



Immigration Law and Compliance: 2007 Update

A Presentation for Lehigh University
April 20, 2007

Presentation Overview

- How does a Foreign National enter the U.S.?
- Changes since September 11
- Typical Work Visas and Related Issues
- Educational and Cultural Exchange Visas, and Special Issues related to them
- Payments to Canadians and Mexicans
- Payments to Visitors
- I-9 Compliance
- Questions

POP QUIZ!!!

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Pop Immigration Quiz: T or F?



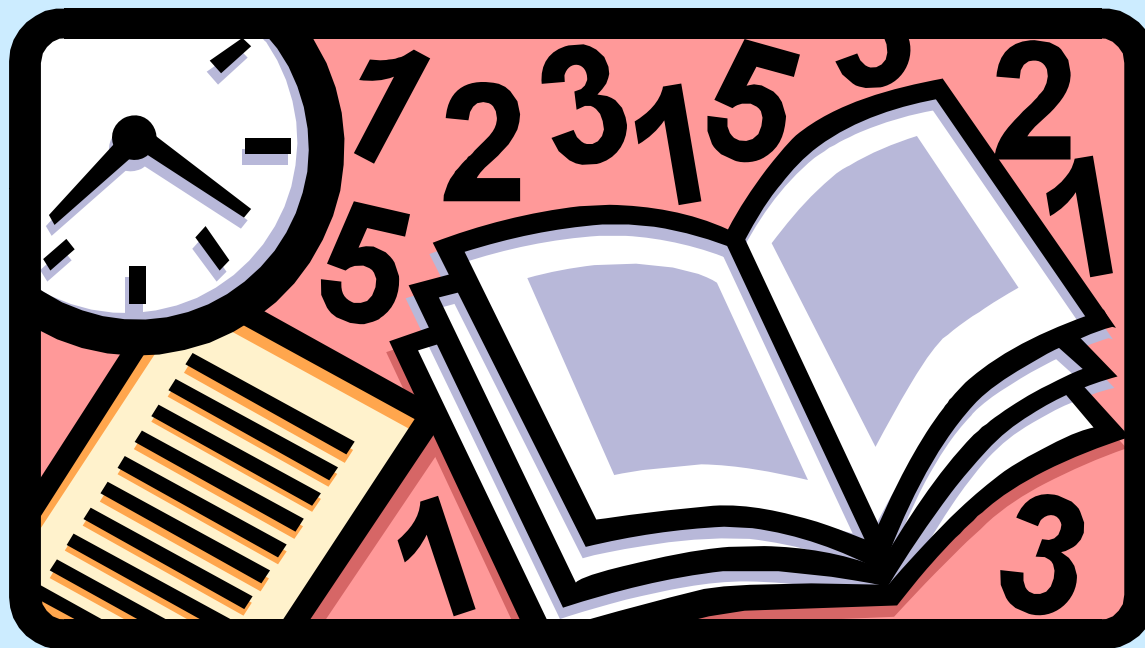
- Once you have your U.S. visa, you're practically in!
- If your U.S. visa expires, you are out of status.
- If your I-94 card expires, you can simply cross the border into Canada. On the way back, you'll get a new one.
- If you have an H visa, you can jump from one employer to another, thereby continuously extending your stay.

Pop Immigration Quiz: T or F?



- Foreign nationals on visitors visas may work in the United States as long as they receive compensation from abroad
- As a condition for obtaining any temporary work visa for a foreign employee, the employer must always prove no U.S. worker can do the job
- The Supreme Court has decided Ellis Island is really in New Jersey.

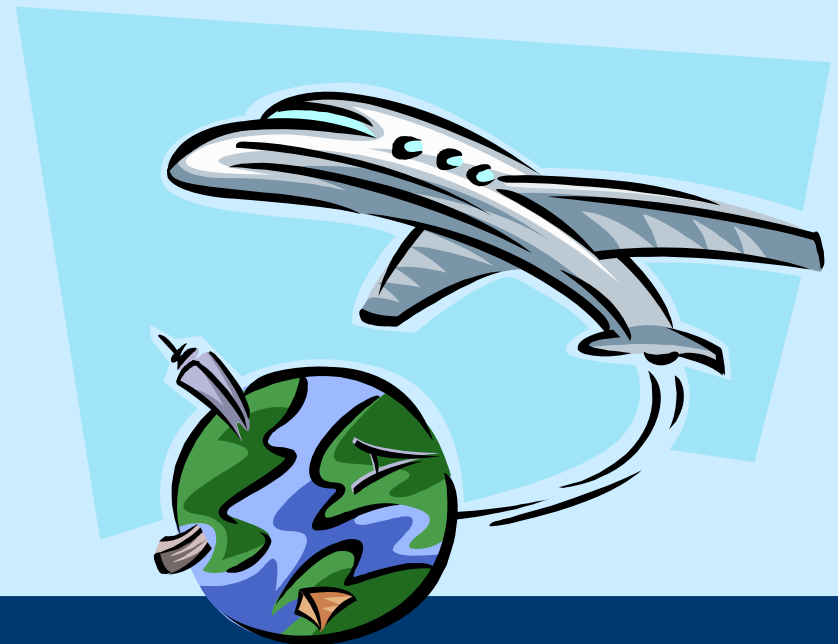
Overview: Our Immigration Laws



How Does a Foreign National Enter the United States?

Two Basic Types of Immigration

- Temporary, or “Nonimmigrant”
- Permanent, or “Immigrant” (“green cards”)



Intent: A Defining Factor

- Non-immigrants are generally required to have a home abroad and an intent to remain temporarily
- Applies to most visa categories, including B, F, J, M and Q
- Immigrants are required to have an intent to stay in the U.S. on a permanent basis

Intent: Examples



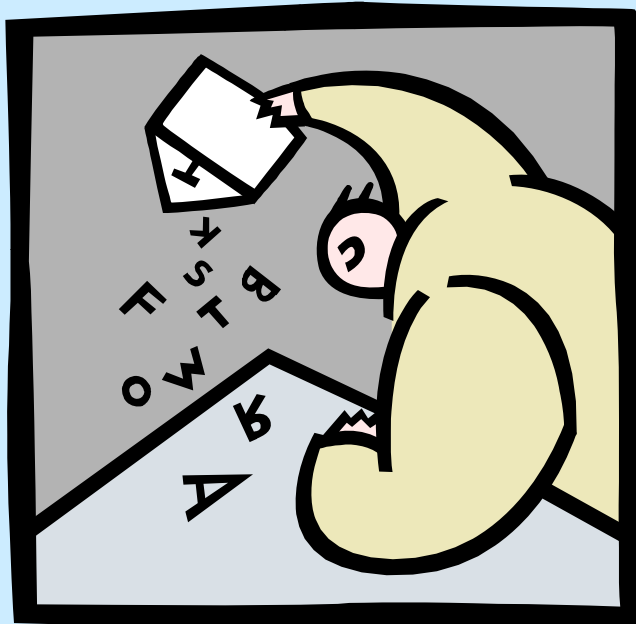
- F-1 applicant in Shanghai may be asked to show evidence of family and economic ties to China.
- Polish J applicant denied when disclosed that mother is living in U.S.

