

Chapter 2 - Completing the I-9 Form

2.1 Where can I obtain a Form I-9?

USCIS makes the Form I-9 available for download on its website in a PDF format at www.uscis.gov. The form can also be ordered by telephone at USCIS' forms office at 800-870-3676 or at the USCIS National Customer Service Center at 800-375-5283.

Various case management and electronic filing systems make the I-9 available as well (see appendix ___ for a list of these companies and contact information). USCIS requires electronically generated I-9s to be legible with no change to the name, content or sequence of information and instructions.

USCIS permits forms to be printed on both sides (as is the actual printed form provided by USCIS) or on single sides.

[8 CFR §274a.2(a)(2)].

2.2 Is the Form I-9 available in different languages?

USCIS only makes Form I-9 available in English and Spanish. Note also that the Spanish form may only be used for translation purposes and the employer must retain the English language version of the form. The lone exception to this is Puerto Rico where employers have a choice and can retain either the Spanish or English language versions of the form.

[M-274 Question 60.]

2.3 Which version of the Form I-9 can an employer accept?

Employers may only accept the June 5, 2007 version of the Form I-9. Furthermore, re-verifications should not be made on the old version of the I-9. In such cases, a new I-9 should be used. Note that USCIS changes the form from time to time and employers should either check the USCIS web site every three or four months, subscribe to or regularly read print and online publications on immigration and employment law or use an electronic I-9 product from a reputable vendor that regularly updates the software for its subscribers.

2.4 What documentation can an employee present that shows both identity and employment authorization?

Employees must present documentation of identity and work authorization and can present documents from a pre-set list included in the I-9 Form's instructions. Some documents can prove both identity and that one is legal to work. Some documents prove either identity or work eligibility and one document must be provided in each of these categories. Employers are not allowed to tell employees which documents from the pre-set list they must present.

Documents showing both identification and employment eligibility are provided in List A in the Form I-9's instructions. They include the following:

- a US passport (unexpired or expired)
- a permanent residency card (a "green card") or alien registration receipt card (Form I-551)
- an unexpired foreign passport with a temporary I-551 stamp
- an unexpired Employment Authorization Document that contains a photograph (Form I-766 (this was added in June 2007), I-688, I-688A, or I-688B)
- an unexpired foreign passport with an unexpired Form I-94 Arrival-Departure Record with the same name as the passport and an endorsement showing the employee's nonimmigrant status showing the individual is eligible to work for the particular employer

Note that several List A items were removed from the list of acceptable documents when USCIS released its new form in June 2007. The following items are NOT acceptable anymore:

- Certificate of US Citizenship (Form N-560 or N-561)
- Certificate of Naturalization (Form N-550 or N-570)
- Alien Registration Receipt Card (I-151) (this is an old version of the green card that is no longer valid to prove permanent residency)
- Unexpired Reentry Permit (Form I-327)
- Unexpired Refugee Travel Document (Form I-571)

Section 2's area for listing documentation actually provides two spaces for document numbers and expiration dates. The purpose of this is to provide for situations where a foreign passport is used and I-94 is also needed to prove both identity and employment authorization. The passport number and expiration date and the I-94 number and expiration date can then be listed. Otherwise, only one document would be listed by document number and expiration date.

2.5 What documentation can an employee present solely to provide the employee's identity?

Form I-9's List B lists documentation acceptable to prove identity and a List B document may be provided with a List C document. List B documents include the following:

- A driver's license or identification card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address.
- An identification card issued by a federal, state or local government agency or entity as long as the form contains a photograph or information such as name, date of birth, gender, height, eye color and address
- A school identification card with a photograph
- A voter's registration card
- A US Military Card or draft record
- US Coast Guard Merchant Mariner Card
- Native American tribal document
- Driver's license issued by a Canadian government authority

Note that many states have recently enacted requirements making it significantly more difficult for non-immigrants to obtain a drivers license. Furthermore, President George W. Bush signed the REAL ID Act in 2005 which will eventually require states to meet more stringent standards in the issuance of driver's licenses and states not meeting the federal standards could find that their drivers licenses may no longer be acceptable documentation proving identity. If and when that happens, USCIS would likely update the Form I-9 instructions accordingly.

