



USCCB Committee on Migration

c/o MIGRATION AND REFUGEE SERVICES
3211 FOURTH STREET NE • WASHINGTON DC 20017-1194
202-541-3227 • FAX 202-541-8755
WEBSITE: www.usccb.org/mrs



February 2, 2009

Chief, Regulatory Management Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Avenue, N.W.
Suite 3008
Washington, DC 20529

Re: DHS Docket No. USCIS-2008-0001. Documents Acceptable for Employment Eligibility Verification.

Dear Sir or Madam,

The United States Conference of Catholic Bishops (USCCB), and the Catholic Legal Immigration Network (CLINIC) submit the following comments on the interim rule issued by U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS) that would require all documents submitted to employers for employment authorization verification purposes to be unexpired.

I. USCCB/CLINIC's Interest in the Interim Rule

USCCB has particular interest in this rule making because it has Federal Government grants and cooperative agreements for refugee resettlement and the Cuban/Haitian entrant program. Many of USCCB sub-recipients are responsible for assisting refugees, parolees, and asylees obtain employment in the United States. For its part, CLINIC supports a national network of community-based immigration programs. The network includes 173 affiliated immigration programs, which operate out of 267 offices in 48 states. The network employs roughly 1,200 attorneys and "accredited" paralegals who, in turn, serve 600,000 low-income immigrants each year. CLINIC and its network serve vulnerable migrants such as refugees, asylum-seekers, and parolees and help them to understand the employment verification process. While we support improvements to the integrity of the employment verification process, we are concerned that certain populations, especially asylees, refugees and parolees, will be adversely impacted by certain provisions of the interim rule.

II. Comments on the Interim Rule

A. The rule should allow for employers to accept List B identity documents that have expired within the last 90 days of the date they are presented to the employer for the Form I-9.

No public education has been done to alert immigrant workers of the changes that the interim rule makes to documentation requirements. Many migrants who rely upon List B and C documents to prove their employment eligibility for purposes of the I-9 Form, are unaware that they will need to obtain new, unexpired List B documents. It is critical that the final rule provide them with sufficient time to secure such documentation.

For example, as a result of the REAL ID Act, most states now tie the validity of a state driver's license or identity document to the validity of limited types of documentation issued by USCIS that proves lawful status. Delays in issuance of new documentation from USCIS or new driver's licenses or identity documents from state Departments of Motor Vehicles will place a population of authorized workers at risk of not having the necessary documentation for proper completion of the I-9 Form. Gainful employment is indispensable to newcomers as they begin to build lives in the United States. Refugees, asylees, and parolees who face language barriers may be particularly at risk of not being aware of the new requirements, and therefore should be given ample time to obtain the documentation required by the rule.

B. DHS should allow employers to accept Employment Authorization Documents (EADs) issued by USCIS to refugees and asylees that have expired within the last 90 days of the date they are presented to the employer for the Form I-9.

Refugees and asylees are authorized to work incident to status. Refugees and asylees begin their employment experience in low-paying entry level jobs, and the current cost for obtaining an EAD, \$340, is prohibitively expensive for those in low-paying employment positions. Refugee resettlement caseworkers and legal representatives from our networks report that it can take USCIS from 60 to 90 days (sometimes longer) to renew an EAD. To be terminated from employment during the current economic downturn could cause severe hardship including evictions and loss of health care benefits to an already traumatized population. We are concerned that many refugees and asylees, especially older clients, will be severely affected. By providing this population with a 90-day grace period, DHS will protect a vulnerable population of authorized workers from being wrongly terminated or denied employment while they secure documentation required by the rule.

C. Refugees and Asylees, who are authorized to work incident to status, should not have to be re-verified once their Employment Authorization Document (EAD) expires.

We suggest that USCIS change the I-9 Form and Instructions to reflect that refugees and asylees do not need to be re-verified if they present an EAD (as a List A document) which subsequently expires, since such individuals are authorized to work incident to their immigration status. As stated above, refugees and asylees often begin their work careers in the United States in low-paying occupations. EADs are issued to this population in two year increments. The filing fee

for a renewal EAD is \$340. This cost is a significant expense for individuals who work in low-wage occupations who are required to possess an EAD in order to work. A population that is authorized to work incident to their status, should not be required to pay for renewal EADs every two years simply to meet the new I-9 requirements.

D. The rule must clarify that List B documents that are unexpired at time of completion of the I-9 Form do not have to be re-verified upon expiration of the document.

The instructions to the I-9 Form and the I-9 Form itself do not clearly explain that List B documents that are valid at the time of I-9 Form completion (but which will later expire) do not require employers to re-verify workers upon expiration of those documents. The I-9 Form requires employers to include expiration dates of such documents on the I-9 Form. This may create confusion among employers who may think that they are required to re-verify workers when identity/List B documentation expires. The instructions to the I-9 Form and the Form itself should be revised to make clear that employers are not required to re-verify workers when their identity/List B documentation subsequently expires.

E. DHS must conduct extensive public education and outreach surrounding the rule's new requirements.

The Form I-9 includes a space to note the expiration date of all documents. It is possible that employers will believe they need to re-verify all documents containing an expiration date (U.S. passports, driver's licenses, and green cards). In order to ensure that eligible workers are not wrongly terminated from or denied employment, DHS must conduct significant outreach and education to employers as well as employees about the rule's changes. The rule does not contemplate any public education or outreach. In particular, the rule should outline the steps that DHS will take to ensure that the public is aware of these changes.

CLINIC and USCCB appreciate the opportunity to submit the above comments to DHS, and encourage it to incorporate them into the final rule.

Sincerely,

Carlos Ortiz Miranda
Associate General Counsel, USCCB

Mark Franken
Executive Director, CLINIC