Intent: Examples



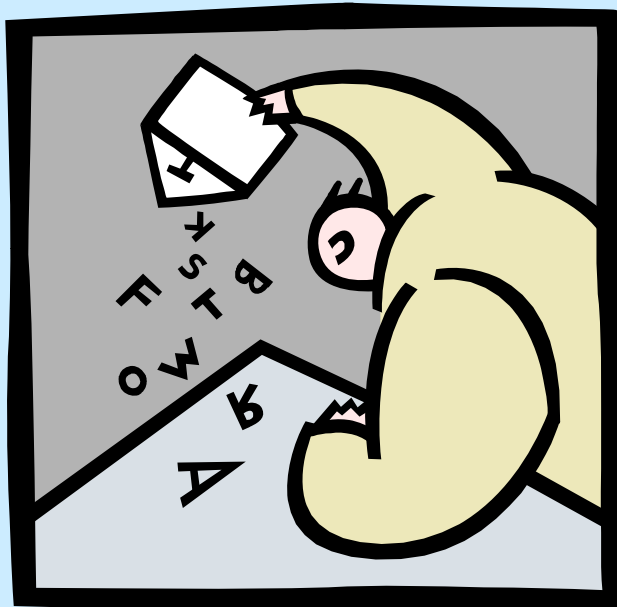
- Green card holder challenged at entry after long absence from the U.S.
- No home in U.S., no family, no bank account, payment of taxes as “nonresident”

Nonimmigrant Visas



- Visa types are an “Alphabet Soup”
- Categories arranged according to proposed activities in the U.S., from A (Diplomats) to V (Certain spouses of LPR’s)
- Temporary intent a key factor in all categories except E, L, H and O

Nonimmigrant Visas



- Typical visas used for work are E, H, L, O, P and TN
- Work authorization is limited to a certain period of time and restricted to a particular employer

“Independent Contractors” – The Naked Truth . . .

- There is no “independent contractor” visa
- Some categories allow work for multiple employers, payment as a contractor, but employers must be specified
- If worker is “independent contractor” under standard definition, no employment eligibility verification is necessary
- Employers can’t use independent contractor or definition to circumvent responsibility to complete I-9
- Wal-Mart case

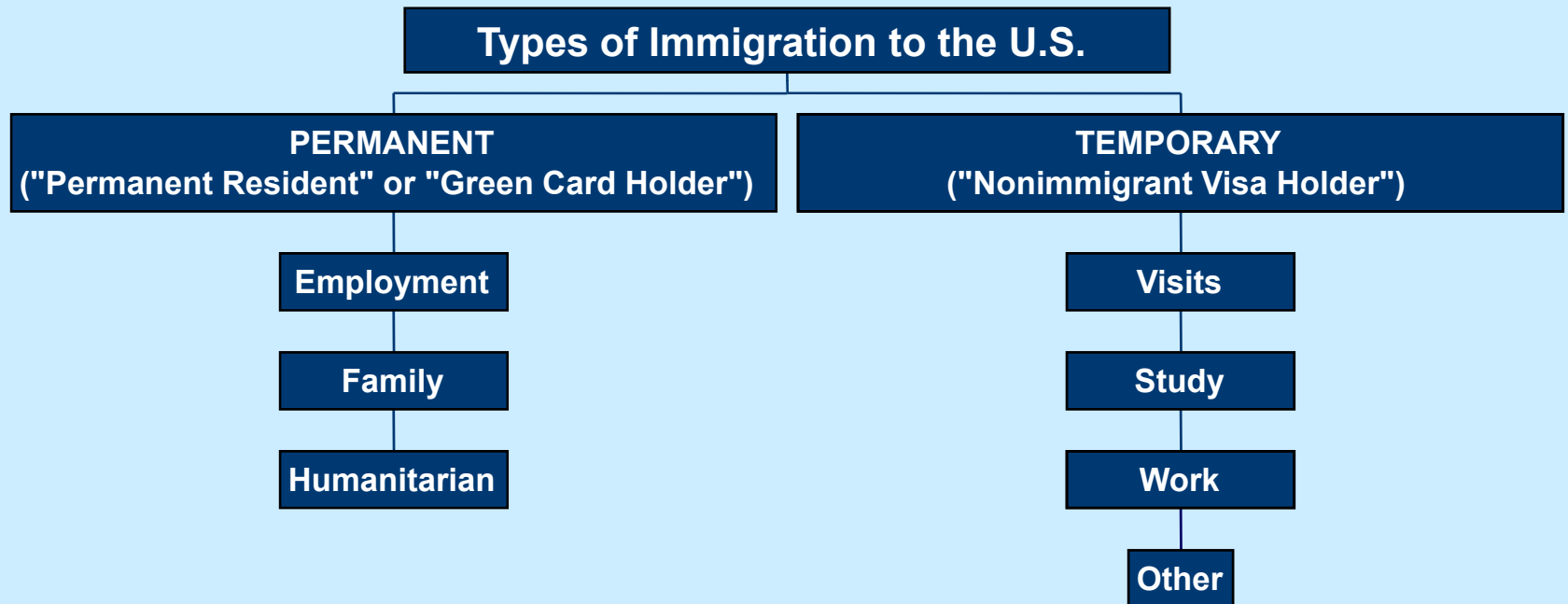
Immigrant Visas

- Employment-based: Most are “sponsored” by employers
- Family-based: Most are “sponsored” by immediate family members
- Humanitarian: Asylees, Refugees (unrestricted employment authorization, in many instances)

Employment-Based Immigration

- Labor Certification-Based
- National Interest Waiver
- Multinational Manager/Executive
- Extraordinary Ability
- Outstanding Researcher
- 140,000 Employment Based Visas available each fiscal year
- Shortages and “retrogression”: The hot news in the immigration world

Overview of U.S. Immigration Structure



Temporary Protected Status



- To offer temporary haven for nationals of countries struck by civil war or temporary disaster
- Attorney General makes annual designation and re-designation of countries
 - e.g., Liberia, Honduras, Burundi
- Beneficiaries have temporary residence and unrestricted employment authorization

Changes Since September 11

- INS eliminated
- DHS took over immigration functions, split into three agencies
 - **Citizenship and Immigration Services**
 - **Customs and Border Protection**
 - **Immigration and Customs Enforcement**
- Department of State remains in charge of visa issuance
- Department of Labor in charge of labor certification, H-1B enforcement
- Implementation of SEVIS is a post 9-11 development

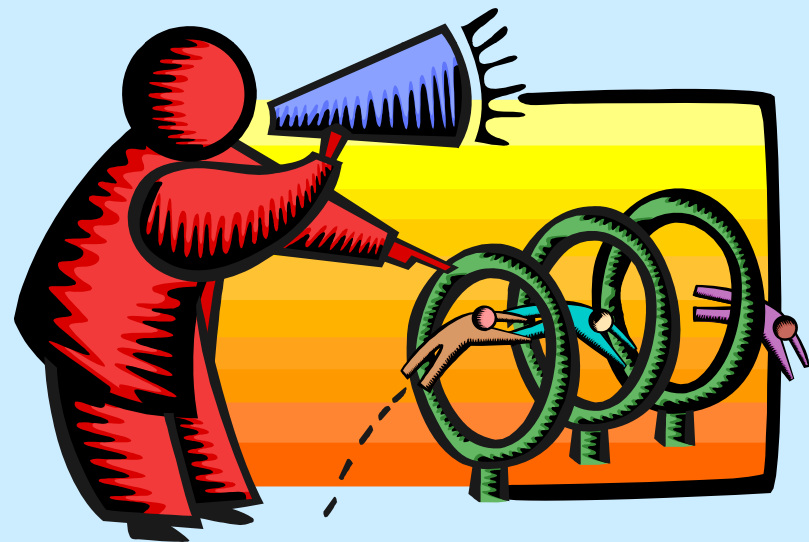
Attitude Shift and Processing Delays



- “When in doubt, keep ‘em out”
- Background checks on each and every application submitted
- Extensive background checks on visa applicants abroad
- Mandatory NIV interviews
- Expect long delays

