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Business Immigration

Ensuring Compliance When Hiring Foreign Nationals

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EXPAND YOUR EXPECTATIONSSM

Overview

- Hiring a foreign national employee **differs significantly** from hiring a U.S. citizen, and requires the employer to obtain an employment-based nonimmigrant visa before the individual can work in the U.S.
- Sponsorship involves time, money, and also responsibilities

Questioning immigration status at interview

- It is helpful to know if sponsorship is required for the candidate during the interview process
- Employers may lawfully ask following two questions regarding immigration status in an interview setting:
 - **1.** Are you legally authorized to work in the U.S.? Yes or No.
 - **2.** Do you now or will you in the future require sponsorship for employment visa status (e.g. H-1B visa status)? Yes or No.

Time and cap limits

- Failure to follow legal employment practices can subject an employer to significant penalties and fines.
- Foreign workers may have obtained visas in order to perform jobs for a specific employer. Need to file a petition to change employers.
- Most nonimmigrant visas are subject to numerical and time limits – when can employee start? How long can they work for employer?

Work authorization is incident to status not visa

- Not every visa holder is in the U.S. legally.
Need to check status – valid I-94
- Different nonimmigrant categories for different jobs
- Only lawful permanent residents (LPR's) and some foreign nationals with unrestricted work authorization are allowed to work without sponsorship

B-1 Temporary Visitors

- B-1 status allows entry to participate in business activities of a commercial or professional nature in the United States, including, but not limited to:
 - Consulting with business associates
 - Traveling for a scientific, educational, professional or business convention, or a conference on specific dates
 - Negotiating a contract
 - Participating in short-term training
- **MUST BE PAID BY FOREIGN EMPLOYER**

Case #1

- U.S. company with subsidiary in Canada terminates the company's comptroller in the U.S. for cause. Canadian subsidiary sends accountant to help while parent company hires permanent replacement. Accountant remains on foreign payroll. Canadians are visa-exempt.
- Can she work in the U.S. for 6 months?
- Options?

TN Professional Work Permit

- Citizens of Canada or Mexico if profession is on the NAFTA list (**Appendix 1603.D.1**)
- Only to work in a prearranged full-time or part-time job, for a U.S. employer. Self employment is not permitted
- Professional Canadian or Mexican citizen has the qualifications of the profession
- Canadians apply at the Border or Port of Entry
- Mexicans apply at Consulate

L-1 Intracompany Transferee

- Allows a U.S. employer to transfer an executive or manager from one of its affiliated foreign offices to the U.S. Requirements:
- Qualifying relationship with a foreign company (parent company, branch, subsidiary, or affiliate) and doing business in the U.S. and abroad.
- Employee must have been working for company abroad for one continuous year within the three years immediately preceding admission to the U.S.
- Be seeking to enter in executive or managerial capacity (also specialized knowledge).
- No cap, time limit 7 for managers and executives and 5 for Specialized knowledge.

E Treaty Visas

- Treaty of commerce and navigation between US and country of nationality
- Nationality “match” employee and company
- Substantial trade between U.S. and treaty country or substantial investment by treaty nationals
- Actual trader or investor, or an executive, supervisory, or essential skills employee
- Be seeking to enter in executive or managerial capacity (also specialized knowledge).
- No cap, No time limit

H-1B: Most used Nonimmigrant visa

- The job must require a bachelor's degree or its equivalent as an industry minimum for an entry-level position.
- Foreign national must possess that degree or U.S. equivalent.
- Employer must pay prevailing wage as determined by the Department of Labor (DOL)
- Employer must file and obtain certification of a Labor Condition Application with DOL prior to H-1B filing
- Posting notice with salary information required
- If terminated, employer must pay transportation back to home country

More H-1B

- H-1B professionals may change jobs as soon as a new petition is filed by the new employer.
- Processing time 3-4 months regular processing, 15 days premium \$1225.00 premium fee
- Only 65,000 per year – 10/01/12 start date
- Some employers are cap-exempt (universities and some non-profits)

Students with OPT/STEM

- Optional Practical Training (OPT) is temporary employment that is directly related to an F-1 student's major area of study.
- F-1 student are authorized to receive up to a total of 12 months of practical training either before (pre-) and/or after (post-) completion of studies.
- STEM students are eligible to receive a 17-month extension of post-completion OPT.
- F-1 students who receive science, technology, engineering, and mathematics (STEM) degrees and who are employed by employers enrolled in E-Verify, may apply for a 17-month extension.