For persons under the age of 18 who cannot present one of the documents listed above, the following may instead be presented:

- A school record or report card
- A clinic, doctor, or hospital record
- A day-care or nursery school record

2.6 What documentation can an employee present solely to provide the employee's authorization to work?

Form I-9's List C lists documentation acceptable to prove employment eligibility and a List C document may be provided together with a List B document. List C documents include the following:

- a US Social Security card issued by SSA (other than a card stating that it is not valid for employment)

- Certification of Birth Abroad issued by the Department of State (Forms FS-545 or Form DS-1350)
- Original or certified copy of a birth certificate issued by a state, county, municipal authority, or outlining possession of the United States bearing an official seal
- Native American tribal document
- US Citizen ID Card (Form I-197)
- ID card for use of Resident Citizen in the US (Form I-179)
- Unexpired employment authorization document issued by the DHS (other than those listed under List A)

2.7 Where can an employer find illustrations of acceptable documents in Lists A, B and C?

Part 8 of the DHS's M-274 Handbook for Employers includes a number of illustrations. The M-274 handbook is included as Appendix ___ in this book.

2.8 May an employer specify which documents it will accept?

Employers may not tell employees which forms to supply. Rather, the employer must simply present the list of acceptable documents listed on the latest I-9 instructions and must allow the employee to choose what will be presented. Employers must then accept the documentation provided as long as the documentation appears genuine. Employers who violate this requirement risk being found liable for committing an unfair immigration-related employment practice that is violation of IRCA's anti-discrimination rules. This rule even applies when an employer writes down an alien number in Section 1 of the Form I-9. Employees are not required to provide documentation to prove statements in Section 1 as long as proper documentation in Section 2 is provided.

The one exception to this rule applies to employers using E-Verify, the government's electronic employment eligibility verification system. E-Verify employers may only accept List B documents with a photograph of the employee.

2.9 When will an I-20 presented by an F-1 student prove employment authorization?

Despite there being no reference to an I-20 on the Form I-9, F-1 non-immigrant students may present a Form I-20 in two situations.

First, if a student works on campus at the institution sponsoring the F-1 and the employer provides direct student services, the I-20 will serve as evidence showing employment eligibility. This also is the case for off-campus work at a an employer that is educationally affiliated with the school's established curriculum or for employers contractually required to provide funded research projects at the post-graduate level where the employment is an integral part of the student's educational program.

Second, in cases where an F-1 student has been authorized by a DSO to participate in a curricular practical training program that is an integral part of an established curriculum (e.g. alternative work/study, internship, cooperative education, or other required internship offered by sponsoring employers through cooperative agreements with the school), the student must have a Form I-20 endorsed by the DSO and the I-20 must also list the specific employer as well as the intended dates of employment.

In either case, the Form I-20 would only be used when an employee presents an unexpired foreign passports and a valid Form I-94 (essentially a third document when these other two List A documents are used).

2.10 When will a DS-2019 presented by a J-1 exchange visitor prove employment authorization?

J-1 non-immigrant exchange visitors can sometimes work based on the terms of their visa. In order to document employment authorization, the J-1 visa holder can present a Form DS-2019 issued by the State Department along with an unexpired passport and I-94 as acceptable List A documentation.

2.11 Can a translator be used by an employee to assist with completing the form?

Yes. If an employee cannot fill out Section I of the Form I-9, he or she can receive the assistance of a translator or preparer. The preparer or translator would read the Form I-9 and instructions to the employee, help the employee fill out Section 1 of the form and then sign the preparer/translator certification block on the form. An employer can serve as translator as long as the translator block is signed as well as the employer verification section.

2.12 What if an employee states in Section 1 that they have a temporary work authorization, but present a List C document that does not have an expiration date?