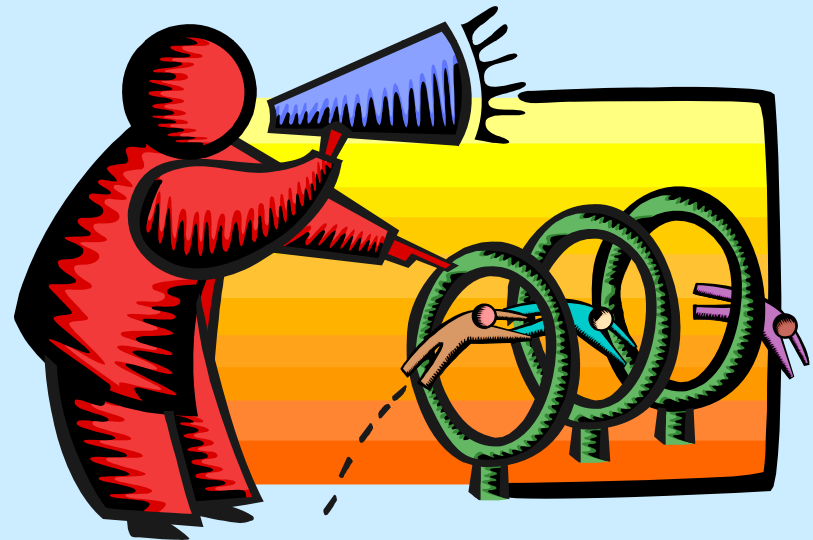
Problems with Social Security

- Since September 11, new identity checks in place
- SSA will go to SAVE system
- Usually response in 10 days
- If no positive response. SSA must do a more in-depth, manual check with CIS
- Sometimes takes weeks or even months to verify work authorization
- Problems with Canadians



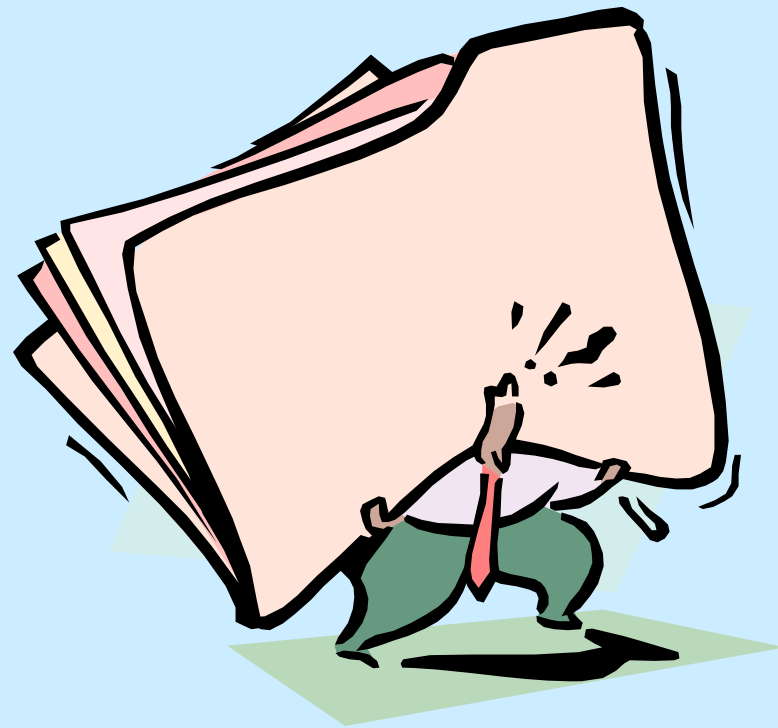
Problems with Drivers Licenses

- Frequent problems for foreign nationals renewing licenses
- States often ask for a variety of immigration documents, some of which are irrelevant
- Some states restrict renewals to length of I-94
- REAL ID Act



Immigration Documentation

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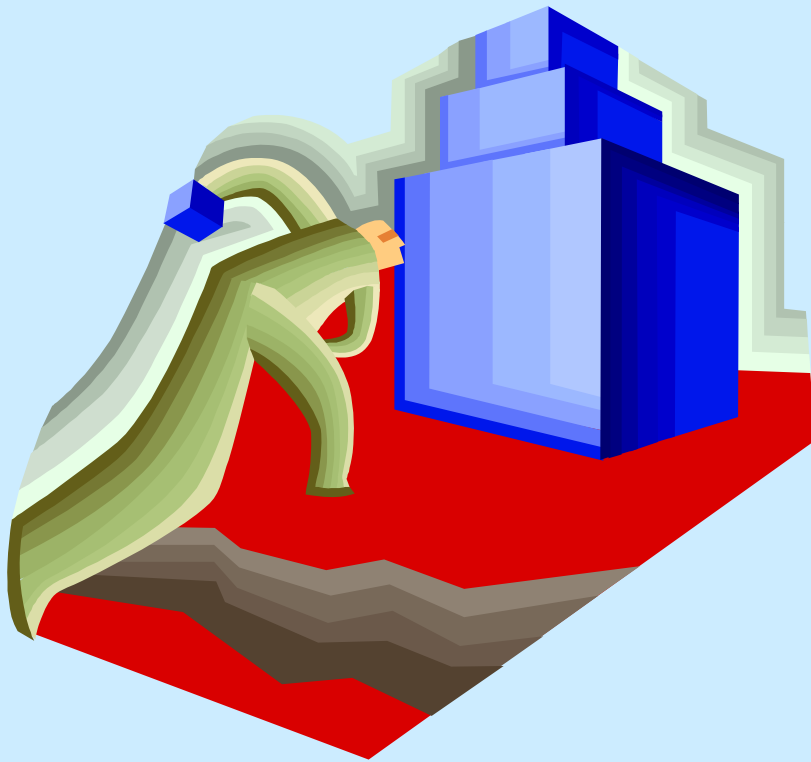


“Authorization Documents”



- Many visas require a pre-approval process
- Prefiling with CIS, issuance by a designated institution
- Pre-approval, or authorization documents include: I-797, I-20 and DS 2019 (former IAP 66)
- Authorization documents are presented at a U.S. consular post for visa issuance, or at border

What is a Visa?



- Ticket, or key to entry into the U.S.
- NOT a guarantee of admission
- Permission to present oneself at the border and request entry in a certain visa category
- State Department controls visa issuance

What controls the terms of stay in the U.S.?



- For nonimmigrants, I-94 or other entry document given after visa is “inspected” at entry
- The I-94 card is the “work-permit” and residence document for most nonimmigrants
- Once in the door, it’s the I-94!

Form I-94

Departure Number	OMB No. 1651-0111
393086569 12	
I-94 Departure Record	
DEPARTMENT OF HOMELAND SECURITY ADMISSIONS JAN 24 2006 Class <u>H1B</u> Until <u>June 17, 2007</u>	
14. Family Name	
P I A T E L	
15. First (Given) Name	16. Birth Date (Day/Mo/Yr)
A R M A N D I	3 0 0 6 7 8
17. Country of Citizenship	
I N D I A	
CBP Form I-94 (10/04)	

Notice of Action



RECEIPT NUMBER WAC-03-009-52040		CASE TYPE I129
RECEIPT DATE October 11, 2002	PRIORITY DATE	PETITIONER SOS SYSTEMS CONSULTANTS
NOTICE DATE February 21, 2003	PAGE 1 of 1	BENEFICIARY SHARMA, PANKAJ A.
STEVEN REIN ATTORNEY AT LAW US VISA ASSOCIATES INC 20501 VENTURA BLVD SUITE 117 WOODLAND HILLS CA 91364		Notice Type: Approval Notice Class: H1B1 Valid from 12/20/2002 to 12/20/2005

The above petition and extension of stay have been approved. The status of the named foreign worker(s) in this classification is valid as indicated above. The foreign worker(s) can work for the petitioner, but only as detailed in the petition and for the period authorized. Any change in employment requires a new petition. Since this employment authorization stems from the filing of this petition, separate employment authorization documentation is not required. Please contact the IRS with any questions about tax withholding.

The petitioner should keep the upper portion of this notice. The lower portion should be given to the worker. He or she should keep the right part with his or her Form I-94, *Arrival-Departure Record*. This should be turned in with the I-94 when departing the U.S. The left part is for his or her records. A person granted an extension of stay who leaves the U.S. must normally obtain a new visa before returning. The left part can be used in applying for the new visa. If a visa is not required, he or she should present it, along with any other required documentation, when applying for reentry in this new classification at a port of entry or pre-flight inspection station. The petitioner may also file form I-824, *Application for Action on an Approved Application or Petition*, with this office to request that we notify a consulate, port of entry, or pre-flight inspection office of this approval.

THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

IMMIGRATION & NATURALIZATION SERVICE
VERMONT SERVICE CENTER
75 LOWER WELDEN STREET
SAINT ALBANS VT 05479-0001
Customer Service Telephone: (802) 527-4913
Form I797A (Rev. 09/07/93)N



PLEASE TEAR OFF FORM I-94 PRINTED BELOW, AND STAPLE TO ORIGINAL I-94 IF AVAILABLE.

Detach This Half for Personal Records

Receipt # WAC-03-009-52040

I-94# 289401559 07

NAME SHARMA, PANKAJ A.

CLASS H1B1

VALID FROM 12/20/2002 UNTIL 12/20/2005

PETITIONER: SOS SYSTEMS CONSULTANTS
501 HOES LANE #203
PISCATAWAY NJ 08854

289401559 07

Receipt Number WAC-03-009-52040

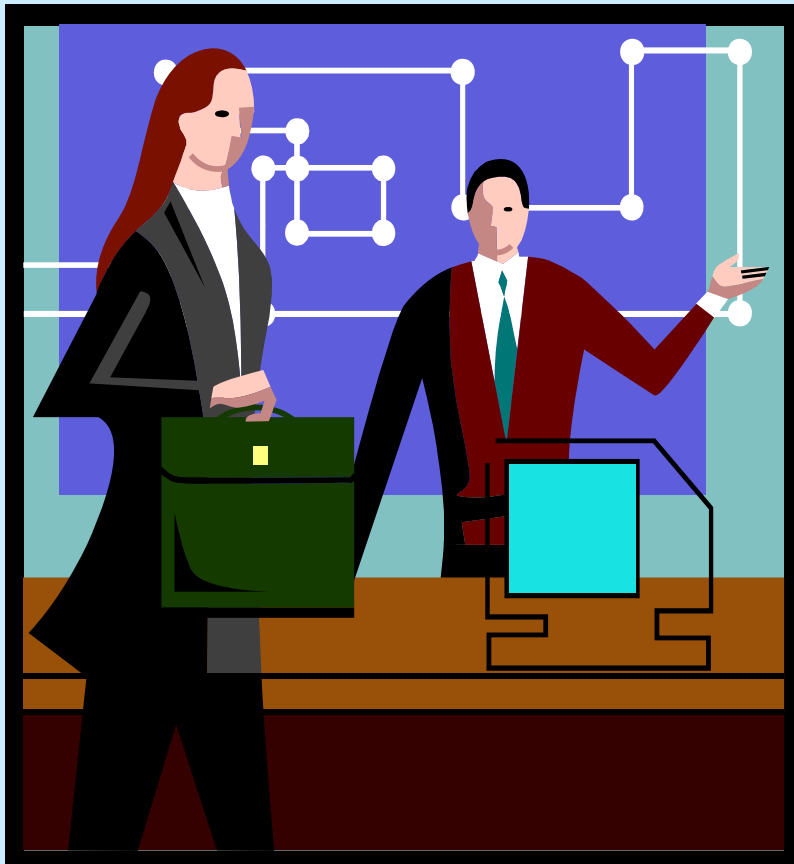
Immigration and
Naturalization Service

I-94

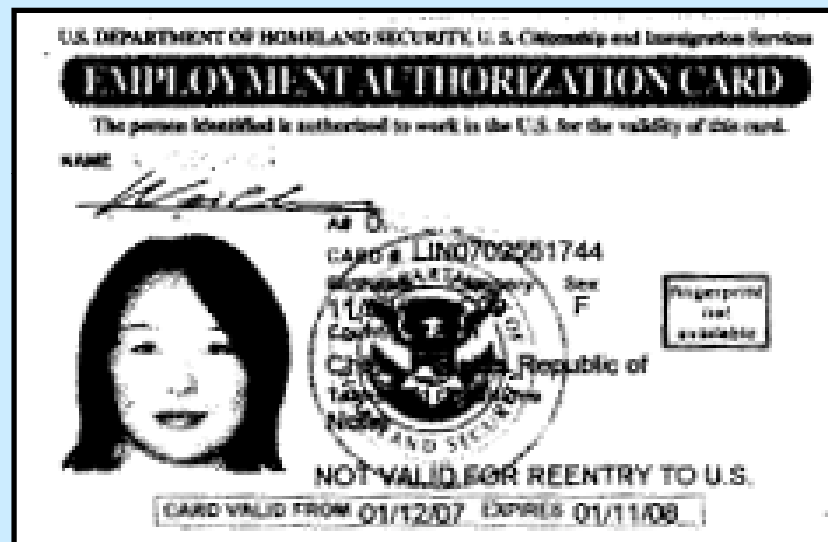
Departure Record Petitioner: SOS SYSTEMS C

14. Family Name SHARMA	
15. First (Given) Name PANKAJ	16. Date of Birth 05/31/1975
17. Country of Citizenship INDIA	

Who gets an EAD?



- F-1's with optional practical training
- J-2 spouses with work authorization
- TPS foreign nationals
- Individuals in “adjustment of status”
- L-2 and E-2 spouses
- Refugees and asylees (but they are also work-authorized “incident to status”)



Problems with Overstays

- Staying one day beyond I-94 period—Automatic visa voidance
- Staying 180 days or more beyond I-94 period--- 3 year bar on re-entry
- Staying 1 year or more beyond I-94 period—10 year bar on re-entry
- Monitor I-94 dates!



Typical Work Visas

... H, L, O

The H-1B Category-- Temporary Professional Workers

- For professional-level workers who are coming to work for a U.S. employer in a “specialty occupation”
- Examples of specialty occupations : engineers, physicists, software developers, systems analysts, accountants, economists, architects

The “H-1B” Equation



- Education and/or experience in a particular professional background, plus a job offer in the same professional field = eligibility for the H-1B visa category
- Employer need not show that no U.S. worker can perform the job

The H-1B Application Process



- Prior to filing the H-1B petition with CIS, a “Labor Condition Application” is filed with the Department of Labor
- The LCA contains certain attestations by the employer that the employment of the H-1B worker will not create a disadvantage to U.S. workers

H-1B Validity

- Initial validity is 3 years, with a maximum total of 6 years.
- After 6 years, H-1B worker must spend one year abroad before returning in H or L status.
- Some exceptions to 6-year limit— “AC-21.”
- H-1B worker’s spouse and minor children receive H-4 visas. No work authorization for spouses.

H-1B Cap Issues



- Cap is currently set 65,000 for each FY. Allotment is opened in April for October 1 start date.
- This year, cap was met on April 2.
- Cap doesn't impact Higher Education institutions, non-profit research institutions, governmental research institutions.
- However, cap will impact a planned H-1B transfer from non-profit to for-profit.
- Separate allotment of 20,000 for U.S. advance degree holders.

H-1B “Portability”

- An H-1B worker may “port” from one H-1B employer to another, upon receipt by CIS of the new employer’s petition to transfer H-1B status.
- The H-1B worker must have been maintaining valid H status and must not have engaged in any unauthorized employment.
- Safest to put H-1B worker on payroll after official filing receipt is received

Typical Work Visas--O visas

- For individuals with extraordinary ability
- “Small percentage who have risen to the apex in their fields”
- International recognition
- Letters of reference from experts
- Valid for an initial 3 years, extendable
- May be a precursor to First Preference green card
- Can be a renowned professor on a lecture tour

Typical Work Visas--O visas

- O visa holder can have contractual relationship.
- Can be paid as independent contractor by numerous institutions if on itinerary.
- If sponsored by an agent, changes to itinerary are permissible.
- Example: Margaret Thatcher visits Harvard, Umberto Eco teaches for a semester at Yale.
- In most cases, will have O visa sticker, I-94.

