

CONSIDERATION of DEFERRED ACTION for CHILDHOOD ARRIVALS



Guidance for Employers

Deferred Action for Childhood Arrivals

BACKGROUND

On June 15, 2012, the Secretary of Homeland Security announced that certain people who came to the United States as children and meet several key guidelines may request consideration of Deferred Action for Childhood Arrivals (deferred action) and are eligible to apply for work authorization. Individuals whose cases are deferred and who are granted work authorization will be issued an Employment Authorization Document (EAD).

All U.S. employers must complete and retain a Form I-9, Employment Eligibility Verification, for each individual they hire for employment in the United States. This includes citizens and noncitizens. This Fact Sheet provides specific guidance to employers on the treatment of EADs issued by USCIS to deferred action recipients and how employers should process Form I-9 in these cases.

GUIDANCE FOR EMPLOYERS OF NEWLY HIRED EMPLOYEES

The EAD that USCIS issues to an eligible deferred action recipient is one of the documents listed as acceptable for the Form I-9. This document establishes both identity and employment authorization under “List A” of the Form I-9.

If a deferred action recipient presents an unexpired EAD to complete the Form I-9, an employer should accept it. The card must reasonably appear to be genuine and relate to the deferred action recipient presenting it. The information will appear on the card as indicated on the image to the right.

The employer must comply with Form I-9 instructions and enter the document title, issuing authority, number, and expiration date in Section 2 under List A. The employer may not request that the employee provide additional proof that his or her case has been deferred or that he or she is authorized to work.

When the validity period of an employee’s Employment Authorization Document expires, the employer must reverify using Section 3 of the Form I-9 (as explained in more detail in the next section) to ensure that the employee is still authorized to work.



1. The document number, which is listed as the CARD# and begins with three letters.
2. The notation “C-33” under “Category.”
3. The expiration date.



GUIDANCE FOR EMPLOYERS OF EXISTING EMPLOYEES

Employers must have a properly completed Form I-9 on file for every employee hired after November 6, 1986. Deferred action recipients who are currently working may provide updated documentation to their employers. An employer receiving updated documentation from an employee should review the employee's previously completed Form I-9 and determine whether to complete a new Form I-9 or only to complete Section 3 of the previously completed Form I-9 based on the guidelines below.

WHEN TO COMPLETE A NEW FORM I-9 FOR EXISTING EMPLOYEES

If any of the following information has changed in Section 1 of the previously completed Form I-9:

- The employee's name
- Date of birth
- Attestation
- Social Security number, if a social security number was provided on the previously completed Form I-9

Then an employer should:

- Complete a new Form I-9
- Write the original hire date in Section 2
- Attach the new Form I-9 to the previously completed Form I-9

WHEN TO COMPLETE SECTION 3 FOR EXISTING EMPLOYEES

If, after review of the previously completed Form I-9, the employer finds:

- The information in Section 1 has not changed; and
- The employee presents a new EAD.

Then the employer should:

- Examine the documentation to determine if it appears to be genuine and to relate to the employee presenting it. Record the document title, document number and expiration date, if any.
- Sign and date Section 3.

If the employer previously completed Section 3, or if the version of the form the employer used for a previous verification is no longer valid, the employer must complete Section 3 of a new Form I-9 using the most current version and attach it to the previously completed Form I-9.

GUIDANCE ON WHEN TO USE E-VERIFY

In the situations described above where the employer completes an entirely new Form I-9, an employer participating in E-Verify should verify the new Form I-9 information through E-Verify. In the situations described above where the employer only completes section 3 of the previous or a new Form I-9 (because the employer had previously completed section 3 of the original Form I-9, or the original Form I-9 had expired), the employer should not conduct a new E-Verify check.

PREVENTING DISCRIMINATION

The Immigration and Nationality Act prohibits employers from discriminating in the Form I-9 process against work-authorized individuals based on their national origin or, under certain circumstances, their citizenship or immigration status.

FOR ADDITIONAL INFORMATION ABOUT DEFERRED ACTION

For information about accepting documents from individuals whose cases have been deferred by DHS, please contact the U.S. Department of Justice (DOJ), Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Employer Hotline at 1-800-255-8155 or visit the DOJ website at www.justice.gov/crt/osc.



For additional information about deferred action:

- Call the USCIS National Customer Service Center at 1-800-375-5273 or visit the USCIS website at www.uscis.gov/childhoodarrivals.

For additional information about Form I-9 or E-Verify:

- Contact USCIS at 1-888-464-4218 or send us an email at e-verify@dhs.gov. E-Verify website: www.uscis.gov/e-verify
- Visit I-9 Central website at: www.uscis.gov/i-9central



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