An employer cannot specify that an employee provide documentation relating to the employee's temporary work authorization even if the employee has indicated in Section 1 that they have temporary work authorization. So if an employee has a valid List B document and a Valid List C document without an expiration date, the employer is not allowed to request documentation regarding the temporary status of the employee about the matter lest he or she be found guilty of immigration discrimination.

2.13 Are there employees that may properly check Box 3 in Section 1 indicating they are an alien without permanent residency in the US but who do not have an expiration date for their status?

Yes. Refugees and asylees are two fairly large groups of individuals who would fit this description. Certain nationals of Micronesia, the Marshall Islands and Palau are authorized to work in the United States by virtue of their status as nationals of those countries. If an employee fits in to one of these categories, they can type "N/A" in the place in section 1.

2.14 If an employee provides an alien number (A number) in Section 1 but presents documents without the alien number, can the employer ask to see the document with the alien number?

No. An employer can not ask to see a document relating to the A number or otherwise specify to an employee which documents they are to provide other than providing the employees with the lists of the accepted documents.

2.15 What if an employee claims to be a US citizen in Section 1 but presents a "green card" as documentation of identity and work authorization?

Employees who provide this sort of information often don't understand the question since one cannot simultaneously be a US citizen and a US lawful permanent resident. The matter should be brought to the attention of the employee and if a correction is needed, the employee should be able to change the I-9 form and should initial any changes. According to the DHS M-274 manual (question 14), an employer could be found to have reasonably known the employee is not employment eligible when it receives two contradictory documents.

2.16 What if a person claims to be a lawful permanent resident in Section 1 but provides a US passport or birth certificate as documentation of status?

As above, employees who provide this sort of information often don't understand the question since one cannot simultaneously be a US citizen and a US lawful permanent resident. The matter should also be brought to the attention of the employee and if a correction is needed, the employee should be able to change the I-9 form and should initial any changes. According to the DHS M-274 manual (question 14), an employer could be found to have reasonably known the employee is not employment eligible when it receives two contradictory documents.

2.17 What types of expired documents may be accepted?

There are a few types of expired documents which can be accepted by employers. An expired US passport is an acceptable List A document. Expired identification documents may be accepted in List B. A final very narrow instance is in the case of Temporary Protected Status holders who have expired employment authorization documents. Employers can accept these as well.

2.18 What types of SSA documents may be accepted?

Social Security cards that are marked "not valid for employment" may not be used as a List C document demonstrating employment eligibility. If an employee claims that he or she has become employment eligible, the employee will need to get a new card issued from the SSA.

Employees are also not permitted to use a printout from the SSA of the employee's particulars – name, SSN, date of birth, etc. – as a substitute for an actual Social Security card.

Employees sometimes present laminated Social Security cards. These are not per se invalid unless they say on the back "not valid if laminated".

2.19 Are receipts for documents acceptable?

In most cases, a receipt will not be acceptable. A common case is where an employee is waiting on an Employment Authorization Document and has a receipt showing the application has been filed. A receipt for an initial grant or employment authorization or a

renewal of employment authorization will not suffice for Form I-9 purposes. But USCIS is limited by law to 90 days to adjudicate Employment Authorization Document applications and they are required to grant an interim employment document valid for up to 240 days at that point. Still, a receipt will not be enough to begin work even after 90 days unless the interim employment authorization has actually been granted.

An exception is made in the case of a receipt for a replacement document when the document has been lost, stolen, or damaged. An employee may use the receipt to demonstrate work authorization for a 90 day period and then must present the replacement document.

A Form I-94 issued with a temporary I-551 stamp will serve as a valid receipt to replace a green card. The individual has until the expiration date of the I-551 stamp or a year from the date of the issuance of the I-94 if the I-551 stamp does not have an expiration date. Note that I-551 stamps are usually approved for a year anyway.

Finally, an I-94 with an unexpired refugee admission stamp may also be used as a receipt for up to 90 days after an employee is hired. The employee would then need to present a valid document demonstrating refugee status.

