

# Immigration Pointers for Businesses

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# Presentation Overview

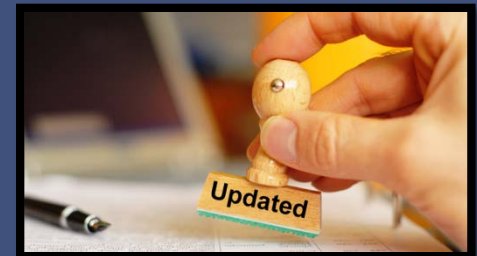
**Part 1:** Working in the United States

**Part 2:** Employment-Based Green Cards

**Part 3:** Compliance

**Part 4:** Immigration Audit Process

**Part 5:** Recent Changes in Immigration Law



# Part 1: Working in the United States



# Working in the United States

Foreign nationals who wish to come to the United States to work must typically be sponsored by the prospective employer.



# H-1B Visas

## H1 B-Work Visa

The US H1B visa is a non-immigrant visa that allows US companies to employ foreign workers in specialty occupations that require theoretical or technical expertise in specialized fields such as in architecture, engineering, mathematics, science, and medicine. Under the visa a US company can employ a foreign worker for up to six years.



US H1B Visa



US H1B Visa, © Principle InfoTech, 2014



# H-1B Visas

“Specialty Occupation”

Eligibility & Qualification Requirements



# H-1B Visas

## The H-1B Cap

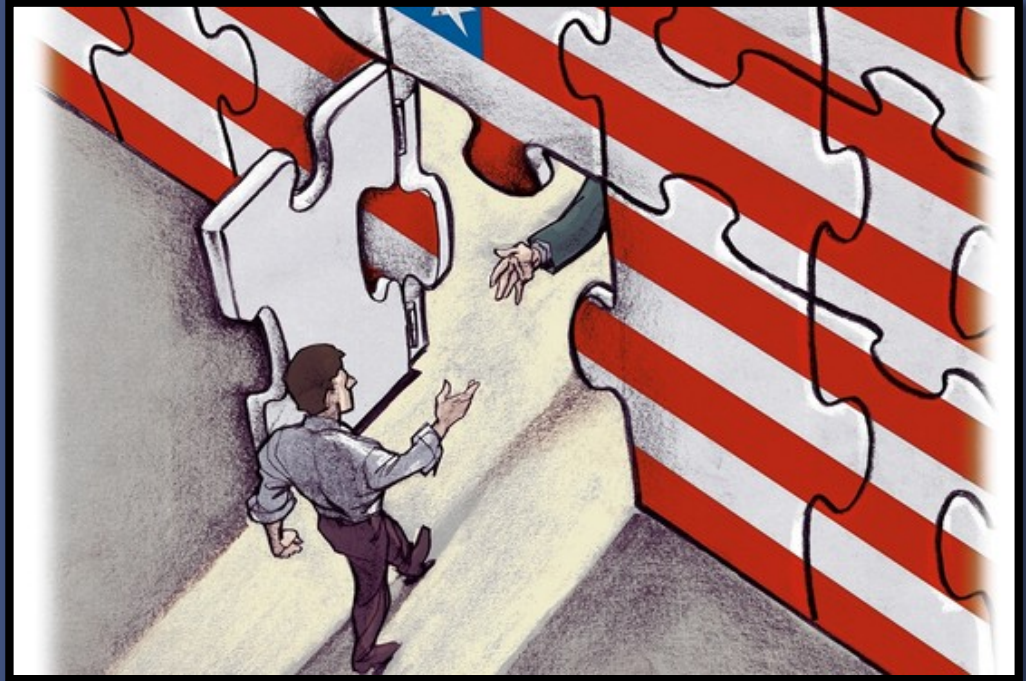
- What is it?
- Are there exemptions?