Green Card sponsorship

- Foreign nationals may become permanent residents through a job or offer of employment.
- Some categories require a certification from the U.S. DOL to show that there are no U.S. workers available in the geographic area where the immigrant is to be employed and that no American workers are displaced by foreign workers. PERM process
- In other cases, highly skilled workers, those with extraordinary ability in certain professions, and investors/entrepreneurs are given priority to immigrate through several immigrant categories. In all cases, the process involves several steps.

Labor Certification and Green Card

- Step 1: PERM Labor Certification
- Step 2: The I-140 Petition
- Step 3: The I-485 Adjustment Application

Labor Certification: PERM

- Must test market – Active recruitment campaign: newspaper ads, internal notice of filing, job order, employer's website, etc...
- Job minimum educational and experience requirement
- Employee must meet requirements at time of hire
- In most instances, this mandatory recruitment/advertising effort can be accomplished within 60-90 days.

The Backlog: When to start the Process

- Some people may run out of time
- May extend H-1B status if PERM pending 365 days or approved I-140
- Other categories can not extend (L's)
- Some categories do not need PERM (Managers and Executives)

	General	China	India	Mexico	Philippine
EB-1	C	C	C	C	S C
EB-2	C	01JAN09	01JAN09	C	C
EB-3	01FEB06	15OCT04	08AUG02	01FEB06	01FEB06
EB-3 •Other Workers	01FEB06	22APR03	01AUG02	01FEB06	01FEB06

Everyone must do PERM labor certification except for EB-1. If in EB-2 category, may skip PERM if can show that doing so is in the national interest of the United States.

I-9 Compliance E-verify

The TN Lawful Employment Act (TLEA)

The I-9 Verification Process

- All U.S. employers must verify the employment eligibility and identity of all employees hired after November 6, 1986 by completing Employment Eligibility Verification forms (Forms I-9)
- Employers who hire or continue to employ individuals *knowing* that they are not authorized to be employed in the United States may face civil and criminal penalties.

Current Form Date

- Immigration law and employment eligibility verification regulations can change over time, check I-9 Central at www.uscis.gov for updated Form I-9 information.
- Current edition date 08/07/09; (02/02/09 also accepted)
- All U.S. employers must complete and retain a Form I-9 for each individual they hire for employment in the U.S. This includes citizens and noncitizens.
- The employer must examine the employment eligibility and identity document(s) an employee presents to determine whether the document(s) reasonably appear to be genuine and relate to the individual and record the document information on the Form I-9.

When to complete form

- Must wait for employee to accept offer of employment
- Employee completes Section 1 NO LATER than first day of work for pay, or before is employee has accepted job offer
- Employer completes Section 2 NO LATER than 3rd business day employee starts work for pay
- If the employee begins work on Monday, you must complete Section 2 by Thursday
- If you hire a person for fewer than three business days, Sections 1 and 2 of Form I-9 must be fully completed by the employee's first day of work for pay

Section 1

Employee Information and Attestation



Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-9, Employment Eligibility Verification

Read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification *(To be completed and signed by employee at the time employment begins.)*

Print Name: Last	First	Middle Initial	Maiden Name
Doe	Jane	A	Smith
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
123 Main Street		1	01/01/1952
City	State	Zip Code	Social Security #
Washington	DC	20011	000-00-0000

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen of the United States
- A noncitizen national of the United States (see instructions)
- A lawful permanent resident (Alien #) _____
- An alien authorized to work (Alien # or Admission #) 00000000000
until (expiration date, if applicable - month/day/year) 02/28/2011

Employee's Signature *Jane A. Doe*

Date (month/day/year) **Date Employee Completes Section 1**

Preparer and/or Translator Certification *(To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.*

Preparer's/Translator's Signature <i>Juanita Doe</i>	Print Name Juanita Doe
Address (Street Name and Number, City, State, Zip Code) 123 Main Street Apt. 2, Washington, DC 20011	Date (month/day/year) Date Employee Completes Section 1

Employees must provide their Full legal name.

