



OFFICE OF BUSINESS LIAISON

U.S. DEPARTMENT OF HOMELAND SECURITY U.S. CITIZENSHIP AND IMMIGRATION SERVICES

Employer Information Bulletin 103 I-9 Document Review September 25, 2003	EBISS: (800) 357-2099 NCSC: (800) 375-5283 Fax: (202) 305-2523 Website: http://www.bcis.gov Order Forms: (800) 870-3676
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The following is not intended to be legal advice pertaining to your situation and should not be construed as such. The information provided is intended merely as a general overview with regard to the subject matter covered.

I-9 DOCUMENT REVIEW

Employers' Responsibility Under The Law -- Document Review Standard

The standard for review of documents in the employment eligibility verification process is that of reasonableness. An I-9 List document is acceptable if it **reasonably** appears on its face (1) to be genuine and (2) to relate to the individual who presents it.

In other words, an employer or employer's agent who signs Section 2 of the Form I-9 is not attesting to the legitimacy of the status of the person who presents the document but, rather, to the fact that he or she has reviewed the original document and that it reasonably **appears** to him or her, upon reasonable inspection of its features and the information it contains, to be genuine and to relate to the employee who has presented it for employment eligibility verification purposes.

Relationship Between Document Review and Continued Employment

If a card reasonably appears to be genuine and to relate to the person presenting it, the employer should not dismiss that employee. However, if a card does not meet this standard, the employer should reject it for employment eligibility verification purposes and ask the individual to produce other acceptable I-9 documentation. In cases where the employee does not produce acceptable documentation that **appears to be genuine and to relate to the individual presenting it**, the employer should not continue to employ the individual.

Constructive knowledge

Knowingly hiring or continuing to employ unauthorized aliens is a serious violation that subjects the employer to civil and, where there is a pattern or practice of such violations, criminal penalties. In this context, the term **knowing** includes not only actual knowledge but also knowledge which may fairly be inferred through notice of certain facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition. Constructive knowledge may include, but is not limited to, situations where an employer: (1) fails to complete or improperly completes the Form I-9; (2) has information available to it that would indicate that the alien is not authorized to work, such as Labor Certification and/or an Application for Prospective Employer; or (3) acts with reckless and wanton disregard for the legal consequences of permitting another individual to introduce an unauthorized alien into its work force or to act on its behalf.

NOTE: An employee's foreign appearance or accent is not a relevant factor.

Verification of Employment Eligibility with the Department of Homeland Security, U. S. Citizenship and Immigration Services

Employers cannot and should not attempt to verify “A” numbers with the U.S. Citizenship and Immigration Services. “A” number verification is authorized **ONLY** by employer participants in **the Department of Homeland Security** Employment Verification Pilot Program. Questions about **this program** can be directed to the SAVE Branch at **(888) 464-4218**. If an employer suspects fraud, the employer may report it to the local BICE office.

For Further Information or Assistance:

As indicated above, neither the Office of Business Liaison (OBL) nor any **Department of Homeland Security** official is permitted to check records to verify employment eligibility outside of the Pilot Program.

In response to such requests, OBL educates employers on how to review documents, such as by instructing employers to review information elements from the front of a document that must comport with corresponding information elements from the back, as well as by directing attention to typeface and other inconsistencies that may call the genuineness of the document into question. This is to facilitate compliance by these employers and help them avoid unlawful discriminatory practices.

Although it is OBL’s goal to educate employers rather than provide ongoing case-by-case assistance, the information provided sometimes results in an employer's decision not to accept a certain document because it has decided that the document fails the "genuineness" and/or "relates to" test. That does not necessarily mean that the person is not authorized to work, nor that the person should be terminated from employment, but rather that the document at issue does not meet the standard(s). Other documentation from the same person that is on a List of Acceptable Documents for I-9 purposes and meets the standard(s) may be accepted and the Form I-9 completed accordingly.

Do you need the “Guide to Selected Travel/Identity Documents?”

Although this pamphlet was prepared for law enforcement officers, it may be of interest to employers. It depicts and describes various documents issued to aliens for travel and admission to, or employment in, the United States.

***To order:** You may order this document by using the number for “Forms” in the heading of this bulletin or through the Office of Business Liaison.*

See also Employer Information Bulletins: 104 for Discussion of Common Documents; 108 for Employment Authorization for Aliens; 112 for Social Security Card/Number Issues.