Typical Work Visas: P Visas

- **P Visas: Internationally Recognized Athletes, Artists or Members of Recognized Entertainment Groups**
- • P-1: Internationally recognized athletes (coming to perform individually or part of a team)
- • P-2: Artist or Entertainers (coming to perform individually or as part of a group)
- • P-3: Artist or Entertainers coming to perform, teach, or coach in a culturally unique program



A Look at Educational Visas

... and their special issues

F-1 Students

- Bona fide student qualified to pursue a full course of study at a designated school, such as a university, college, seminary, high school
- Temporary intent required
- Prospective students should announce intent to seek schools when applying for visitor visa
- B visa holders can't start school before change to F is granted
- F-1 students are given D/S on I-94 --period needed to complete the program, plus any authorized period of practical training, plus 60 days

F-1 Students and Employment

ON CAMPUS

- Incident to Status
- 20 hours/weeks while school is in session
- Full-time during vacation
- Employer can be university, or other employers providing on-campus services
- No EAD

OFF CAMPUS

- Show severe economic hardship
- Make effort to find on campus employment
- I-538 filed
- EAD issued

F-1 Students and Employment

- CURRICULAR PRACTICAL TRAINING
- Part-time or full-time
- Integral part of F-1 curriculum
- No CIS approval required
- Eligibility after 9 months full time study
- 12 months or more of full time CPT renders foreign national ineligible for OPT

F-1 Students and Employment

- OPTIONAL PRACTICAL TRAINING
- Pre- or post-completion
- Related to student's major
- Not required to apply to CIS for permission
- EAD application required
- Eligibility after nine months full time study

F-2 Dependents

- May study while in the U.S.
- May not receive any financial assistance, such as teaching assistantship, involving employment
- May not be employed in U.S.

J-1 Exchange Visitors

- Bona fide student, scholar, trainee, teacher, professor, research assistant, specialist
- Also summer work study, camp counselors, au pairs
- Coming temporarily to participate in a program designated by the State Department
- Admitted for D/S
- Temporary Intent
- Certain J's have two year foreign residence requirement, if program financed by U.S. or home country, J-1 is subject to "skills list," or J-1 has obtained graduate medical training in U.S.

J Categories

- Students pursuing full time courses at college or university, or secondary school (24 months study, 18 months academic training, 36 months for post-docs)
- Short term scholars, such as professors, research scholars and the like coming to lecture, observe, consult for a period of six months

J Categories

- Trainees participating in a structured training program (up to 18 months)
- Full time teachers in primary or secondary schools (3 years plus 30 days)
- Professors and research scholars teaching, lecturing, observing at educational institutions, museums, libraries and the like (up to 5 years plus 30 days, with extensions possible, although SEVIS not yet updated to accomodate)

Payments to Mexicans and Canadians, Special Rules

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J Categories

- Specialists, including experts with specialized knowledge coming to observe, consult or demonstrate specialized skills (1 year plus 30 days)
- Alien Physicians, International Visitors, Government Visitors, Camp Counselors and Au Pairs

J-1 Exchange Visitors and Employment Authorization

- J-1 students eligible for part-time on or off-campus employment if urgent and unforeseen financial need has arisen and employment will not preclude progress toward educational objective
- Academic training for 18 months, 36 for post docs
- No EAD required

J-1 Exchange Visitors and Employment Authorization

- Other J-1's are employment authorized as stated in DS 2019
- J-1 professors and research scholars may lecture at other institutions and receive honoraria
- J-2's may work with CIS pre-approval, showing J-2 income not necessary for support of J-1

Special Provisions regarding Mexicans and Canadians

- Many Mexicans enter the U.S. as visitors using “Border Crossing Cards”
- Mexicans are still required to carry passports
- Canadians are currently both visa exempt
- Recent changes in Canadian passport requirements—passports currently required at airports, soon at land border crossings.
- BUT—Even where passports are not required, Canadians must enter in a “status”

Immigration Under NAFTA

- NAFTA provides a schedule or list of professions
- A Mexican or Canadian in a listed profession may enter the U.S. for one year to work for a U.S. employer in that profession
- Schedule includes architects, accountants, computer systems developers, lawyers, scientists in almost all scientific disciplines, professors, graphic artists, management consultants, hotel and restaurant managers and others

Immigration Under NAFTA

- Temporary intent required
- For Canadians, application is made directly at a border crossing point
- Canadians must show proof of nationality, evidence of inclusion in occupational list, and job offer
- As of January 1, 2004, Mexicans may apply directly for TN status at a U.S. embassy or consulate abroad, instead of pre-approval process.
- No limit on TN renewals

NAFTA and Universities

- College and university professors are on the schedule
- No minimum time on TN
- Good option for short stints that do not meet requirements of the B honoraria rules
- Multiple employers O.K.



Payments to B Visa Holders

A Confusing Scenario

- Under prior law and regulation, payment of honoraria to speakers with visitor's visas was unclear
- MOST CONSERVATIVE: B-1's could accept incidental expenses for trip
- B-2's could not be paid at all

Changes made by ACWIA

- Effective October 1998, all visitors are entitled to receive honoraria and/or associated incidental expenses
- For a “usual academic activity”
- Lasting not more than 9 days
- At certain academic institutions
- If foreign national has not accepted such payment or expenses from more than 5 such institutions in the prior 6 months

What institutions qualify?

- Institution of higher learning as defined in section 101(a) of the Higher Education Act of 1965, or a related or affiliated nonprofit entity
- Nonprofit research organization or Government research organization

Proposed Rules

- Proposed rules on Academic Honoraria—Not finalized yet
- CIS says proposed rule a reflection of its current policy
- No dollar limit on honoraria
- “Usual academic activity” means lecturing, teaching, sharing knowledge, attending meetings of boards and committees
- Events and performances must be open to students /general public with no admission fee

Proposed Rules

- Academic visitors who seek admission for academic activities must enter with B-1 or “WB” designation
- Those already in U.S. as B-2 may undertake academic activities and receive honoraria consistent with law
- B-2’s coming with intent to “mix business and pleasure” must so state at entry
- No I-9 necessary

Proposed Rules

- Several activities at different branches or campuses of one institution count as one if paid for with one honorarium
- Where each campus or branch pays its own honorarium, each activity is viewed as a distinct academic activity

B-1 Academic Visits: Examples

- UK professor hired by Morningside University to write curriculum, writing it from UK, visiting U.S. to consult—OK
- Invited to Morningside to participate in 5 day conference on area of specialization (importance of pumpernickel bread during 30 years war)---OK
- Invited to give spring semester lecture series on same topic---H-1B?

B-2 Academic Visits: Examples

- Dr. Bombay is a world-renowned expert on Hindu mysticism
- He is in the U.S. in B-2 status visiting Sedona with his family and feeling the energy emanations from the red rocks
- The University of Northern Arizona gets wind of this and asks him to spend a day on its campus and give a guest lecture
- Can Dr. Bombay agree to give this lecture and accept an honorarium for it?

Let's Take a Breather

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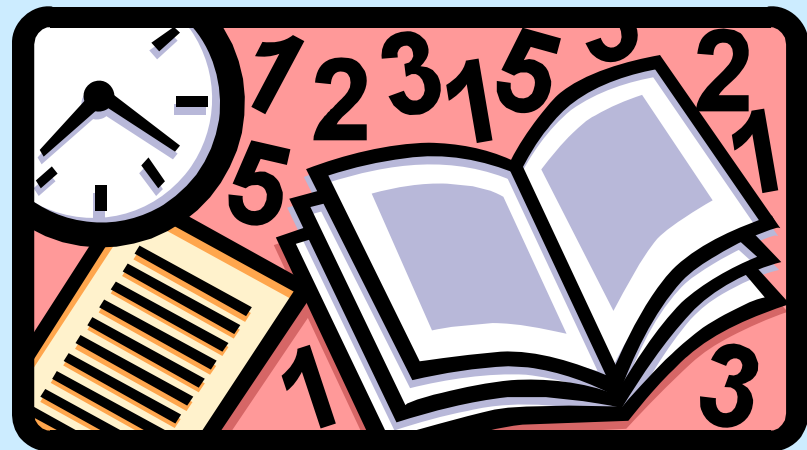
I-9 Compliance

