

Patricia A. Bollman, A Professional Law Corporation Immigration News

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Our Firm Can Assist You With:

- ♦ **Employment based immigrant and nonimmigrant petitions**
- ♦ **Family based immigrant petitions**
- ♦ **Naturalization applications**
- ♦ **Follow up with USCIS on pending petitions**
- ♦ **I-9, LCA and PERM audits**
- ♦ **Employment authorization and advance parole extensions**
- ♦ **Form I-9 training for HR staff; review or drafting of I-9 compliance procedures**

USCIS Issues New Handbook for Employers

On January 5, 2011, the United States Citizenship and Immigration Services ("USCIS") released a new Handbook for Employers (M-274), a guide to help employers understand the Form I-9 process. By law, all U.S. employers must verify the identity of and employment authorization of and complete Form I-9 for every worker they hire. The newly revised M-274 has numerous updates and improvements.

One of the major updates included in the current M-274 is a section which incorporates the final regulations issued on July 22, 2010 on the electronic creation and storage of Form I-9s. Other revisions in the M-274 include:

- New visual aids for completing Form I-9;
- Examples of new relevant USCIS documents;
- Expanded guidance on lawful permanent residents, refugees and asylees, individuals in Temporary Protected Status (TPS), and exchange visitors and foreign students;
- Expanded guidance on extensions of stay for employees with temporary employment authorization; and
- A section with information specifically designed for employers in

the Commonwealth of the Northern Mariana Islands.

The new M-274 also has an excellent Question and Answer section which addresses many common situations encountered when completing a Form I-9.

Anyone who completes Form I-9s for their business or employer should have the most current version of the Handbook for Employers (M-274) printed out and available as a resource when filling out a Form I-9.

The M-274 can be printed from the USCIS website at the forms section and is located with the Form I-9.

USCIS Issues Single Card for Employment Authorization and Advance Parole

On February 11, 2011, the United States Citizenship and Immigration Services ("USCIS") announced it is now issuing employment and travel authorizations on a single card for certain Adjustment of Status Applicants. The new I-766 card looks a lot like the current Employment Authorization Document ("EAD") but includes text that reads "Serves as I-512 Advance Parole".

An applicant may receive this card when he/she files an Application for Employment Authorization and an Application for Advance Parole concurrently. USCIS will continue to issue separate EADs and Advance Parole documents as needed.

Employers may accept this new card as a List A document when completing Form I-9.



USCIS has announced that it has begun issuing a single card for employment authorization and travel (advance parole).



People wanting to file a new H-1B petition will have to wait until FY 2012 to obtain a visa.

The new annotated B-1 visa will allow foreign maritime workers to obtain a TWIC.

Fiscal Year 2011 H-1B Cap Reached

The United States Citizenship and Immigration Services ("USCIS") has announced that it has received a sufficient number of H-1B petitions to reach the statutory cap for fiscal year (FY) 2011. January 26, 2011 was the final receipt date for new H-1B specialty occupation petitions which requested a start date for FY 2011. The final receipt date is the date on which USCIS determines that it has received enough cap-subject petitions to reach the limit of 65,000. USCIS will reject all cap-subject petitions received after January 26, 2011.

On December 22, 2010 USCIS had received more than 20,000 H-1B petitions filed on behalf of persons exempt from the cap under the "advance degree" exemption. Thus the FY 2011 quota for H-1B petitions has been completely filled.

While H-1B petitions for new employment in 2011 will no longer be accepted, USCIS will continue to:

- ◆ Extend the amount of time a current H-1B worker may remain in the US;

- ◆ Change the terms of employment for current H-1B workers;
- ◆ Allow current H-1B workers to change employers; and
- ◆ Allow current H-1B workers to work concurrently in a second H-1B position.

Employers contemplating H-1B petitions for FY 2012 should contact our office now since petitions can be filed beginning April 1, 2011.

