effect on May 10, 2016.

Under the new rule, foreign students in F-1 status with degrees in science, technology, engineering or math will be able to extend their initial 12 month OPT by an extra 24 months, for a total of 36 months.

The OPT program allows F-1 students to temporarily work in the U.S., but F-1 STEM students are currently only able to extend their OPT period by 17 months. The regulation will therefore boost the available work authorization period for these foreign students by seven months.

DHS advises that 17 month STEM OPT work permit issued before May 10, 2016 will remain valid until it expires, but that beginning on May 10, 2016, STEM students will be eligible to apply for an additional seven months of OPT.

F-1 STEM students will be able to extend OPT for 24 months beyond the original 12 months granted after graduation beginning May 10, 2016.

Form I-9 Q & A

Q: Is the Form I-9 available in different languages?

A: The Form I-9 is available in English and Spanish. However, only employers in Puerto Rico may use the Spanish version to meet the verification and retention requirements of the law. Employers in the United States and U.S. territories may use the Spanish version as a translation guide for Spanish speaking employees, but the English version must be completed and retained in the employer's records. Employees may also use or ask for a preparer or translator to assist them in completing the Form I-9.

We suggest that employers with Spanish speaking employees laminate a copy of the Spanish version of the Form I-9, its instructions, and the List of Acceptable Documents and present the Spanish version with the Form I-9 in English for completion. By laminating the Spanish version, it cannot inadvertently be completed by the new hire. Providing the Spanish version as a guide reduces the time it takes for the new hire to complete the Form I-9 and reduces errors.

"Only employers in Puerto Rico may use the Spanish version of the Form I-9 to meet the verification and retention requirements of the law."

DHS Updates Rules for H-1B1, E-3 and CW-1 Visas

The U.S. Department of Homeland Security published a final rule on January 15, 2016 that will allow foreign nationals with H-1B1, E-3 and CW-1 visas to continue to work for their employer while their timely filed extension of stay is pending with the Immigration Service.

Final Rule Published

Prior to this, federal regulations allowed foreign nationals in specific non-immigrant classifications (such as H-1B or L-1) to continue working with the same employer for a 240 day period beyond their authorized period of stay, as long as an extension of stay had been timely filed.

Because Congress created the H-1B1, E-3 and CW-1 visas after those regulations went into effect, they were not included in the provision and had not been afforded the same advantage as similarly situated nonimmigrants. This new regulation resolves that issue and allows the same rule to apply to foreign nationals with the H-1B1, E-3 and CW-1 visa as other highly skilled foreign worker visas.

OCAHO Halves I-9 Fines Against Metal Company

Earlier this month, a Judge for the Office of the Chief Administrative Hearing Officer ("OCAHO") ordered an Illinois metalworking company to pay $18,450 for Form I-9 violations, reducing the fine amount to roughly half of what the government sought. The Judge noted that the company was a small company, did not have a history of previous violations and did not appear to have acted in bad faith. The Judge noted in her opinion, "I consider as well the company's financial situation, and conclude, in light of the record as a whole and the statutory factors in particular, that the proposed assessment is unduly harsh."

The company was accused of failing to prepare I-9s for two people, neglecting to properly complete Section 2 of the Form I-9 for 30 people, and not adequately completing the Form I-9 for seven workers who were found to be unauthorized to work in the United States.

Although the ruling was based on the particular facts and circumstances of this case, there has been a recent trend to reduce fines in situations where the government is seeking the maximum penalty. This is especially true where the employer is a small business.

OCAHO Judge cuts company's fine.

DOJ Settles with McDonald's to Resolve Allegations of Immigrant Discrimination

The Department of Justice's Office of Special Counsel entered into a Settlement Agreement with McDonald's after McDonald's, as part of its Form I-9 process, required Lawful Permanent Residents to show new green cards when the original document expired. McDonald's will pay $355,000 in civil penalties, undergo 20 months of monitoring, and train employees on INA anti-discrimination provisions. This Settlement Agreement demonstrates how important it is for businesses of every size to have written Form I-9 Policies and Procedures (including policies which deal with the provisions of the Form I-9 anti-discrimination regulations), and, to train all employees who complete the Form I-9 in order to avoid a DOJ investigation and the fines, monitoring and training which result from such investigations.

"If your business needs written I-9 policies and procedures, I-9 training or other I-9 services, please contact us for more information."

Supreme Court Agrees to Hear Obama Immigration Case

On January 19, 2016, the United States Supreme Court announced that it will hear the federal government's appeal of the U.S. Fifth Circuit Court of Appeals decision that upheld a block on President Obama's executive actions on immigration.

Immigration Executive Orders to be decided this term.

The Supreme Court directed the parties to brief and argue the issue of "Whether the Guidance violates the Take Care Clause of the U.S. Constitution, Article II, Section 3."

The Supreme Court's decision to hear this case sets the stage for one of the biggest immigration fights at the high court in years.

Oral arguments in the case have been set for April 18, 2016.

Check out the firm's future newsletters or its Blog page on its website for updates on this important case.

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Specializing in employment-based and family-based Immigration and Nationality law
I-9 Compliance and Training

Just A Note…

While there will be no Comprehensive Immigration Reform any time in the foreseeable future, immigration is an area of the law that is constantly evolving and changing. New cases are decided, federal regulations are changed, new guidance is issued by administrative agencies, and world and national events occur, all of which have an important impact on the processing of visas and immigration compliance issues. This newsletter gives you just a glimpse of some of the most recent and important changes and cases.

Developments happen frequently in immigration law so it is important to make sure that if you are processing for a visa or an employee's visa that you are fully aware of all of the legal requirements for that visa. Businesses should also be cognizant of the compliance requirements for visas, I-9s, E-Verify and other immigration areas in order to protect itself from liability in the event of an audit or investigation by a federal agency.

You can stay on top of many of these changes by reviewing our newsletters and our Blog, but we are also available to evaluate your individual situation and to advise and assist you with any of your immigration needs.

We look forward to working with you in the future.

Patricia

DOL Finds Company Owes Back Wages to H-1B Worker

On February 29, 2016, the U.S. Department of Labor's Administrative Review Board ("DOL") has held that a computer products company owes an Icelandic woman $341,693 plus interest after filing a specialty visa for her and then not paying her the wages it owed her for six years of work.

Datalink Computer Products Inc. and its President owe the money to the H-1B visa holder because they did not undergo the proper procedure to terminate her labor condition application ("LCA"), according to the DOL decision.

Datalink argued that the H-1B visa holder had missed work and was not performing all of her duties as an account executive and therefore they should not be obligated to pay her the $341,693 which represents the $362,607 owed to her from May, 2005 to May, 2011 minus about $21,000 for specific dates she was outside the country and when she was incarcerated for an unspecified reason, according to the decision. The DOL determined that the company agreed to pay her the money and it never followed the process for terminating the deal, and reasons cited by the company for the H-1B visa holder's termination do not count in the company's favor.

The DOL emphasized that if the company had wanted to end the H-1B relationship with its employee, it should have followed the proper procedure for terminating the LCA. The decision stated that, "Respondents admittedly never effected a bona fide termination, so the requirements to pay wages continued."

This case illustrates the importance of employers' compliance with all procedural requirements of a specific employer sponsored visas including terminating those employees using the procedures set forth in immigration law. Doing so will eliminate any further liability on the part of the employer to the employee.

Proper termination by an employer of a visa holder is important to prevent liability for back pay.