Include the middle initial and Maiden name, if applicable.

- Current address, including street name and number (no P.O. Box), city, state and ZIP code.
- Date of birth.
- Social Security number. (This is optional unless the employer uses E-Verify and the individual has been issued a number.)
- Citizenship or employment-authorized immigration status, and (if applicable) Alien or Admission number and the date employment authorization expires.
- Signature and date.
- Employees must sign the form even if a preparer or translator helps them. The preparer or translator who helps the employee must provide his or her name, address, and signature, and date the form.

Section 2

The Employer Review and Verification



Section 2. Employer Review and Verification *(To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)*

List A	OR	List B	AND	List C
Document title: <u>EAD</u>	OR	_____		_____
Issuing authority: <u>DHS/USCIS</u>		_____		_____
Document #: <u>LIN0000000000</u>		_____		_____
Expiration Date (if any): <u>02/28/2011</u>		_____		_____
Document #: _____				
Expiration Date (if any): _____				

CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) **See Above** and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative <i>Book Smith</i>	Print Name Book Smith	Title Manager
Business or Organization Name and Address (Street Name and Number, City, State, Zip Code) Library Corp., 123 S. Main St., Washington, DC 20011		Date (month/day/year) Date Employer Completes Section 2

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- Employees must present unexpired original documentation that shows the employer their identity and employment authorization. Employees choose which documentation to present.
 - Employees must make: One selection from List A or One selection from List B in combination with one selection from List C.
 - List A contains documents that show both identity and employment authorization, List B documents show identity only, and List C documents show employment authorization only.
 - In certain circumstances, employees may present an acceptable receipt in lieu of a List A, B, or C document.
 - <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=b1151921c6898210VgnVCM100000082ca60aRCRD&vgnnextchannel=b1151921c6898210VgnVCM100000082ca60aRCRD>

Entering Dates in Section 2

- Section 2 includes two spaces that require dates. The date the employee began employment (for example, work for pay).
- The date the employer examined the documentation the employee presented to show identity and employment authorization.
- [Federal contractors](#) completing Form I-9 for existing employees as a result of an award of a federal contract with the [FAR E-Verify clause](#) should enter the date employees first began work for pay from Section 2 of their previously completed Form I-9.

I-9 Retention

- Employers are required to retain the page of the form on which the employer and the employee enter data. If copies of documents presented by employees are made, those too should be kept with the I-9 forms.
- The I-9 forms may be stored on paper, microfilm, microfiche or electronically.
- Form I-9 must be kept by the employer either for three years after the date of hire or for one year after employment is terminated, whichever is later. The form must be available for inspection by authorized U.S. Government officials (e.g., Department of Homeland Security, Department of Labor, Department of Justice).

I-9 Retention

1. Date the employee began work for pay	1. _____
A. Add three years to the date on line 1.	A. _____
2. The date employment was terminated	2. _____
B. Add one year to the date on line 2.	B. _____
3. Which date is later; A or B?	3. _____
C. Enter the later date.	C. _____

