



IMMIGRATION PRACTICE

ALERT

USCIS AND ICE ANNOUNCEMENTS

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NEW I-9 FORM CONTINUES TO BE EFFECTIVE

U.S. Citizenship and Immigration Services (USCIS) announced on June 26, 2009, that the current edition of the Employment Eligibility Verification Form I-9 (with “Rev. 02/02/09” on the lower right corner and “Expires 06/30/2009” on the upper right corner) will continue to be valid for use beyond June 30, 2009.

USCIS has requested the Office of Management and Budget (OMB) to approve the continued use of the current version of Form I-9, allowing USCIS to update the form itself to reflect a new expiration date. While this request is pending, the Form I-9 (Rev. 02/02/09) will not expire. When the request for extension is approved, USCIS will update the Form I-9 appropriately.

Currently, the most recent version of the form (with “Rev. 02/02/09” on the lower right corner and “Expires 06/30/2009” on the upper right corner) is mandatory and all previous versions are invalid. When USCIS updates the Form to reflect a new expiration date, employers will be able to use either this new edition of the Form (with a new revision date on the lower right) or the current edition of the Form I-9 (with “Rev. 02/02/09” on the lower right corner and “Expires 06/30/2009” on the upper right corner).

The new I-9 Rules and Form are designed to improve the security of the I-9 process by making it easier for employers to verify acceptable documents and identify fraudulent documents. For more information about the new I-9 Rules, which took effect on April 3, 2009, please see our previous [alert](#) on this topic.

The new Form I-9 and List of Acceptable Documents is available on USCIS’ web site in [English](#) and in [Spanish](#).

(Note, however, that the Spanish version of the Form may only be executed by employers in Puerto Rico; Employers in the rest of the United States may use the Spanish version of the Form as a translation guide only but must complete the English version of the Form.)

The new [M-274 Handbook for Employers](#) is also available on USCIS’ web site.

FOCUS OF ENFORCEMENT SHIFTS TO EMPLOYERS: ICE TO CONDUCT I-9 AUDITS AT 652 BUSINESSES

The Department of Homeland Security’s Immigration and Customs Enforcement agency (ICE) announced on July 1 that it will serve notices of inspection to 652 businesses nationwide as part of a new I-9 audit initiative to crack down on the hiring of illegal workers. The Agency confirmed that this is more than the number of notices of inspection issued during the last fiscal year (503 in 2008). According to ICE, the 652 businesses being presented with a notice of inspection were selected as the result of leads and information obtained through other investigative means, but that due to the ongoing, sensitive nature of the audits ICE was not able to reveal the names and locations of the businesses that will be audited.

The notices alert business owners that ICE will be inspecting their hiring records to determine whether they are complying with employment eligibility verification laws and regulations.

According to ICE, such inspections are “one of the most powerful tools the federal government has to enforce employment and immigration laws.” The renewed emphasis on I-9 audits “illustrates ICE’s increased focus on holding employers accountable for their hiring practices and efforts to ensure a legal workforce,” the Agency said.

“ICE is committed to establishing a meaningful I-9 inspection program to promote compliance with the law,” said John Morton, DHS’ assistant secretary for ICE. “This nationwide effort is a first step in ICE’s long-term strategy to address and deter illegal employment,” he said.

All employers in the United States are required to have an I-9 on file for all employees to verify their identity and authorization to work in the United States. The form requires that employers execute this process upon hire of an employee, review and record the individual’s original, valid identity documents and determine whether those documents reasonably appear to be genuine and related to the individual. For more information about the current I-9 rules, which took effect on April 3, 2009, please see our previous [alert](#) on this topic.

USCIS ANNOUNCES RESUMPTION OF PREMIUM PROCESSING SERVICE FOR FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

U.S. Citizenship and Immigration Services (USCIS) announced on June 26, 2009, that effective June 29, 2009, it will resume Premium Processing Service for Form I-140, Immigrant Petition for Alien Worker, for the following categories: EB-1 Aliens with Extraordinary Ability, EB-1 Outstanding Professors and Researchers, EB-2 Members of Professions with Advanced Degrees or Exceptional Ability not seeking a National Interest Waiver, EB-3 Professionals, EB-3 Skilled Workers and EB-3 Workers other than Skilled Workers and Professionals.

Premium Processing Service remains unavailable for Form I-140, Immigrant Petition for Alien Worker, involving EB-1 Multinational Executives and Managers and EB-2 Members of Professions with Advanced Degrees or Exceptional Ability seeking a National Interest Waiver.

USCIS had indefinitely suspended Premium Processing for I-140 petitions in July 2007, although it was reinstated for certain applications in June 2008¹. USCIS’ Premium Processing Service provides faster processing of certain petitions or applications for a \$1,000 processing fee. Specifically, USCIS provides 15 calendar day processing to those who choose to use and pay the additional fee for this service. Under this service, USCIS guarantees that it will process the filing (consisting of issuing either an approval notice, a notice of intent to deny or a request for evidence or opening an investigation for fraud or misrepresentation) within 15 calendar days of receipt. If the petition is not processed within 15 calendar days, USCIS refunds the \$1,000 fee and continues to process the request as part of the Premium Processing Service. This program also provides better and more efficient communication regarding applications by the use of a dedicated phone number and e-mail.

The reinstatement of the Service for certain I-140 petitions will be of great benefit to many foreign nationals who, due to lengthy processing time and backlogs in the issuance of immigrant visa numbers, particularly under the EB-3 category², must possess an I-140 approved on their behalf in order to extend their nonimmigrant visas and continue to live and work in the United States³. By filing an I-140 petition pursuant to Premium Processing, processing time can be reduced from as long as eight months to about two weeks.

For more information regarding this *Alert*, please contact Alka Bahal at 973.994.7800 (immigration@foxrothschild.com) or any member of our [Labor & Employment Department](#) or [Immigration Practice](#). Visit us on the web at www.foxrothschild.com.

[1] In June 2008, USCIS reinstated the Premium Processing Service on a limited basis for I-140 petitions, where the alien worker in H-1B nonimmigrant status will reach the end of his sixth year in H-1B nonimmigrant status within 60 days (or has already reached this limit) and is only eligible for an H-1B extension beyond the six-year limit under the provision of AC21, which requires an *approved* I-140 petition (i.e., §104(c)) and also is ineligible for an H-1B extension beyond the six-year limit under the provision of AC21, which enables the extension if a labor certification/I-140 has been filed 365 days or more before the sixth year limit (i.e., §106(a)).

[2] The “EB-3 Category” is the third preference classification of employer-sponsored permanent residency processing, which includes Skilled Workers, Professionals, and Other Workers and consists of 28.6% of the total worldwide Immigrant Visa Quota plus any numbers not required by first and second preferences, not more than 10,000 of which to “Other Workers.” This Category is currently oversubscribed and no Immigrant Visa Numbers are available for foreign nationals from any country. This means that individuals under this Category are unable to obtain (in some cases even file) for Permanent Residency, even if they possess approved labor certifications and/or I-140s.

[3] H-1B visa holders who did not have the permanent residency process filed on their behalf prior to their fifth year anniversary in H-1B status may only extend their H-1B visas beyond the normal sixth year limit where they have an *approved* I-140 petition (AC21§104(c)); the current limited Premium Processing Service only permits those I-140 petitions for H-1B visa holders who will reach the sixth year limit within 60 days (or who have already reached this limit). This does not provide relief to H-1B visa holders who may be reaching their H-1 visa limit in four months, for example, but it will be eight months before they can obtain an approval notice on the I-140 petition.

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