DHS and DOS to Issue Annotated B-1 Visa to Foreign Maritime Workers

The Department of Homeland Security ("DHS") and the Department of State ("DOS") announced on February 9, 2011 the creation of an annotated version of the B-1 visa—issued to foreign citizens visiting the United States for business purposes—that will make foreign maritime workers eligible to apply for a Transportation Worker Identification Credential (TWIC). The TWIC is a tamper-resistant biometric identification card that

maritime workers must obtain to gain unrestricted access to secure areas of maritime facilities.

Under this process, foreign maritime workers who need to acquire a TWIC for the performance of their official duties must provide notice of their need for a TWIC to DOS upon application for the B-1 visa, as well as a letter from their employer indicating that the individual will be required to per-

form services in secure port areas. Upon receipt of the new annotated TWIC B-1 visa, each individual will apply separately for a TWIC.

These foreign maritime workers will undergo rigorous background checks.

The new process will apply to the approximately 4,000 to 6,000 foreign workers in U.S. ports who are required to have a TWIC for the performance of their official duties.

PATRICIA A. BOLLMAN
A Professional Law Corporation



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

Come Visit Us at the LA and MS SHRM State Conferences in April

Look for Us At Upcoming SHRM State Conferences

Our firm will have a vendor booth at the Louisiana SHRM State Conference on April 4 and 5, 2011 at the Cajun Dome in Lafayette, Louisiana and at the Mississippi SHRM State Conference on April 5 and 6, 2011 at Harrah's Conference Center in Tunica, Mississippi.

The firm will provide information and be there to answer your questions on our

Form I-9 Compliance and Training Services. A "hot topic" for Human Resource departments, I-9 audits have become the primary enforcement tool for Immigration and Customs Enforcement under the Obama Administration.

Of course, we will also have information available on the full range of immigration services our firm provides.

If you will be attending the conference, please be sure to stop by our booth, say hello and pick up a packet of our materials.

We look forward to seeing you.

Justice Department Settles Two I-9 Document Abuse Cases

In December, 2010 the Department of Justice (“DOJ”) announced that it had reached settlements with a company in Oregon and a company in North Carolina that had engaged in immigration related unfair employment practices.

Collins Management Corporation (“Collins”), a forestry products company in Oregon was found to have unlawfully fired and then refused to rehire a lawful permanent resident in violation of the Immigration and Nationality Act (“INA”). Collins had insisted that a lawful permanent resi-

dent produce an unexpired permanent resident card (“green card”) for I-9 purposes even though the individual had presented his driver’s license and unrestricted social security card. When he did not present an unexpired green card the company fired him and refused to consider him for rehire two months later because they did not believe he had proper documentation.

Collins was required to pay \$15,000 in back pay and a civil fine to the government. Collins also had to agree to

train its managers and HR staff on proper I-9 compliance.

Oakwood Healthcare, Inc. (“Oakwood”), a North Carolina company was found to have unlawfully discriminated against a lawful permanent resident by rejecting her employment eligibility verification documents during the I-9 process. Oakwood was required to compensate the individual for back pay and pay a fine to the government.

These cases emphasize the need for proper I-9 training for all HR departments.



The DOJ said “The INA’s anti-discrimination provision protects all authorized workers from unfair documentary requests during the Form I-9 process.”

Subway Restaurant #3718 Fined for I-9 Violations

In December, 2010, the Office of the Chief Administrative Hearing Officer (“OCAHO”) ruled in a case against Subway Restaurant #3718 (“Subway”), a Subway franchise located in North Carolina with respect to I-9 violations.

In early 2009, Subway was subject to an I-9 inspection by Immigration and Customs Enforcement (“ICE”) and was subsequently served with a Notice of Intent to Fine

(“NIF”) for 11 cases of failure to properly complete section 1 and/or section 2 of Form I-9 and 97 cases of failing to complete a Form I-9 for employees. ICE sought \$111,078.00 in fines.

Subway appealed alleging several defenses and contending that the fine should be reduced. Subway argued that due to the small size of the franchise if they paid the assessed fine it would put

them out of business. They also argued that their high turnover rate meant they had over a hundred I-9s for the inspection period which covered several years, but the franchise never employed more than a few employees at one time.

The OCAHO agreed with Subway and reduced the fine to \$27,150.00. Still a significant fine for a company with only a few employees.