# H-1B Visas

## Period of Stay

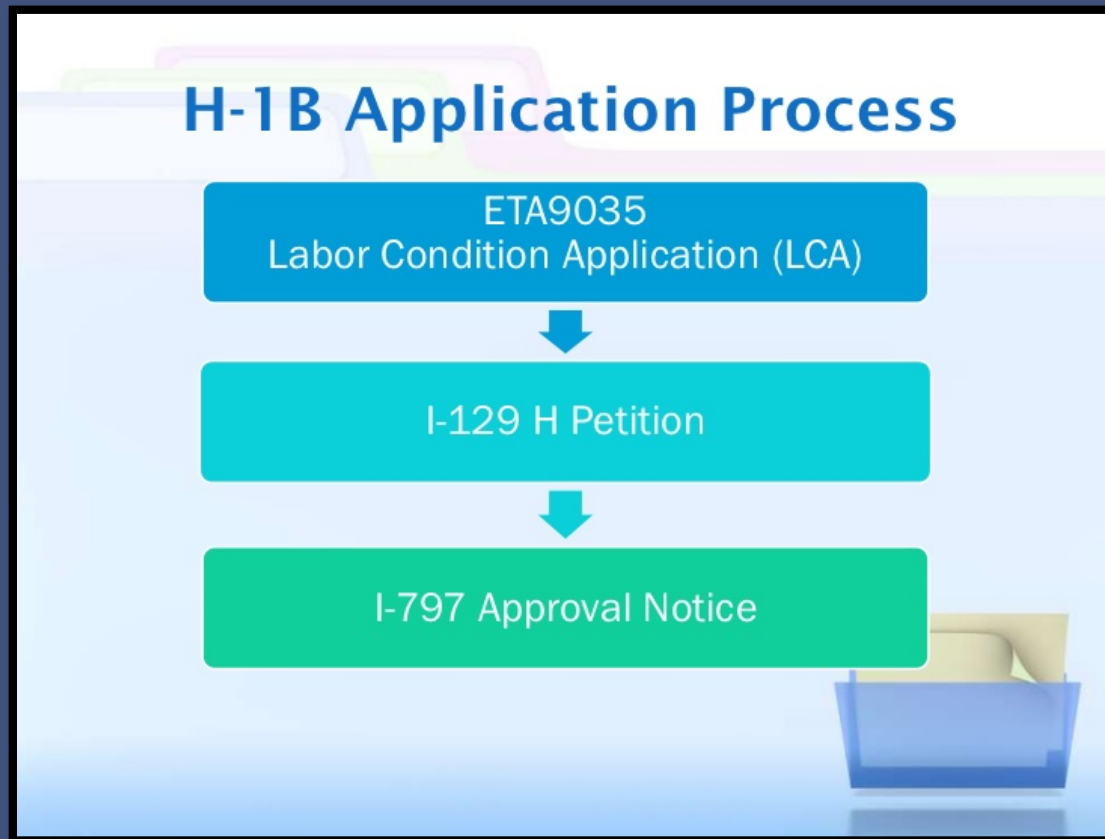
- How Long?
- How much?
- Who pays?





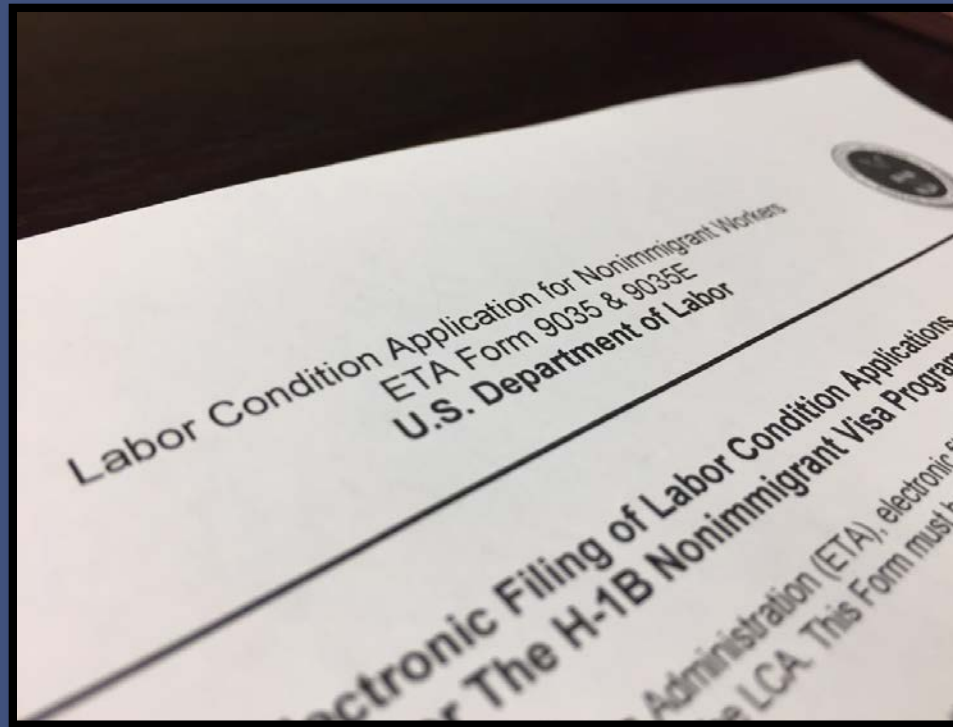
# H-1B Visas

## 3 Step Application Process



# H-1B Visas

## Step 1: Complete and Submit the Labor Condition Application (LCA)



# H-1B Visas

## Step 1 (cont.): Determine the Prevailing Wage

**FLC Wage Results** [New Quick Search](#) [New Search Wizard](#)

You selected the All Industries database for 7/2016 - 6/2017.

Your search returned the following: [Print Format](#)

|                          |  |
|--------------------------|--|
| <b>Area Code:</b>        | 35614  |
| <b>Area Title:</b>       | New York-Jersey City-White Plains, NY-NJ Metropolitan Division |
| <b>OES/SOC Code:</b>     | 11-3021  |
| <b>OES/SOC Title:</b>    | Computer and Information Systems Managers                      |
| <b>GeoLevel:</b>         | 1  |
| <b>Level 1 Wage:</b>     | \$53.23 hour - \$110,718 year                                  |
| <b>Level 2 Wage:</b>     | \$69.11 hour - \$143,749 year                                  |
| <b>Level 3 Wage:</b>     | \$84.99 hour - \$176,779 year                                  |
| <b>Level 4 Wage:</b>     | \$100.87 hour - \$209,810 year                                 |
| <b>Mean Wage (H-2B):</b> | \$84.99 hour - \$176,779 year                                  |

This wage applies to the following O\*Net occupations:

**11-3021.00 Computer and Information Systems Managers**

Plan, direct, or coordinate activities in such fields as electronic data processing, information systems, systems analysis, and computer programming.