Topics for Today: I-9 Compliance

- **Employment Eligibility Verification—the legal background**
- **Current trends in enforcement**
- **Penalties for noncompliance**
- **How to conduct “EEV”**
- **How to examine documents**
- **Retention and Maintenance**
- **Audits and Investigations**

Three main types of work authorization

- Permanent unrestricted
- Temporary unrestricted
- Temporary restricted



The Immigration Reform and Control Act of 1986 (“IRCA”)



- Employment eligibility verification + amnesty = no illegal immigration
- Congress appointed companies as front line “cops” to prevent unauthorized employment
- “Cops,” but not detectives

The Immigration Reform and Control Act of 1986 (“IRCA”)



- Employment eligibility verification + amnesty = no illegal immigration

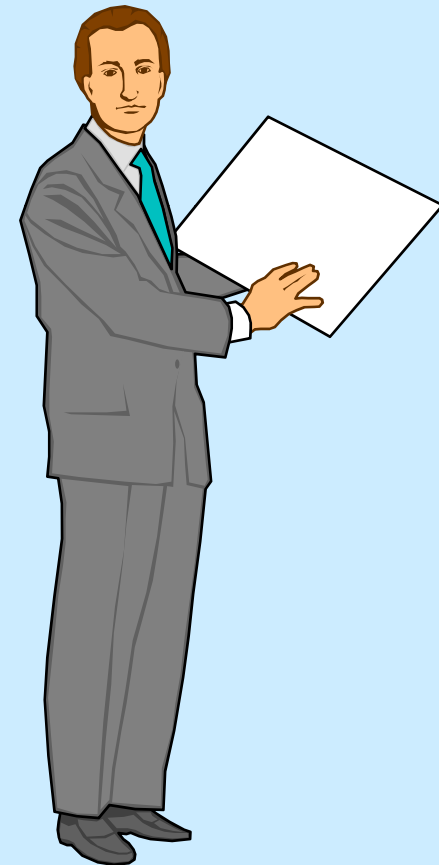
Penalties for Noncompliance

- Civil Monetary Penalties
- Criminal Penalties: 6 months in prison for “pattern and practice” violations, and criminal monetary penalties for each unauthorized worker (in addition to civil penalties)
- Paperwork Violations: \$110 to \$1,100 per employee (even if authorized to work!)
- Debarment from Government Contracts
- New legislation
 - Colorado—State Contractors must use Pilot Program
 - Similar Federal legislation proposed

Are penalties levied only when
undocumented workers are found?

NO! Penalties are levied for:

- accepting facially inadequate documents
- failing to complete I-9
- failing to update or reverify
- failing to observe the 3 day rule



Mitigating factors

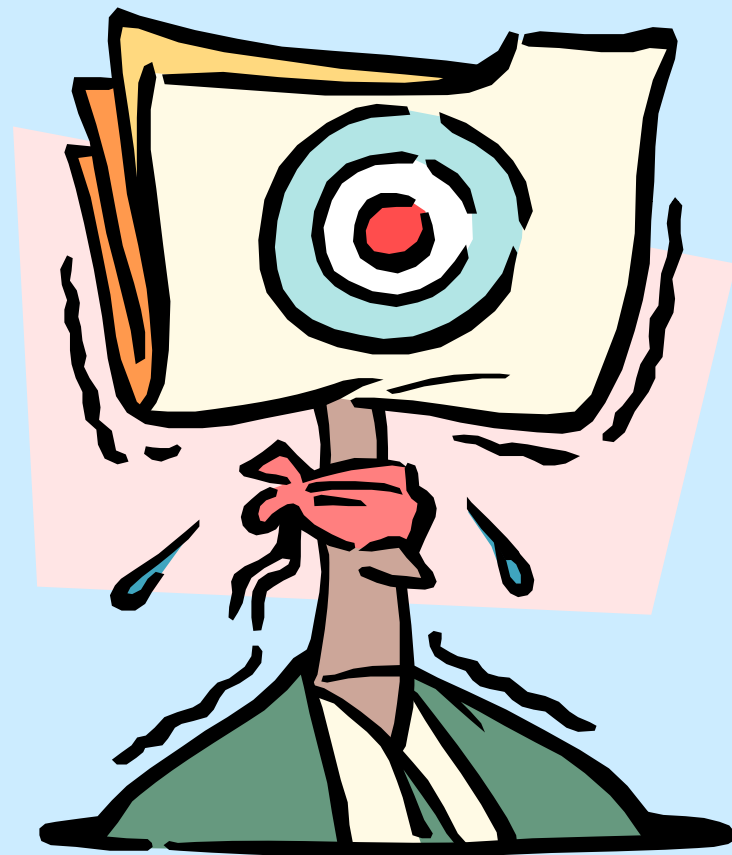
- Limited liability for technical violations—10 day window to correct
- Factors that can mitigate penalties include:
 - **Size of institution**
 - **Good faith of employer**
 - **Seriousness of violation**
 - **Whether individual was undocumented**
 - **History of prior violations**
 - **Compliance program**

Enforcement

- INS enforcement targeted certain high incidence states and industries
- Texas, California, Arizona, Illinois, Florida, New York and New Jersey
- Hospitality, construction, agriculture
- In late 90's marked decline in enforcement

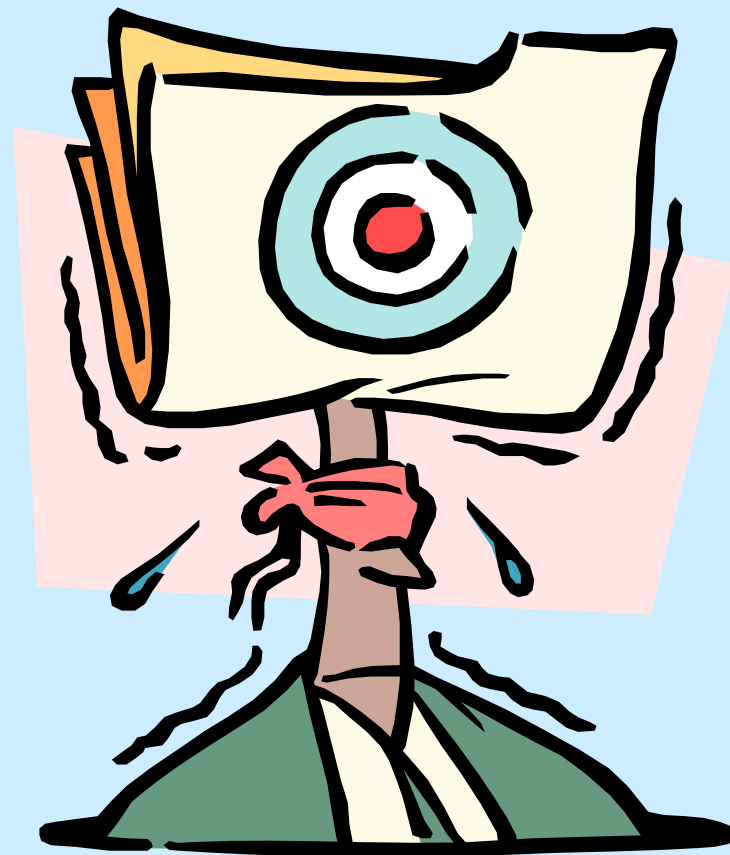
Current Enforcement Priorities

- ICE has reinvigorated I-9 enforcement
- Since September 11, I-9 investigations also targeted at industries or institutions with connection to national security



Current Enforcement Priorities

- Colleges and universities may be a target of investigation because of the high numbers of foreign students



Recent Enforcement Trends

- ICE pursuing I-9 enforcement with new vigor in last 2 years
- Connection to Comprehensive Immigration Reform?
- New focus on criminal penalties, for workers, owners and managers

Recent ICE Activity

- **Wal-Mart settlement**
- **Multi-state Swift raids**
- **IFCO raids and investigations**
- **New Bedford Leather Factory raid (Michael Bianco Inc.)**
 - Criminal forfeitures
 - Arrest/Indictment of owners and managers
 - Identity theft allegations
 - Use of undercover agents
 - Transfer of workers to processing center and separation of families
 - “Co-employment” allegations with respect to contract workers

IRCA Obligations

- Makes employers responsible for two determinations for all employees hired since November 6, 1986:
 - Identity
 - Eligibility to work
- IRCA also prohibits unfair immigration-related employment practices

Looking closely at the I-9 Form



The I-9 Form, Section 1

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

OMB No. 1615-0047; Expires 03/31/07

Employment Eligibility Verification

Please 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 eligible individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because of 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 #
<p>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.</p>		<p>I attest, under penalty of perjury, that I am (check one of the following):</p> <p><input type="checkbox"/> A citizen or national of the United States</p> <p><input type="checkbox"/> A Lawful Permanent Resident (Alien #) A _____</p> <p><input type="checkbox"/> An alien authorized to work until _____</p> <p>(Alien # or Admission #) _____</p>		
		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)

The I-9 Form, Section 2

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

The I-9 Form, Section 3

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 eligibility.

