



KERSEY  
IMMIGRATION  
COMPLIANCE, LLC

January 29, 2015

Ms. Laura Dawkins  
Chief, Regulatory Coordination Division  
USCIS Office of Policy and Strategy  
20 Massachusetts Avenue, NW  
Washington, DC 20529-2140

**Submitted via e-mail to:** USCISFRComment@uscis.dhs.gov

**Re: Notice of Request for Information: Immigration Policy  
79 Fed. Reg. 78,458 (December 30, 2014)  
Docket ID: USCIS-2014-0014**

**Suggestions for Streamlining the U.S. Immigration System**

In lieu of attempting to tackle the entire immigration system, I will focus here on the area about which I am most familiar: employer compliance.

**Deferred Action for Employers:**

First, I would urge you to consider a “stay” or a “freeze” on most I-9 inspections until USCIS has had an opportunity to process the DACA and DAPA applications that will result from the President’s Executive Order. While some inspections may still be necessary, most will result in the termination of employment for individuals who are eligible for work authorization under DACA/DAPA but who have not yet been allowed to apply for the benefit (or who have applied but have not received the benefit).

These are valuable employees, and those who employ them are typically unaware of their current lack of employment authorization. Punishing the employers with a loss of workers and unexpected turnover, plus hefty fines and penalties, makes little sense when the government intends to grant employment authorization to those individuals in short order. The employees themselves will face even harsher consequences: the loss of a job is tough on anyone, but here it may cause the individuals to be unable to pay the filing fees to obtain DACA/DAPA benefits.

A “stay” of this type would also allow employers to offer educational resources to their employee populations. It would allow the employees to come forward and ask for an employment letter or other documentation without fearing for their jobs. And it would allow employers, if they wished to do so, to offer financial assistance to those in need of DACA/DAPA



benefits. This possibility (of financial and educational assistance) would help to ensure that prospective beneficiaries obtain the legal advice and assistance that they need to properly file DACA/DAPA applications. It would reduce the likelihood that the individuals would be taken advantage of by “notarios” or others without sufficient knowledge of the immigration system.

For more on how the DACA/DAPA “limbo” period affects employers, and – I hope – for a chuckle, see my guest post, “Gambling on Immigration at a Dangerous Intersection (Merry Christmas, Ninja Squirrel!)” at <http://www.nationofimmigrators.com/i-9s/immigration-voices-gambling-on-immigration-at-a-dangerous-intersection-merry-christmas-ninja-squirrel/>.

### **Allowance for Employment Based on Receipts:**

Backlogs are always a problem for someone. Right now, DACA beneficiaries are facing delays in obtaining employment authorization cards. It’s always someone. When the delay means that the new card is issued after the original expires, it means that the individual loses his job. It often means that the employer spends time and money talking to attorneys to determine how to proceed. It could mean that the employer allows the person to keep working (inadvertently) and faces a charge of knowingly continuing to employ an unauthorized worker. And it also means that the individual calls USCIS and makes InfoPass appointments.

I suggest applying the 240-day “receipt rule” that applies to those in H-1B and similar statuses (or the 180-day rule that applies to foreign students seeking STEM extensions) to all individuals seeking renewal of benefits. This would allow these individuals to continue working for up to 240 (or whatever period is set) days if they present the expired employment authorization document together with proof of timely filing of the application for renewal. This would cut down on calls to USCIS, employer calls to attorneys, InfoPass appointments, and employment authorization gaps (which result in termination of employment and/or productivity issues).

### **Modernize the Form I-9:**

The Form I-9 itself is too long and too complex. For an employer who hires only U.S. citizens, it isn’t too bad, I guess. But the minute an employee whips out an employment authorization card or a green card, things get tough. On the green card, it’s difficult for most managers to find the document number. Employers are expected to record the issuing authority for every document, despite the fact that it is generally clear from the document title who issued it. And the new I-9 instructions require individuals to write “N/A” in certain fields and to use a specific format for dates, giving ICE auditors new ways to “prove” that an employer “doesn’t value compliance.” (I did not believe I’d ever see it, but one auditor tried to fine one of my clients for failure to write “N/A” in a field that it left blank.)



KERSEY  
IMMIGRATION  
COMPLIANCE, LLC

If you start talking about students working under “curricular practical training” or TPS beneficiaries with automatic extensions, H-1B portability cases and I-551 stamps, the Form I-9 basically sets employers up for failure.

I suggest either eliminating the I-9 (and moving to a pure E-Verify requirement) or modernizing the form by providing an electronic option that significantly cuts down on the risk of error. Alternatively, the form should be made more user-friendly by going back to a version of the Form I-9 more like the original, which listed the documentation employees could provide, only requiring that the employer input data where it was actually unique to the document (the state for a driver’s license, document numbers and expiration dates for most others).

In the end, the goal should be a method of confirming employment authorization that does not require a 70-page handbook and a separate website dedicated to proper completion. Moving to E-Verify or an electronic (or simpler paper) version of the form would make work easier for employers, cut government costs by reducing the need for auditors to comb through thousands of forms for paperwork errors, and would make employment of unauthorized workers less likely.

---

My name is Nici Kersey. I am an immigration attorney whose practice is dedicated to worksite compliance (I-9 and E-Verify issues). I may be suggesting myself right out of a job by making it so that my clients don’t need me, but the suggestions above would greatly benefit employers across the nation as well as the individuals they employ. They also promise to reduce government spending.

I would be happy to discuss these (or other) ideas with you in the hopes of turning them into concrete solutions should you wish to have such a discussion.

Thanks,

Nici Kersey  
Managing Director