O\*Net™ JobZone: 4

Education & Training Code: 4-Work experience, plus a bachelor's or higher degree

For information on determining the proper occupation and wage level see the new Prevailing Wage Guidance on the [Skill Level](#) page.

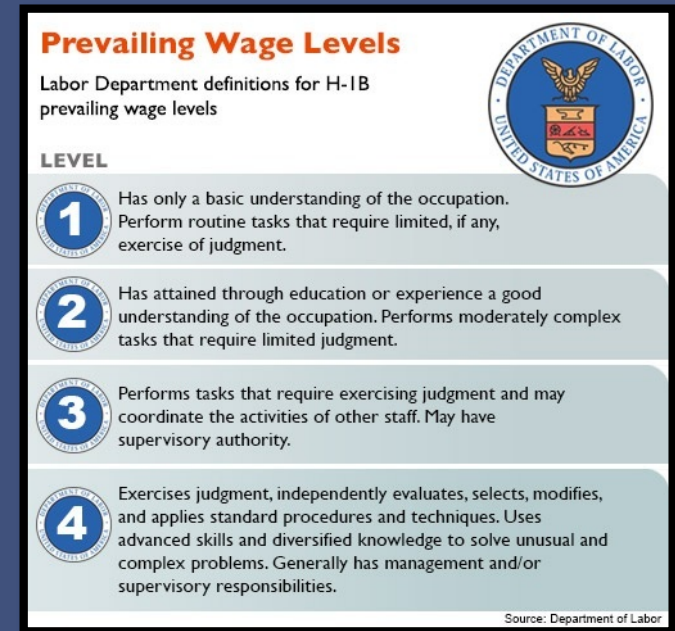
The prevailing wage must be at, or above the federal or state or local minimum wage, whichever is higher. The federal minimum wage is \$7.25/hr effective July 24, 2009.

# H-1B Visas

## Step 1 (cont.): Determining the Prevailing Wage

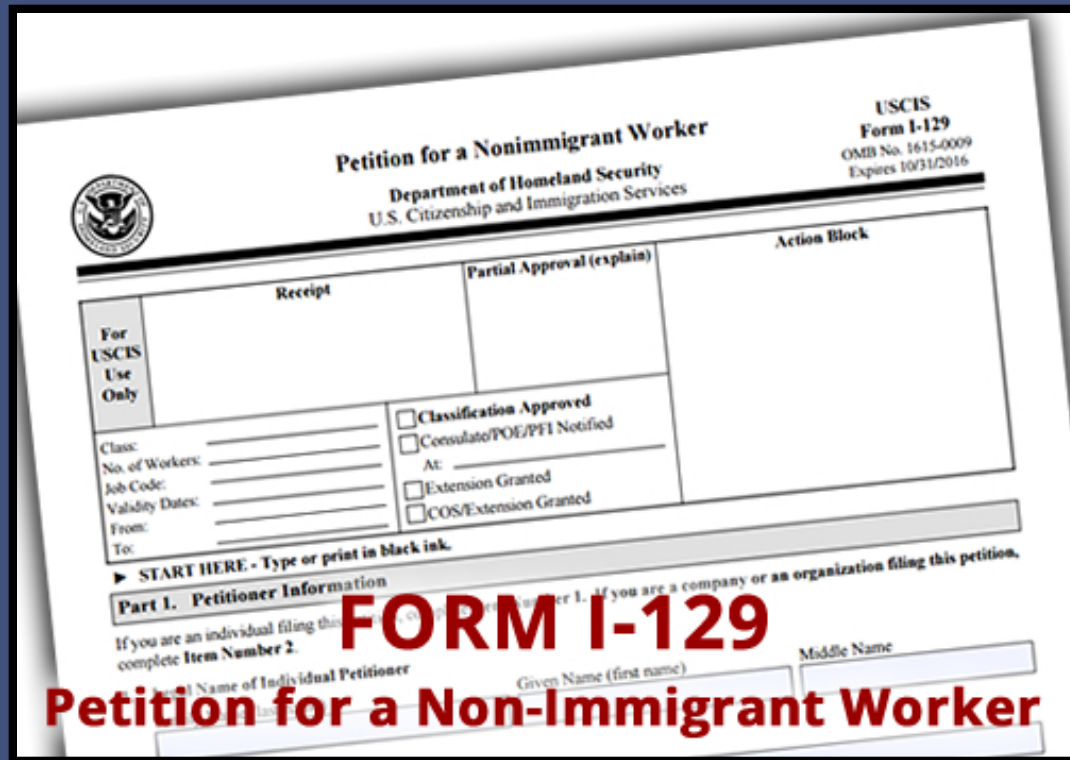
### Four-Tier System

- Level 1: Entry/beginning level
  - Level 2: Qualified/competent in basic tasks
  - Level 3: Experienced/exercise judgment
  - Level 4: Senior management
- Recent Level 1 and Level 2 Wage Issues
  - Responding to Requests for Information from USCIS