Storing Forms I-9 Electronically

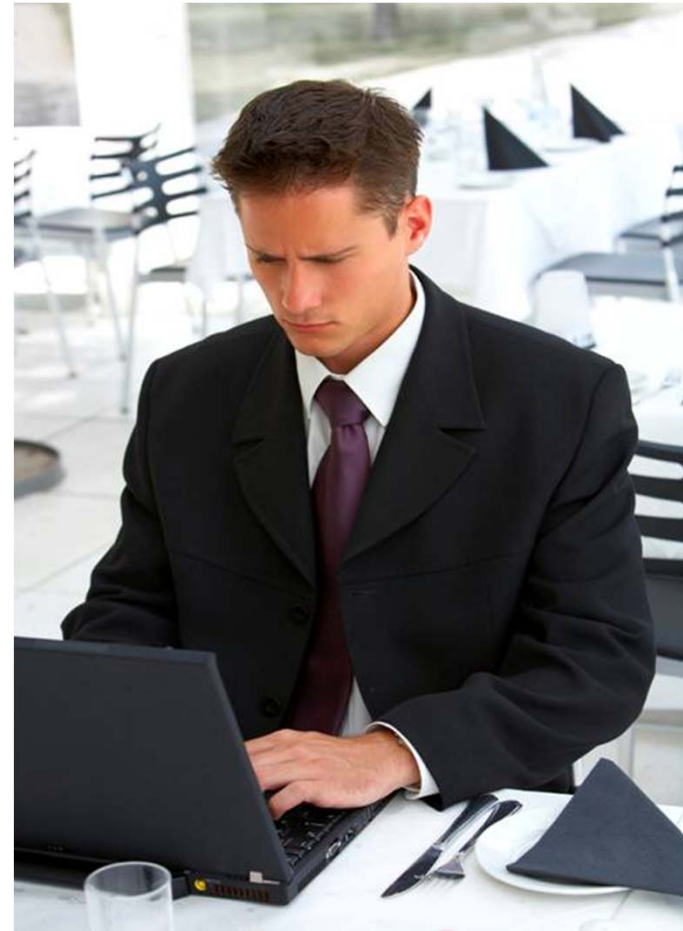
- Employers may use a paper system, an electronic system or a combination of paper and electronic systems to store Forms I-9.
- Include controls to ensure the integrity, accuracy and reliability of the electronic storage system.
- Include controls to detect and prevent the unauthorized or accidental creation of, addition to, alteration of, deletion of or deterioration of an electronically stored Form I-9, including the electronic signature, if used.
- Include controls to ensure an audit trail so that **any** alteration or change to the form since its creation is electronically stored and can be accessed by an appropriate government agency inspecting the forms.

Penalties

- Employers who violate the law may be subject to:
 - civil fines
 - criminal penalties (when there is a pattern or practice of violations)
 - debarment from government contracts
 - a court order requiring the payment of back pay to the individual discriminated against
 - a court order requiring the employer to hire the individual discriminated against

What is E-Verify?

- Internet-based system
- Operated by Department of Homeland Security (DHS) and the Social Security Administration (SSA)
- Allows participating employers to electronically verify employment eligibility of newly hired employees



Who Uses E-Verify?

- Voluntary for most employers.
- Some states, such as Arizona and Mississippi, require employers to E-Verify.
- Mandatory for employers with federal contracts or subcontracts that contain the Federal Acquisition Regulation E-Verify clause.

Relationship to the I-9

OMB No. 1615-0047; Expires 08/31/12
Form I-9, Employment Eligibility Verification

Department of Homeland Security
U.S. Citizenship and Immigration Services

Read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification (To be completed and signed by employee at the time employment begins.)

Print Name: Last First Middle Initial Maiden Name

Address (Street Name and Number) Apt. # Date of Birth (month/day/year)

City State Zip Code Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

A citizen of the United States

A noncitizen national of the United States (see instructions)

A lawful permanent resident (Alien #) _____

An alien authorized to work (Alien # or Admission #) _____ until (expiration date, if applicable - month/day/year) _____

Employee's Signature Date (month/day/year)

Preparer and/or Translator Certification (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature Print Name

Address (Street Name and Number, City, State, Zip Code) Date (month/day/year)

Section 2. Employer Review and Verification (To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)

List A	OR	List B	AND	List C
Document title: _____		_____	_____	_____
Issuing authority: _____		_____	_____	_____
Document #: _____		_____	_____	_____
Expiration Date (if any): _____		_____	_____	_____
Document #: _____		_____	_____	_____
Expiration Date (if any): _____		_____	_____	_____

CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative Print Name Title

Business or Organization Name and Address (Street Name and Number, City, State, Zip Code) Date (month/day/year)

Section 3. Updating and Reverification (To be completed and signed by employer.)

