



U.S. Department of Justice
Civil Rights Division

*Office of Special Counsel for Immigration Related
Unfair Employment Practices - NYA
950 Pennsylvania Avenue, NW
Washington, DC 20530*

September 21, 2009

Via electronic mail to: gillespiej@lssnca.org

Jason Gillespie
Employment Manager
LSS/NCA
8700 Georgia Avenue
Suite 500
Silver Spring, MD 20910

Dear Mr. Gillespie:

This letter responds to yours of July 2, 2009, seeking guidance on: (1) proper employment eligibility verification procedures for asylees and refugees; (2) the types of documents an asylee or refugee might elect to produce to establish his or her employment eligibility; and (3) the implications of an expired employment authorization document (EAD) for asylees and refugees.

Please note that the Office of Special Counsel (OSC) cannot provide an advisory opinion on any particular instance of alleged discrimination or on any set of facts involving a particular individual or entity. However, we can provide some general guidelines regarding employer compliance with the anti-discrimination provision of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b, which OSC enforces.

The anti-discrimination provision prohibits the following types of employment-related discrimination against asylees and refugees: hiring, firing, recruitment or referral for a fee, and unfair documentary practices during the employment eligibility verification (Form I-9) process (document abuse) on the basis of citizenship or immigration status or national origin. It also prohibits retaliation against asylees and refugees for filing a charge, assisting in an investigation, or asserting their rights under the anti-discrimination provision.

Asylees and refugees are authorized to work incident to their status.¹ Accordingly, an asylee's or refugee's right to work exists whether or not he or she possesses an employment authorization document (EAD) issued by the Department of Homeland Security.² In addition, the Social Security Administration is authorized to issue an asylee or refugee an unrestricted Social Security card immediately upon receiving proof of status.³

Like all other workers in the United States, asylees and refugees are subject to the Form I-9 employment eligibility verification process. As you may know, the Form I-9 includes three lists of documents that individually or in combination establish an individual's identity and eligibility to work in the United States. No later than three days from the date of hire,⁴ all employees are required to present to their employer either one document from List A (establishing both identity and employment eligibility), or, in the alternative, one document from List B (establishing identity) and one document from list C (establishing employment eligibility).⁵

Asylees and refugees may possess a variety of acceptable documents Form I-9 documents, including documents providing temporary evidence of work eligibility for 90 days (*i.e.*, a receipt for a replacement document, or a current Form I-94 or Form I-94A indicating refugee status);⁶ documents evincing work authorization for a set period (*i.e.*, an unexpired EAD); and documents providing unlimited evidence of work authorization (*i.e.*, an unrestricted Social Security card or a Form I-94 or Form I-94A indicating asylee status). An employee must be allowed to choose which documents or combination of documents to present, and an

¹ 8 CFR §§274a.12(a); *Getahun v. DuPont Pharmaceuticals*, 124 F.3d 59, 594 (3d Cir. 1997) (asylee is work authorized incident to status); "Handbook for Employers: Instructions on Completing Form I-9 (Employment Eligibility Verification Form)," M-274 (rev. 04/03/09) (hereinafter "Handbook"), at 20; "I Am a Refugee or Asylee: How Do I...Show My Employer That I Am Authorized to Work in the United States," M-576 (August 2008) (hereinafter "How Do I"), at 1; Memorandum for All Regional Directors, William Yates, Acting Director, Operations Bureau of Citizenship and Immigration Services (March 10, 2003) (hereinafter "Yates Memo"), at 2; Memorandum from Dea Carpenter, Deputy General Counsel for the Executive Associate Commissioner, Office of Policy Planning (June 17, 2002) (hereinafter "Carpenter Memo"), at 3.

² How Do I, at 1; Yates Memo, at 2; Carpenter Memo, at 1.

³ See "Social Security Online: Documents You Need to Work in the United States," <http://www.ssa.gov/immigration/documents.htm>. A "restricted" Social Security card bears the legend "valid for work only with DHS authorization." An "unrestricted" Social Security card does not.

⁴ "Date of hire" means the first day the employee begins work in the United States for wages or other remuneration. Handbook, Answers to Questions 3 and 5, at 29.

⁵ 8 U.S.C. §1324b(a); 8 C.F.R. §274a/2(b); Handbook, at 6.

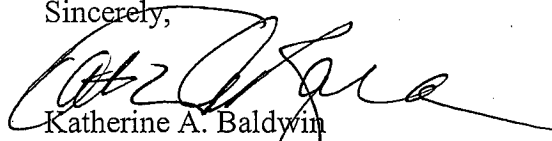
⁶ Unless another date is indicated, an I-94 or I-94A indicating admission into the United States as a refugee may be accepted by an employer within a year of its issuance to establish temporary work authority for 90 days beyond the date of hire. Handbook at 8 and 32.

employer may not request an employee to produce more or different document(s) than required to establish employment eligibility. To request specific documents or reject documents that appear on their face to be reasonably genuine and relate to the person may constitute document abuse in violation of 8 U.S.C. § 1324b(a)(6).

Finally, when completing the attestation portion of Section 1 of the Form I-9, an asylee or refugee should check the box indicating that he or she is "[a]n alien authorized to work . . . until _____." When the asylee or refugee elects to produce a temporary or time-limited document to establish his or her authorization to work (*i.e.*, EAD, receipt for replacement document or, in the case of a refugee, Form I-94 or Form I-94A), the asylee or refugee should insert the expiration date of the document or receipt produced in the space allotted. In this case, the employer must reverify the asylee's or refugee's employment eligibility on or before the date indicated. However, if the asylee or refugee produces a document without an expiration date (*i.e.*, unrestricted Social Security card or, in the case of an asylee, Form I-94), the asylee or refugee may leave the "until" part of the attestation blank, or, in the alternative, insert "N/A."⁷ In this case, the employer should not reverify the asylee's or refugee's employment eligibility. To do so may constitute document abuse in violation of 8 U.S.C. § 1324b.

We hope that this information is helpful. If you have additional questions about the employment eligibility of asylees or refugees or proper employment eligibility verification procedures for asylees or refugees, please contact OSC by telephone at 1-800-255-8155, or via the Internet at <http://www.usdoj.gov/crt/osc>. Information about the employment eligibility of asylees and refugees may also be obtained from the U.S. Citizenship and Immigration Services by telephone at 1-800-375-5283, or via the Internet at <http://www.uscis.gov>.

Sincerely,



Katherine A. Baldwin
Deputy Special Counsel

⁷ Handbook, Answer to Question 57, at 40; Instructions, Form I-9, Employment Eligibility Verification, OMB No. 1615-0047 (exp. 6/30/09), "Filing Out Form I-9, Section 1, Employee."