# H-1B Visas

## Step 2: Complete and File Form I-129, Petition for a Nonimmigrant Worker



The image shows a sample of Form I-129, Petition for a Nonimmigrant Worker, from the U.S. Citizenship and Immigration Services (USCIS). The form is titled "Petition for a Nonimmigrant Worker" and "Department of Homeland Security U.S. Citizenship and Immigration Services". It includes a "Receipt" section, a "Partial Approval (explain)" section, and an "Action Block" section. The "Action Block" contains checkboxes for "Classification Approved", "Consulate/POE/PFI Notified", "Extension Granted", and "COS/Extension Granted". The form also includes a "For USCIS Use Only" section with fields for "Class:", "No. of Workers:", "Job Code:", "Validity Dates:", "From:", and "To:". A large red watermark "FORM I-129" and "Petition for a Non-Immigrant Worker" is overlaid on the form.

USCIS  
Form I-129  
OMB No. 1615-0009  
Expires 10/31/2016

**Petition for a Nonimmigrant Worker**  
Department of Homeland Security  
U.S. Citizenship and Immigration Services

**For USCIS Use Only**

Class: \_\_\_\_\_  
No. of Workers: \_\_\_\_\_  
Job Code: \_\_\_\_\_  
Validity Dates: \_\_\_\_\_  
From: \_\_\_\_\_  
To: \_\_\_\_\_

☐ Classification Approved  
☐ Consulate/POE/PFI Notified  
At: \_\_\_\_\_  
☐ Extension Granted  
☐ COS/Extension Granted

**START HERE - Type or print in black ink.**

**Part I. Petitioner Information**  
If you are an individual filing this petition, complete Item Number 1. If you are a company or an organization filing this petition, complete Item Number 2.

Name of Individual Petitioner \_\_\_\_\_  
Given Name (first name) \_\_\_\_\_ Middle Name \_\_\_\_\_

**FORM I-129**  
**Petition for a Non-Immigrant Worker**



# H-1B Visas

## Part 6 of Form I-129

### **Part 6. Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States**

(For H-1B, H-1B1 Chile/Singapore, L-1, and O-1A petitions only. This section of the form is not required for all other classifications. See **Page 3** of the Instructions before completing this section.)

**Check Box 1 or Box 2 as appropriate:**

With respect to the technology or technical data the petitioner will release or otherwise provide access to the beneficiary, the petitioner certifies that it has reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) and has determined that:

- ☐ 1. A license is not required from either U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the foreign person; or
- ☐ 2. A license is required from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data to the beneficiary and the petitioner will prevent access to the controlled technology or technical data by the beneficiary until and unless the petitioner has received the required license or other authorization to release it to the beneficiary.

