

**OSC LETTER RE:
Asylees/refugees with
unrestricted Social Security
cards and without EADs**



U.S. Department of Justice

Civil Rights Division

Special Counsel for Immigration-Related
Unfair Employment Practices - NYA
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

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BY FAX (312-993-9767)

Julie Marion, Esq.
Sears Tower
Suite 5800
Chicago, Illinois 60606

Re: INS Form I-9

Dear Ms. Marion:

This is in response to your inquiry this morning regarding appropriate employment verification procedures and the Immigration and Naturalization Service (INS) Form I-9.

As you know, employers must complete the INS Form I-9 within three days of hiring a new employee. Employees are required to present to the employer either one document from List A (establishing both identity and employment eligibility), or one document from List B (establishing identity) and one document from List C (establishing employment eligibility). All employees, including immigrants, may choose to present a driver's license and Social Security card (unrestricted version) to fulfill their employment verification responsibilities. Employers must accept the proffered document if it appears genuine on its face and relates to the new employee.

The INS Form I-9 contains three boxes in Section 1, and the new employee must check one of the boxes to attest that he or she is authorized to work in the United States. The third box is provided for individuals who are not U.S. citizens or lawful permanent residents.

It is important to recognize, however, that asylees and refugees (and lawful permanent residents) are authorized to work incident to their status, and therefore are authorized to work indefinitely. See 8 C.F.R. § 274a.12(a)(3) and (4); see also Gelatin v. DuPont Pharmaceuticals, 124 F.3d 591 (3d Cir. 1997) (asylee is work authorized incident to status). In other words, such individuals are authorized to work even if they have not applied to the INS for an employment authorization document. Of course, such individuals must present acceptable documentation upon hire to establish employment eligibility (such as an unrestricted Social Security card and driver's license).

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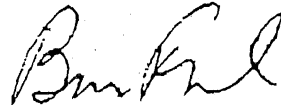
FROM

In the event that an asylee or refugee does not possess an INS-issued employment authorization document possessing an expiration date, it is perfectly acceptable for the individual to write, "N/A - asylee" or "N/A - refugee," on the line next to box 3 in Section I of the INS Form I-9. Doing so will not subject the employer to administrative sanctions.

The Immigration and Naturalization Act (INA) prohibits citizenship status and national origin discrimination with respect to hiring, termination, and recruiting or referring for a fee. See 8 U.S.C. § 1324b(a)(1)(B). The INA also prohibits employers from engaging in unfair documentary practices relating to the employment eligibility verification (or INS Form I-9) process. *Id.* at 1324b(a)(6). Both provisions are enforced by the Office of Special Counsel, within the Civil Rights Division of the U.S. Department of Justice. If an employer refuses to employ an asylee or refugee who presents an unrestricted Social Security card and a driver's license because the individual cannot provide an expiration date for box 3 in Section I of the INS Form I-9, such conduct may violate the INA, and subject the employer to back pay and civil penalties.

I hope that you will find this information helpful. If you have any questions or would like further information, please feel free to contact me at 202-616-5560. I am also happy to discuss this with any employer that needs further clarification of proper INS Form I-9 verification procedures.

Sincerely,



Bruce Friedman
Special Policy Counsel

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FROM