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

I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible 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)*

NOTE: This is the 1991 edition of the Form I-9 that has been rebranded with a current printing date to reflect the recent transition from the INS to DHS and its components.

Form I-9 (Rev. 05/31/05)Y Page 2

Who must conduct EEV?

- All U.S. employers must conduct EEV
- A designated agent of an employer may also conduct EEV



For whom must an I-9 be completed?



- All U.S. employees
- Full or part-time
- Hired since November 6, 1986
- NOT independent contractors
- NOT contract agency employees

Proper EEO practices begin BEFORE hire

- It is permissible, and even advisable, to ask whether a candidate is authorized to work in the United States for any employer, But **BE CONSISTENT**
- Make Contingent Offers

Conducting EEV



- First phase of EEV should begin on or before the first day of employment

Conducting EEV: By or On Day One--



- **Employee** must complete and sign Section One of I-9 Form
- **Employer** should ensure that Section One is completed correctly

The I-9 Form, Section 1

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

OMB No. 1615-0047; Expires 03/31/07

Employment Eligibility Verification

Please 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 eligible individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because of 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 #
<p>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.</p>		<p>I attest, under penalty of perjury, that I am (check one of the following):</p> <p><input type="checkbox"/> A citizen or national of the United States</p> <p><input type="checkbox"/> A Lawful Permanent Resident (Alien #) A _____</p> <p><input type="checkbox"/> An alien authorized to work until _____</p> <p>(Alien # or Admission #) _____</p>		
		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)

Within 3 Business Days--



- **Employee** must present acceptable documents
- **Employer** must inspect documents presented
- **Employer** must complete and sign Section Two of Form I-9

The I-9 Form, Section 2

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

What documents may be accepted?

- List A contains documents that constitute evidence of employment authorization and identity
- List B contains identity documents only
- List C contains work authorization only
- You may accept one List A, or one each from Lists B and C

Typical Documents

- What is typical evidence of identity?
- What is typical evidence of employment authorization?
- Both?



Changes in acceptable documents

- Since September 1997 the following List A documents are no longer acceptable:
 - Certificate of citizenship
 - Certificate of naturalization
 - Unexpired reentry permit
 - Unexpired refugee travel document

Expired or unexpired documents?

- Expired identity documents, such as driver's license, may still be evidence of identity.
- If identity document is old/expired, make sure you can use it to actually identify the employee!



Expired or unexpired documents?

- Expired U.S. passport may be accepted
- Expired permanent resident card may NOT be accepted, but reverification unnecessary if it expires *after* EEV



Examine documents carefully

- Only accept original documents!
- Accept documents that appear “reasonably genuine” on their face
- Do not accept documents that do not relate to the individual or have inherent inconsistencies



Keeping Copies of Documents: The Great Debate

- Keeping copies is not required by law, but is permitted
- It may be helpful for internal audits, and sometimes with respect to charges of fraud and discrimination
- On the other hand, it can enhance liability



Special Situations

Students and Scholars

- Internal Foreign Student Policies
 - Some institutions require written confirmation of eligibility for work authorization from office of foreign student adviser/Designated Officer in order to be considered for employment
 - I-9 may be completed using passport/I-94 (D/S), student ID plus I-20
 - EAD if OPT



Students and Scholars

- J-1 students can work
 - 20 hrs/wk on campus as part of fellowship or assistantship
 - Through “academic training”
 - No EAD
 - J-2 spouses can obtain temporary unrestricted employment authorization



Other Nonimmigrant Visas



- A college or university may also employ individuals with temporary work visas, such as H's or O's
- For these, typical documentation would be valid passport and I-94 card

Form I-94

Departure Number	OMB No. 1651-0111
393086569 12	
I-94 Departure Record	
DEPARTMENT OF HOMELAND SECURITY ADMISSIONS JAN 24 2006 Class <u>H1B</u> Until <u>June 17, 2007</u>	
14. Family Name	
P I A T E L	
15. First (Given) Name	16. Birth Date (Day/Mo/Yr)
A R M A N D I	3 0 0 6 7 8
17. Country of Citizenship	
I N D I A	
CBP Form I-94 (10/04)	

Notice of Action



RECEIPT NUMBER WAC-03-009-52040	CASE TYPE I129	PETITION FOR A NONIMMIGRANT WORKER
RECEIPT DATE October 11, 2002	PRIORITY DATE	PETITIONER [REDACTED]
NOTICE DATE February 21, 2003	PAGE 1 of 1	BENEFICIARY [REDACTED]

Notice Type: Approval Notice
Class: H1B1
Valid from 12/20/2002 to 12/20/2005


The above petition and extension of stay have been approved. The status of the named foreign worker(s) in this classification is valid as indicated above. The foreign worker(s) can work for the petitioner, but only as detailed in the petition and for the period authorized. Any change in employment requires a new petition. Since this employment authorization stems from the filing of this petition, separate employment authorization documentation is not required. Please contact the IRS with any questions about tax withholding.

The petitioner should keep the upper portion of this notice. The lower portion should be given to the worker. He or she should keep the right part with his or her Form I-94, *Arrival-Departure Record*. This should be turned in with the I-94 when departing the U.S. The left part is for his or her records. A person granted an extension of stay who leaves the U.S. must normally obtain a new visa before returning. The left part can be used in applying for the new visa. If a visa is not required, he or she should present it, along with any other required documentation, when applying for reentry in this new classification at a port of entry or pre-flight inspection station. The petitioner may also file Form I-824, *Application for Action on an Approved Application or Petition*, with this office to request that we notify a consulate, port of entry, or pre-flight inspection office of this approval.

THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

IMMIGRATION & NATURALIZATION SERVICE
VERMONT SERVICE CENTER
75 LOWER WELDEN STREET
SAINT ALBANS VT 05479-0001
Customer Service Telephone: (802) 527-4913



Form I797A (Rev. 09/07/93)N

PLEASE TEAR OFF FORM I-94 PRINTED BELOW, AND STAPLE TO ORIGINAL I-94 IF AVAILABLE.

Detach This Half for Personal Records

Receipt # WAC-03-009-52040
I-94# 289401559 07

NAME [REDACTED]

CLASS H1B1

VALID FROM 12/20/2002 UNTIL 12/20/2005

PETITIONER: [REDACTED]

289401559 07

Receipt Number WAC-03-009-52040

Immigration and Naturalization Service

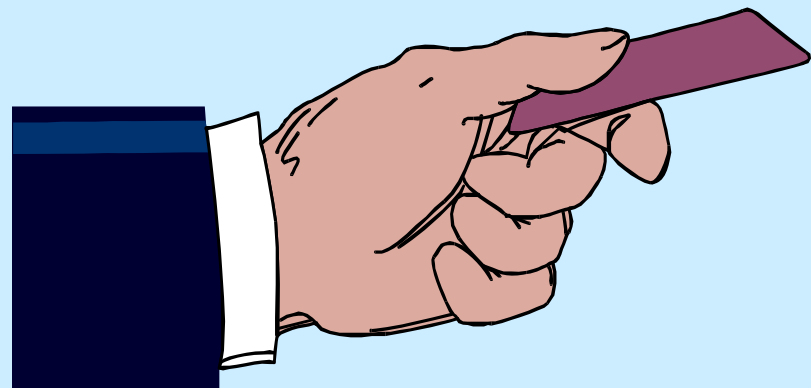
I-94

Departure Record: Petitioner: [REDACTED]

14. Family Name [REDACTED]	
15. First (Given) Name [REDACTED]	16. Date of Birth 05/31/1975
17. Country of Citizenship INDIA	

Restricted Social Security Cards

- Today, everyone with time-limited work authorization receives a restricted Social Security Card
- Must see other evidence of employment authorization!