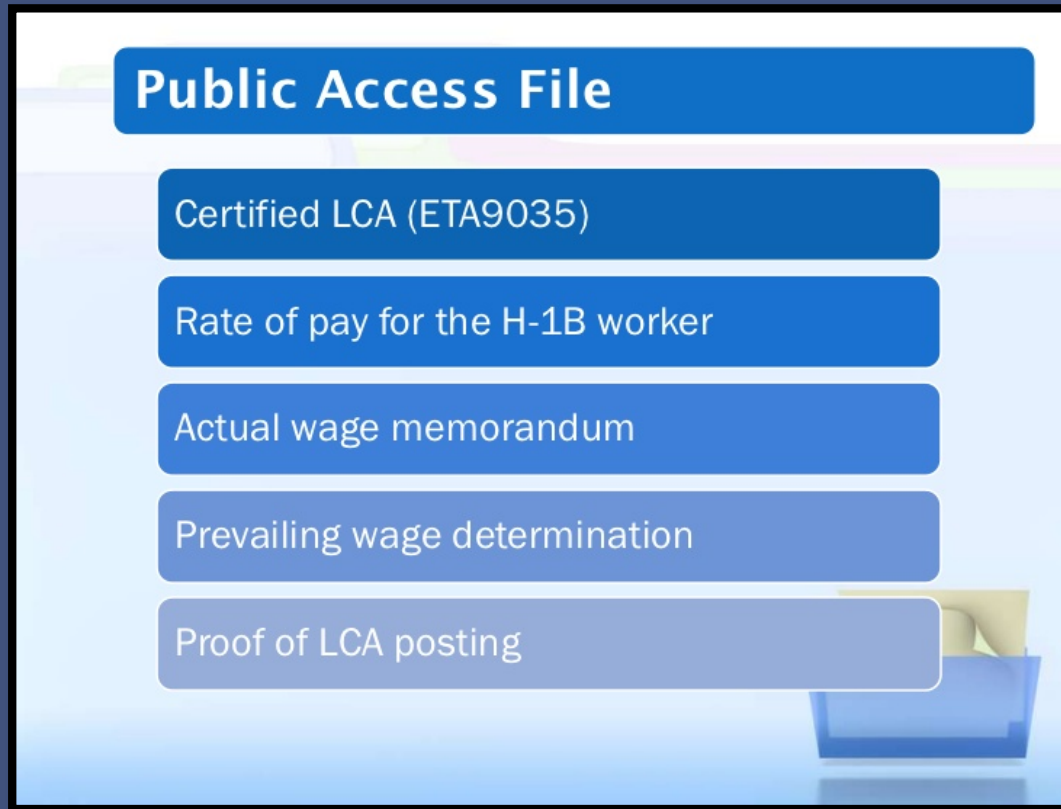
# H-1B Visas

## Step 3: Apply for a H-1B Visa



# H-1B Visas

## The Public Access File



# H-1B Visas

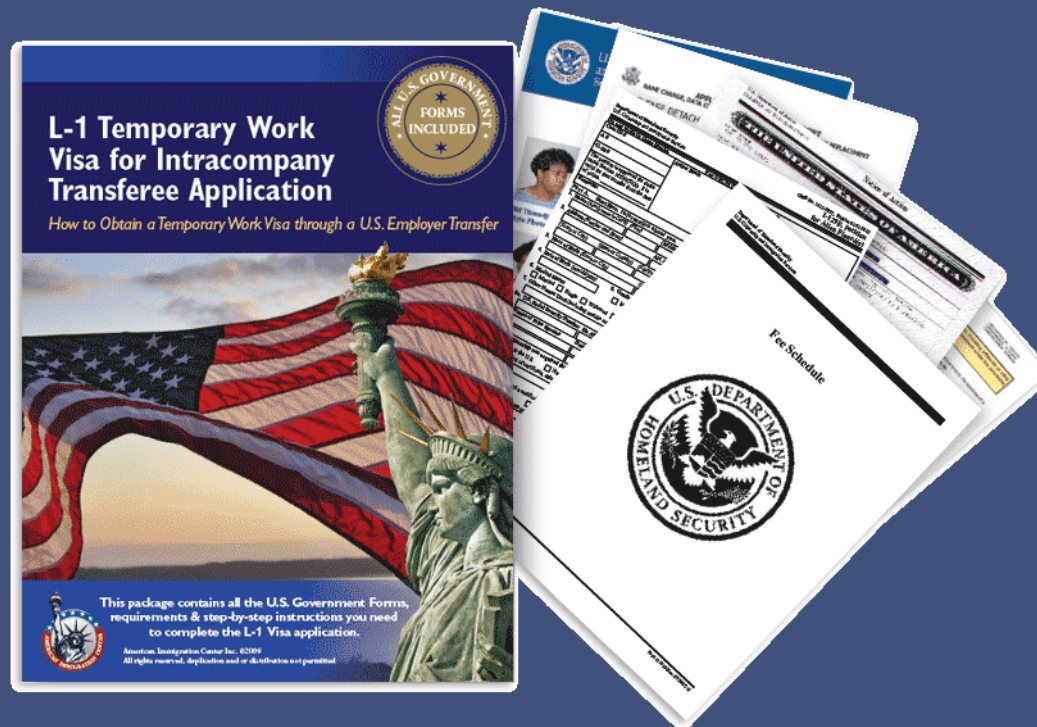
## Maintaining the Public Access File

- Required Contents:
  - LCA, including instructions executed by employer and employee
  - Prevailing Wage Documentation
  - Health Benefits Summary
  - Actual Wage Memorandum
- Highly Recommended Contents:
  - Notice of Posting
  - Posting Notice Certification
  - Written acknowledgment or other proof that the beneficiary received a copy of the LCA
  - Specific salary data the employer used to calculate actual wage



# L-1 Visas

The L-1 Visa Classification enables a U.S. employer to transfer a nonimmigrant worker from one of its affiliated foreign offices to one of its offices in the United States

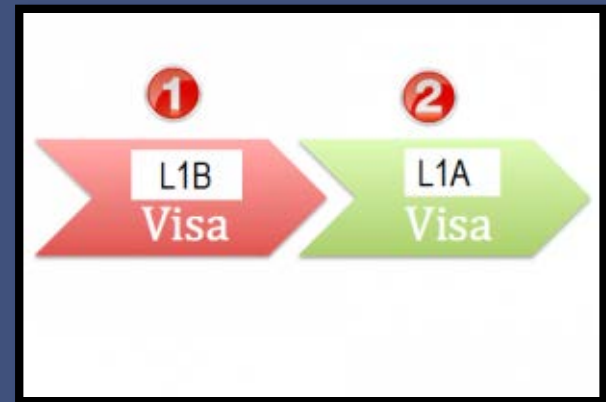




# L-1 Visas

Two types of L-1 Visas:

- L-1A: Intracompany Transferee Executive or Manager
- L-1B: Intracompany Transferee Professional Employee with Specialized Knowledge