When an employer does receive an acceptable receipt, the employer should record the document in Section 2 with the annotation "receipt" and any document number in the place for such information. Once the actual document is presented, the employer will cross out the word "receipt" and the accompanying document number and put the number from the new document. The employer should date and initial the amendment.

2.20 Can an employee present photocopies of documents rather than original documentation?

With the exception of a certified copy of a birth certificate, an employee is never permitted to present a photocopy of a List A, List B, or List C document.

2.21 What should a permanent resident still waiting on the actual permanent residency card to arrive present?

An applicant waiting on a permanent residency card should present the specially issued Form I-94 with an I-551 immigrant visa stamp. The I-94 with the stamp is typically valid for a year.

2.22 What documentation should a refugee present to document authorization to work?

A refugee should present an Employment Authorization Document. However, if that application is being processed, the refugee can present an I-94 with a refugee admission stamp as long as the employment card is presented within 90 days.

2.23 What if the document presented by the employee does not look valid?

This is a tricky situation for employers. On the one hand, employers are not expected to be document experts. On the other hand, if a document is obviously a phony, an employer should not be expected to be off the hook. DHS requires employers to accept documents that “reasonably appear on their face to be genuine”. Employers need to be careful, however, about being over-zealous since they face the risk of being found to have committed an unfair immigration-related employment practice if they question the legitimacy of documents that do not reasonably appear to be invalid.

2.24 What if the name of the employee on the document is different than the name of the employee on the Form I-9?

If an employee presents a document with a different name than in Section 1, an employer would arguably have reason to believe that the documentation may not demonstrate employment eligibility. The employer should bring the discrepancy to the attention of the employee and see if there is a reasonable explanation (such as a legal name change by the employee).

2.25 What if the employee does not look like the person on the presented document or is different than the description of the person on the document (hair color, eye color, height, race, etc.)?

An employer is required to check that the presented documentation and ensure that the documents relate to the individual. If the individual presenting the document does not reasonably appear to be the same person in the identification document, then the employer can reject the documentation.

2.26 May an employer correct Forms I-9 after they are completed?

Yes. However, the employer should be careful to make changes in a way that makes it clear to an inspecting official that the form was corrected and also how the form was corrected. Blank fields should be completed and incorrect answers should be lined through (so the original answer is visible) rather than erased. Changes in Section 1 should be initialed and dated by the employee, preparer or translator. Changes in Section 2 should be initialed and dated by the employer.

2.27 Are employees required to supply a SSN on a Form I-9?

Employees are not required to supply an SSN unless the employer participates in the E-Verify program. Employers using E-Verify may not ask an employee to provide a specific document with an SSN.

2.28 Are there special rules for minors?

Yes. Individuals under age 18 who are unable to produce a List A or List B document can present the following documents to establish identity:

- school record or report card
- clinic doctor or hospital record
- daycare or nursery school record

If a person under the age of 18 is not able to present a List A or List B document or one of the documents note above, Section 1 of the Form I-9 should be completed by the parent or legal guardian and the phrase “Individual under age 18” in the employee signature space. The parent or legal guardian should then complete the “preparer/translator certification” block. Under List B, the phrase “Individual under age 18” should be stated.

2.29 Are there special rules for individual with handicaps?

Yes. Individuals with handicaps unable to present a required identity document who are being hired for a position in a non-profit organization, association or as part of a rehabilitation program, a special procedure can be used.

Section 1 of the Form I-9 should be completed by the parent, legal guardian, or a representative from the nonprofit organization, association or rehabilitation program placing the individual into a position of employment. The phrase “special placement”

should be written in the employee signature space. The person completing the form would then complete the “preparer/translator certification” block. Under List B, the phrase “special placement” should be stated.

Qualifying handicapped individuals include any person who

- has a physical or mental impairment, which substantially limits one or more of such person’s major life activities
- has a record of such impairment or
- is regarded as having such impairment