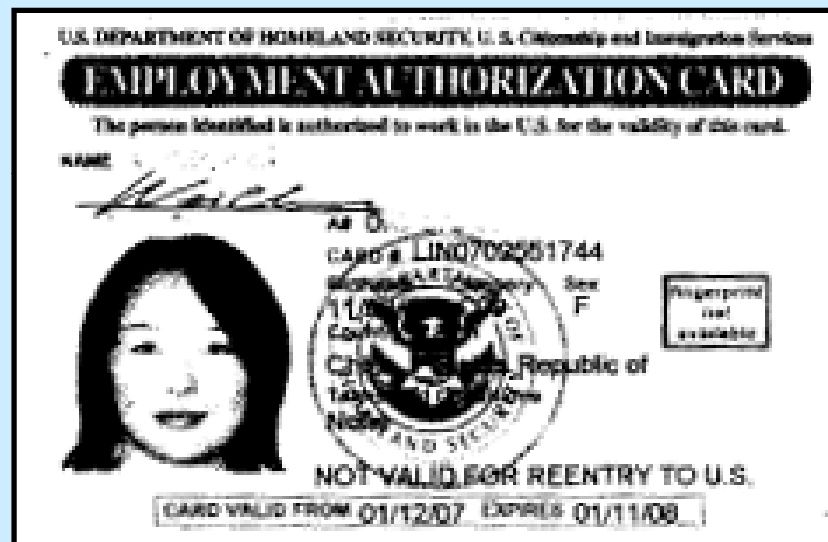


Social Security Mis-matches

- Under prior law and practice, an employer could not presume unlawful status due to a mis-match
- Proposed rule would require action by an employer if issue remains unresolved
- Treat a mis-match as two separate problems
 - Payroll
 - I-9 if SSN was used for List C

Employment Authorization Documents (EAD)

- List A document
- Employee should have checked 3rd box in Section 1 Attestation
- Who might have an EAD?
 - **Students**
 - **J-2 visa holders**
 - **Adjustment applicants**
 - **People with “TPS”**
 - **Spouses of L and E Visa Holders**



Employment Authorization Documents (EAD)-IMPORTANT

- Will require reverification!
- Cannot accept a receipt for application for a new period of employment authorization at reverification
- No employment authorization, no employment!

Accept Receipts for Employment Eligibility Documents:

- Only when original has been lost, stolen or misplaced
- Ensure original is presented within 90 days
- EAD extension application receipts are unacceptable
- Adjustment of status application receipts are unacceptable

Rules Regarding Refugees and Asylees

- Refugees and asylees are considered work authorized “incident to status”
- Therefore, if proof of refugee or asylee status is shown, that constitutes employment authorization

The 240 day rule

- Timely-filed extensions of stay in most NIV categories allow for 240 days of additional work authorization
- Receipt for filing can be accepted for reverification



H-1B “Portability”

- H-1B holder transferring from one employer to another may work upon filing of H-1B transfer petition.
- I-797 Receipt acceptable



Best Practices for Retention of I-9 Forms

- Keep all I-9 forms in binders, in alphabetical order by employee's last name
- Keep them in a central location
- Keep I-9 forms separate from personnel files
- Pull I-9's as employees depart, note retention date, keep in retention file or binder
- Alternatively, I-9's may be scanned and kept electronically

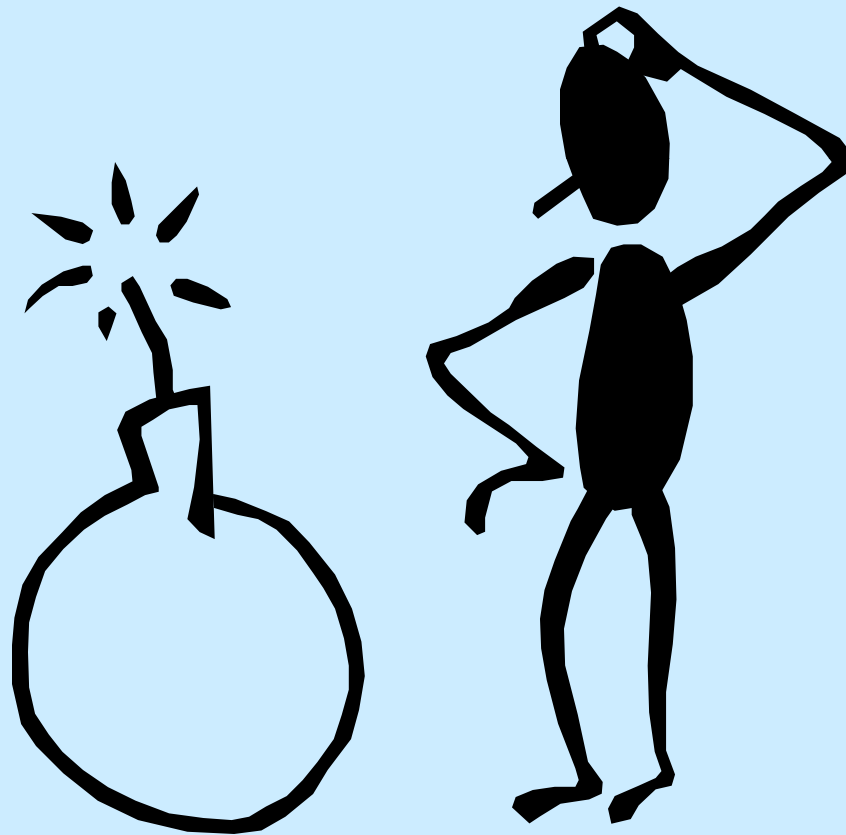


The Retention Rule: How Long Must I-9 Forms be Kept on File?

- All current employees hired after 11/6/86 must have an I-9 on file
- After termination, retain I-9 forms for three years following the date of hire or one year after termination, whichever is later



Why destroy I-9's that have met their retention period?



Re-verification/Re-hiring

- Use Section 3 of Form I-9, or a new Form I-9
 - For re-verifying employment eligibility for those whose authorization expires
 - For rehiring if within three years of initial hire date

The I-9 Form, Section 3

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 eligibility.

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

I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible 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)*

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Form I-9 (Rev. 05/31/05)Y Page 2

Best Practices for Re-verification

- Alert employees with expiring work authorization documents 3-4 months prior to expiration



Working with contractors and short-term labor

- No I-9 form needed for contract employees
- Do not turn a blind eye if you identify an unauthorized contract employee
- Short-term labor: Employees who will work fewer than 3 days need sections 1 and 2 of the I-9 completed on day 1)

Audits and Investigations

- Investigations vs. Raids
- What to expect?
- Other investigations in which I-9's will be reviewed:
 - OFCCP
 - Immigration-related employment discrimination
 - Some wage and hour investigations

Common Audit Issues

- No I-9 on file
- I-9 not timely
- Employee has not completed Attestation box in Section 1
- Section 2 not completed within 3 business days
- Employer attestation box not completed, no date
- Failure to reverify
- Knowing continued employment of unauthorized workers

Preparing for Audit: Best Practices

- Written statement of commitment to I-9 laws
- Written policy guidelines on completion and maintenance of I-9 forms
- Regular training of new HR staff on I-9 procedures
- Regular internal audits
- Written standard protocols for dealing with government “visitors”

For more information, contact

Morgan Lewis
...Resources

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