# L-1 Visas

## Application Process

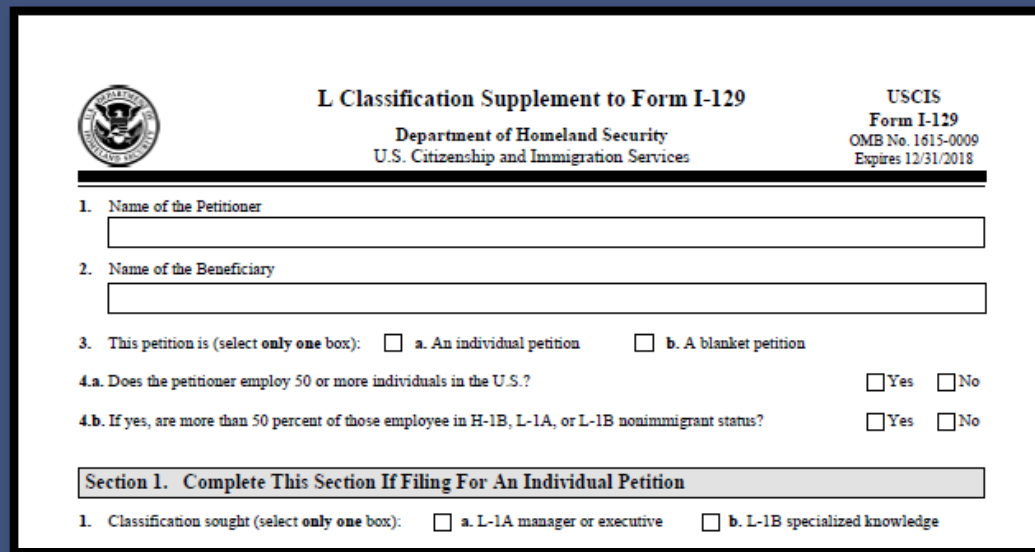
- Same as H-1B application process
- EXCEPT: Employer Completes the L Classification Supplement to Form I-129



# L-1 Visas

## L Classification Supplement to Form I-129

- Section 1, Part 1: Classification Sought
- Employer will select either L-1A manager or executive or L-1B specialized knowledge



The image shows the L Classification Supplement to Form I-129, a document from the U.S. Citizenship and Immigration Services (USCIS). The form is titled "L Classification Supplement to Form I-129" and is part of the "Department of Homeland Security U.S. Citizenship and Immigration Services" forms. It includes the USCIS logo and the text "Form I-129 OMB No. 1615-0009 Expires 12/31/2018". The form is divided into sections for the petitioner and beneficiary information, and a section for the classification sought. The classification sought section includes checkboxes for L-1A manager or executive and L-1B specialized knowledge.

**L Classification Supplement to Form I-129**

Department of Homeland Security  
U.S. Citizenship and Immigration Services

USCIS  
Form I-129  
OMB No. 1615-0009  
Expires 12/31/2018

1. Name of the Petitioner  
\_\_\_\_\_  
\_\_\_\_\_

2. Name of the Beneficiary  
\_\_\_\_\_  
\_\_\_\_\_

3. This petition is (select **only one** box): ☐ a. An individual petition ☐ b. A blanket petition

4.a. Does the petitioner employ 50 or more individuals in the U.S.? ☐ Yes ☐ No

4.b. If yes, are more than 50 percent of those employee in H-1B, L-1A, or L-1B nonimmigrant status? ☐ Yes ☐ No

**Section 1. Complete This Section If Filing For An Individual Petition**

1. Classification sought (select **only one** box): ☐ a. L-1A manager or executive ☐ b. L-1B specialized knowledge

# L-1 Visas

## Period of Stay

- All qualified L-1 employees will be allowed a maximum initial stay of 3 years
- Qualified L-1 employees entering the United States to establish a new office will be allowed a maximum initial stay of 1 year

## L-1 Petition Fees

- Carefully review USCIS's webpage titled "H and L Filing Fees for Form I-129, Petition for a Nonimmigrant Worker" to determine which supplemental fees are required