In its Conclusions of Law the OCAHO found “ignorance of the law does not constitute good faith.”

Coming Soon to USCIS – I-9 Central

The United States Citizenship and Immigration Services (“USCIS”) has announced that in response to concerns raised by the Chamber of Commerce of the United States of America it is developing a new website, I-9 Central. According to USCIS, I-9 Central will provide clear guidance on how to complete the Form I-9.

The proposed website is in response to the January 20,

2011 correspondence from the Chamber of Commerce to USCIS on the need for a consistent differentiation between technical and substantive violations during an I-9 audit. Although USCIS pointed out that it is not directly involved in these audits, it agreed to work to provide a website which would provide additional guidance to employers.

The anticipated launch date is

mid-Spring, 2011. USCIS has indicated that it will solicit the input of the Chamber of Commerce and other stakeholders for feedback on the type of information they would like to see on I-9 Central. USCIS also stated that it will invite other government partners, such as ICE, to participate in the development of this website.



I-9 Central—a website on Form I-9 will be launched by USCIS soon.

Patricia A. Bollman,
A Professional Law Corporation

3616 S. I-10 Service Road W.
Suite 111
Metairie, LA 70001

Phone: 504-218-5887
Fax: 504-304-0890
E-mail: patricia@bollmanfirm.com

Specializing in employment based and family based Immigration and Nationality law, I-9 Training and Compliance and the general representation of small businesses.

We are on the web!
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Just a note....

The "hottest topic" in immigration law today, and conversely in employment law, is worksite enforcement. Immigration and Customs Enforcement ("ICE") continues to increase the number of I-9 inspections, including random audits of businesses. ICE has hired a significant number of I-9 auditors to facilitate the increasing number of I-9 inspections. No longer is a business "safe" from an I-9 audit because it employs only U.S. workers.

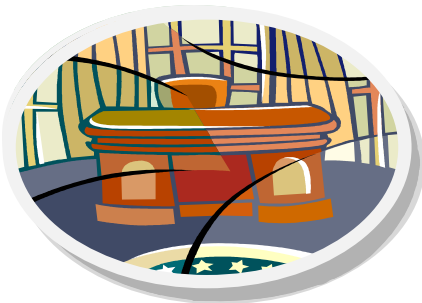
My message to all businesses — be proactive! Make certain you are complying with all I-9 regulations regarding completion, maintenance and storage of your I-9s. Don't wait to do this until ICE is at your doorstep with a Notice of Inspection because the fines are significant.

Our firm is here to assist you. We have a full range of I-9 services that can ensure your business is fully compliant with all I-9 statutes and regulations. These include a half day comprehensive I-9 training seminar, drafting or reviewing your company's I-9 compliance policies, performing an I-9 audit to ascertain whether your I-9s have any deficiencies and assisting you in developing proper I-9 procedures for completion, maintenance and storage of your I-9s.

Call us today to discuss how we can help your business be ready to stand up to the scrutiny of an ICE I-9 inspection.

Patricia

Obama's Plan to Fix the Broken Immigration System



Shortly after the State of the Union address, the White House released the President's plan for fixing the Immigration System.

The White House released an outline of the President's plan for "fixing the broken immigration system." This plan focuses on four specific areas:

- **Securing the borders.** Investing strategic resources to further secure the borders. Enforcement resources should be targeted, increased where appropriate, and focused on stopping potential terrorists and others who would do our nation harm.
- **Holding accountable businesses that break the law by exploiting undocumented laborers and undermining American workers.** Continue to crackdown on employers who hire undocumented workers and who do not follow employment verification laws. Also make it easier for employers to verify whether workers are here legally.
- **Demanding responsibility from those living in the country illegally.** Immigrants who are here illegally must take responsibility for their actions. To get on the right side of the law, they must own up to their illegal actions by paying taxes and an additional penalty and learn English.
- **Creating a legal immigration system that meets our diverse needs.** Our immigration laws should encourage and attract high-skilled individuals from all over the world. Stop expelling talented and responsible young people, whether they were brought here by their parents as children, or come from other countries to pursue advanced degrees. Provide farmers a legal way to hire the workers they rely on.