A. New Name (if applicable) B. Date of Rehire (month/day/year) (if applicable)

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.

Document Title: _____ Document #: _____ Expiration Date (if any): _____

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative Date (month/day/year)

Form I-9 (Rev. 08/07/09) Y Page 4

- E-Verify compares I-9 information to electronic database.
- I-9 completion is required while E-Verify is voluntary for most employers.

Enrolling in E-Verify

- Visit enrollment website and accept terms: www.uscis.gov.
- Follow steps such as determining access method and selecting the organization designation.
- Review and agree to memorandum of understanding.
- Provide hiring site information.

Some E-Verify No-No's

- Don't use E-Verify to prescreen applicants.
- Don't take adverse action based on a case result unless E-Verify is a Final Nonconfirmation.
- Don't selectively verify work authorization for newly hired employees.



E-Verify for Federal Contractors



- Applies to federal contractors awarded a new contract on or after September 8, 2009, that includes a FAR E-Verify clause.
- Ensure company is designated as a “federal contractor with the FAR E-Verify clause” in the E-Verify system.
- Most federal contractors then select from the following E-Verify options:
 - E-Verify all new hires and all existing employees assigned to a federal contract.
 - E-Verify the entire workforce.
- Exemptions from verification.
 - Employees previously verified.
 - Employees with certain security clearances.
 - Employees hired on or before November 6, 1986.

Determining Whether You Are a Federal Contractor

- Contract awarded on or after September 8, 2009, and includes the “FAR e-verify clause.”
- Contract has a period of performance that is for 120 days or more.
- The contract’s value exceeds the simplified acquisition threshold of \$100,000.
- At least some portion of the work under the contract is performed in the United States.
- For health care entities, consider if participating in TRICARE or Medicare Part C or D.

Subcontractors

- Certain federal contractors must require their subcontractors to use E-Verify when:
 - The prime contract includes the FAR-E-Verify clause;
 - The subcontract is for commercial or noncommercial services or construction;
 - The subcontract has a value of more than \$3,000; and
 - The subcontract includes work performed in the United States

Tennessee Lawful Employment Act

- Signed into law by Governor Haslam on June 7, 2011, it requires verifying the employment eligibility of all newly hired employees through the online E-Verify program, or requesting all newly hired employees to provide one of the listed identity and employment authorization documents as required

Tennessee Verification Law

- Requires Tennessee employers to use Federal E-Verify Employment Verification Program or maintain certain identity or work authorization documents
- Requires covered employers to request and maintain a copy of requisite identity or work authorization documents for non-employees with whom they contract or pay for services
- Provides monetary penalties and the suspension of business licenses for violations
- Law becomes effective in phases:
 - 500 or more employees – January 1, 2011
 - 200 – 499 employees – July 1, 2012
 - Less than 200 employees – January 1, 2013
 - Not effective if 5 or fewer employees



Tennessee Lawful Employment Act

- valid Tennessee driver's license or photo identification
- A valid driver's license or photo identification from another state where the license requirements are at least as strict as those in Tennessee
- A birth certificate issued by a U.S. state, jurisdiction or territory
- A U.S. government issued certified birth certificate
- A valid, unexpired U.S. passport
- A U.S. certificate of birth abroad
- A certificate of citizenship
- A certificate of naturalization
- A U.S. citizen identification card
- A lawful permanent resident card
- Other proof of employee's immigration status and authorization to work in the United States

Tennessee Lawful Employment Act

- TLEA only requires listed identification document storage for an independent contractor who is not someone else's employee. Self-employed painter or bricklayer.