# Part 2: Employment-Based Green Cards

## Adjustment of Status





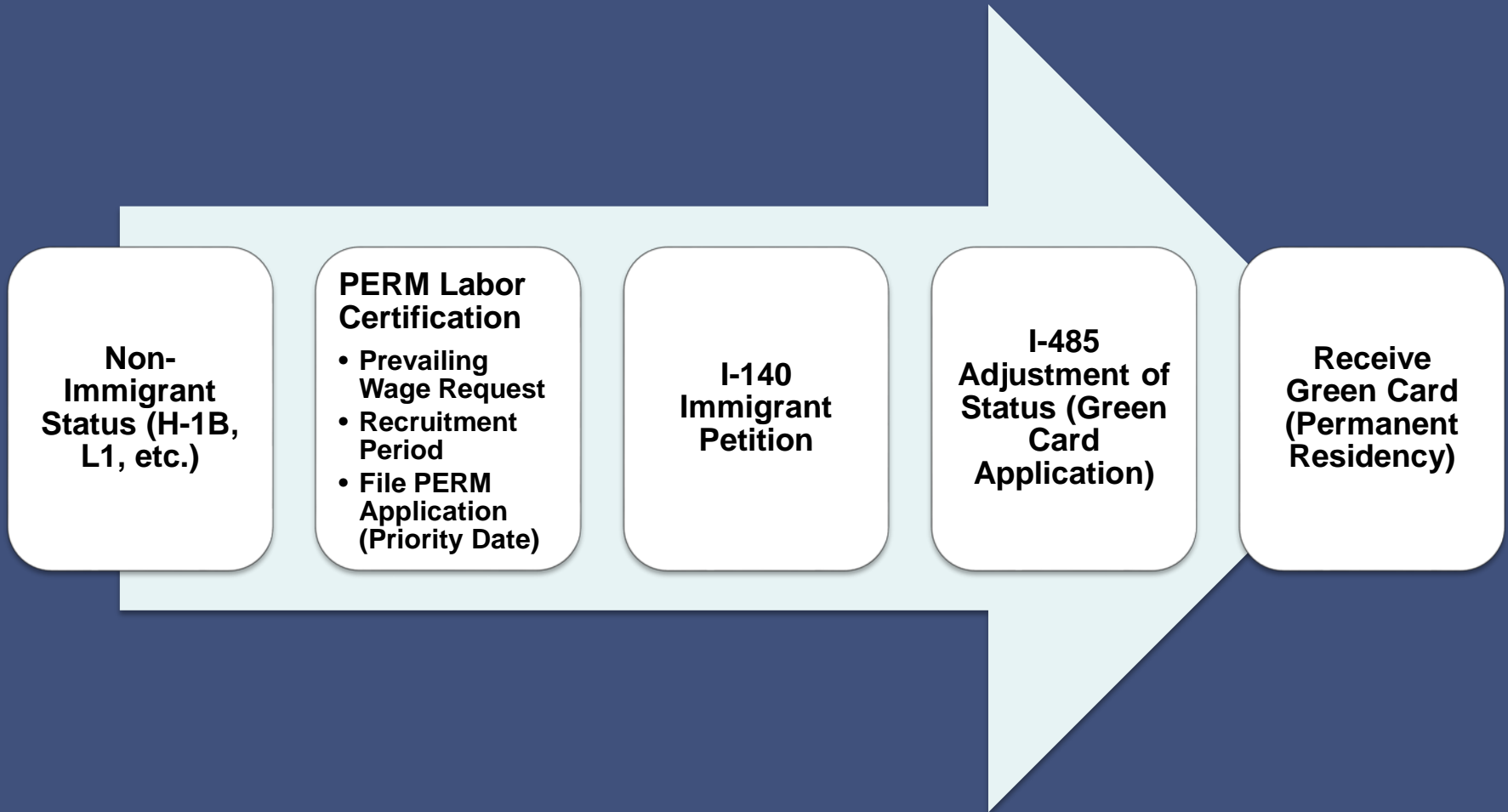
# Adjustment of Status

## 9 Steps for Adjustment of Status

### Steps for Adjustment of Status

1. Determine if you are eligible to apply for a Green Card
2. You or someone else must file an immigrant petition for you (if applicable)
3. Check visa availability (if applicable)
4. File Form I-485
5. Go to your Application Support Center appointment
6. Go to your interview (if applicable)
7. Respond to request for additional evidence (if applicable)
8. Check your case status
9. Receive a decision

