



Legal Corner - "Worksite Enforcement" Employers Beware!!!

By: Neelofer Syed, Esq.

This article is specifically written to spread awareness among the employers/business owners, small or big, hiring employees, foreign or domestic, to work for their companies/businesses.

In order to deal with the issue of unauthorized employment, in the recent past, DHS has become as focused on Employer practices as they are on the illegal worker. The mind set behind this policy is the fact that the need of a person (unauthorized to work) to get hired is greater than the need of the employer to hire. While someone unauthorized by law to work may have motive to violate the law in order to become employed, the fear of penalties and in some cases imprisonment by the DHS will deter the employer from hiring workers not authorized to be employed. As a result the hiring of illegal immigrants will automatically dwindle.

A great number of South Asian business owners, while running successful businesses are not aware of the increasing need to maintain the right kind of documentation regarding their employees. Such documentation is aimed to save the employer from potential criminal or civil penalties imposed by law. The penalties are triggered if it is determined by the Department of Homeland Security that the employer has knowingly hired or continues to hire Aliens who are not authorized to work in the United States. Penalties are also imposed even if all the workers are authorized to work BUT the employer fails to maintain proper records/documentation in the shape of Form I-9.

Before I even begin, let me start by saying that those of you, who think that they will not be subject to any raids by Immigration and Customs Enforcement (ICE) or any penalties imposed by DHS, because they do not have any foreign workers, think twice. The law related with worksite enforcement not only requires the employer hiring foreign workers to maintain proper documentation but it also requires ALL employers to maintain appropriate documentation in connection with its employees.

So whether you are the owner of a big company or small business, and whether your work force is foreigners or U.S. citizens or both, you need to take preventive measures in order to deal with DHS/ICE. You need to maintain meticulous records that will serve as a shield and save you in case ICE raids your office/worksite.

In order to ensure protection from any potential penalties, it is extremely important for an employer to maintain record of Form I-9 in connection with all of its employees. An employer must complete Form I-9 each time they hire any person to perform labor or services in return for wages or other remuneration in United States.

Form I-9 does not require any filing fee or other fees. The Form also need not be filed with Immigration or any other Government agency. Completed Forms I-9 are only required to be retained by the Employer and should be made available for inspection by U.S. government officials when required or requested.

The Form I-9 indeed is a very simple Form that is self explanatory. The first section of the Form contains information on employee, including his social security number and status in the U.S. The second section is for the employer where the employed notes the type of document s/he examined in order to verify the employment eligibility and accordingly attests the same in section 3 of the Form.

The employer must ensure that the employee fully completes section 1 of the Form at the time of hire. When the employee begins to work the employer must review his employment eligibility documents in original and fully complete section 2 of the Form within 3 business days of work. It is extremely important that your employee MUST present an original document that establishes his identity and employment authorization within 3 business days of the date employment begins. Form I-9 needs to be maintained for all employees hired after November 7, 1986. The record of Form I-9 is also required to be maintained for at least a year after the termination of an employee.

An employer does not need to complete Form I-9 for casual domestic work in private home on irregular basis; independent contractors; persons not physically present in U.S.; or independent contractors.

Various documents are listed to be acceptable as proof of identification, employment authorization

(Continued on page 22)

(Continued from page 20)

or both. It is important that the employer examines the list of acceptable documents from time to time in case of any changes/updates. Nevertheless, at present, some of the following documents are acceptable proof of both employment authorization and identity, please note the list below only mentions some documents not all.

- * U.S. Passport
- * Permanent Resident Card (Green Card)
- * Foreign passports that contain an I-551 stamp
- * Employment authorization document that contain a photograph
- * Foreign Passport with I-94 reflecting specific visa status that allows employment, for example, H-1B, L-1 etc.

It is important to know that generally in case of inspections the employers are given 3 days notice by ICE to make all the Form I-9 records available for inspection. The Form I-9 record may be maintained in paper, electronic or even microfilm form as long as the Forms remain legible. It is important that with each Form I-9 copy of the document/s verified by the employer as proof of employment authorization and identification is attached.

While there are many other areas that need to be discussed in connection with the I-9 compliance and other worksite enforcement issues, but due to space limitations it is not possible to discuss them all. Nevertheless, I would strongly recommend the employers to read more about these worksite enforcement laws, there is a lot of information available for employers on USCIS official website.

The employers may also choose to hire an attorney to do a complete audit of their current and previous Form I-9 records or to have an attorney come to their human resource department to educate the staff about these issues and how to observe compliance and maintain proper records.

Questions From Readers:

Question: Hi:, I am a Green Card Holder and residing in USA since 1998. In 2007, after about 8 year's of residence in the U.S., I went to India to take care of my aged mom &

brother suffering from Cancer. I remained in India for 11 months and returned to the U.S. for 2 weeks and again went back to India to take care of my only uncle and aunty. I returned after 10 months to the U.S. and have been residing in the U.S. since. (Unfortunately all four of my beloved ones passed away during the two years in my presence)

I am living separately from my family for the last three years (not legally separated). When I consulted an Attorney regarding my interest in filing for Citizenship, his advice was not to file since I was out of the U.S. for almost two years in the last five years and to wait until I complete a period of 4 years and 9 months. Would u please confirm on this point.

Also, in the application for Citizenship, the question about the A# of spouse, I am unable to get that information ever. So please advise me on what can I do for that.

Thank you very much for your time.

Reader (Names are concealed for privacy)

Answer: Dear Reader: First of all I will assume that you obtained your green card in a category that required you to be a permanent resident for at least 5 years in order to apply for citizenship. Now, in order to be eligible to file for citizenship, besides other things, you need to meet both continuous residence and physical presence requirements. To meet the continuous residence requirement you need to establish that you have lived in United States without leaving for trips of 6 months or longer. To meet the physical presence requirement you need to show that you were physically present in the U.S. for at least 30 months. In your case you have been outside U.S. for more than 6 months, this apparently breaks your continuous residence. As such I will suggest that you should file your application according to the time line suggested by the other Attorney.

Regarding the A # of the spouse, if you do not have that information then simply mention that. However, as always I will advise you to hire an immigration Attorney to represent you.

Ms. Syed is a practicing attorney with Perez and Associates, specializing in immigration law. Please send your questions concerning immigration issues to legal@citymasala.com