# Adjustment of Status



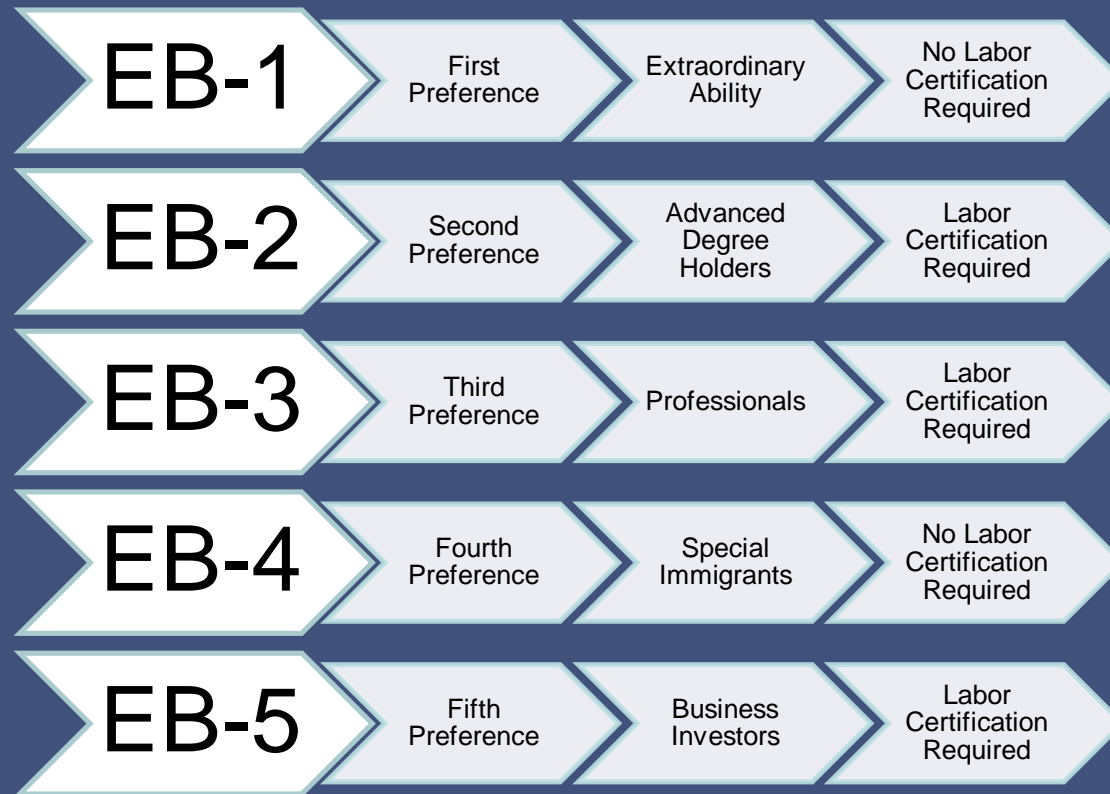
# Adjustment of Status

## Eligibility for Adjustment of Status



# Adjustment of Status

## Employment-Based (EB) Visa Preference Categories



# Adjustment of Status

## Permanent Labor Certification Process (PERM)





# Adjustment of Status

Form I-140

Immigrant petition for Alien Worker



## Instructions for Petition for Alien Workers

Department of Homeland Security  
U.S. Citizenship and Immigration Services

USCIS  
Form I-140  
OMB No. 1615-0015  
Expires 04/30/2018

### What is the Purpose of This Form?

Form I-140 is used to petition U.S. Citizenship and Immigration Services (USCIS) for an immigrant visa based on employment.

# Adjustment of Status

## Form I-485

Application to Register Permanent Residence or Adjust Status

What happens after?



# Part 3: Compliance



# Form I-9 Overview

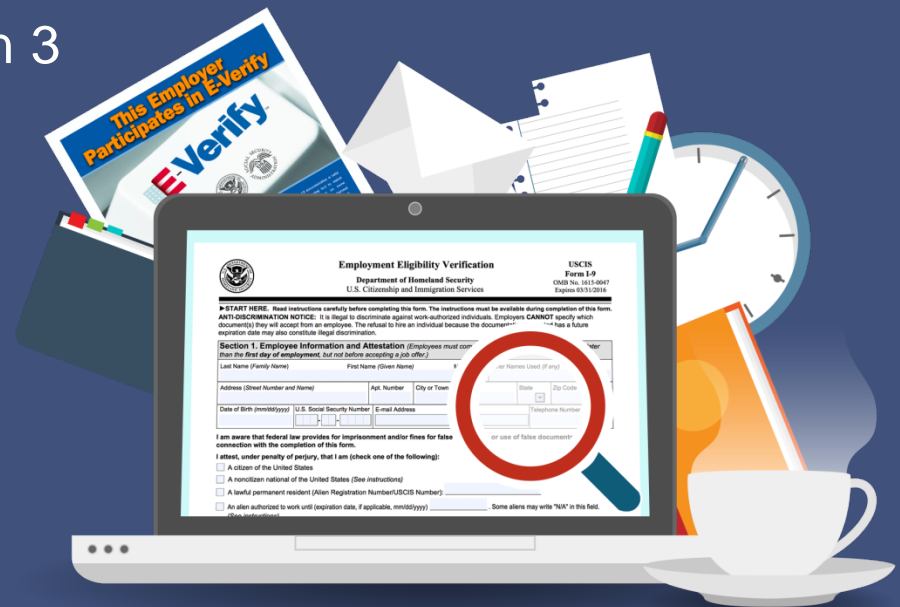
[illegible]

- The Immigration Reform and Control Act (IRCA)
- Revised Form I-9 Now Mandatory



# Form I-9 Overview

- Form I-9 **MUST** be completed for each newly hired employee
- Form I-9 must be completed within 3 days of employment
- There are 3 Sections to Form I-9



# Form I-9: Section 1

Newly hired employees **MUST** complete and sign Section 1 **no later than** the first day of employment, but not before accepting a job offer



# Form I-9: Section 1

**Section 1. Employee Information and Attestation** *(Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)*

1 Last Name (Family Name) 2 First Name (Given Name) 3 Middle Initial 4 Other Last Names Used (if any) 5

2 Address (Street Number and Name) 3 Apt. Number 4 City or Town 5 State 6 ZIP Code

3 Date of Birth (mm/dd/yyyy) 4 U.S. Social Security Number 5 Employee's E-mail Address 6 Employee's Telephone Number

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following boxes):

☐ 1. A citizen of the United States 2

☐ 2. A noncitizen national of the United States (See instructions) 3

☐ 3. A lawful permanent resident (Alien Registration Number/USCIS Number): 4

☐ 4. An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy): 5  
Some aliens may write "N/A" in the expiration date field. (See instructions)

Aliens authorized to work must provide only one of the following document numbers to complete Form I-9:  
An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number.

1. Alien Registration Number/USCIS Number: 2  
OR  
2. Form I-94 Admission Number: 3  
OR  
3. Foreign Passport Number: 4  
Country of issuance: 5

QR Code - Section 1  
Do Not Write in This Space

Signature of Employee 2 Today's Date (mm/dd/yyyy) 3

**Preparer and/or Translator Certification (check one):** 2  
☐ I did not use a preparer or translator. ☐ A preparer(s) and/or translator(s) assisted the employee in completing Section 1.  
(Fields below must be completed and signed when preparers and/or translators assist an employee in completing Section 1.)

I attest, under penalty of perjury, that I have assisted in the completion of Section 1 of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator 2 Today's Date (mm/dd/yyyy) 3

Last Name (Family Name) 2 First Name (Given Name) 3

Address (Street Number and Name) 3 City or Town 4 State 5 ZIP Code 6



# Form I-9: Section 2

- Employers or their authorized representatives **MUST** complete and sign Section 2 within three (3) business days of the employee's first day of employment
- Employers or their authorized representatives **MUST** physically examine one document from List A or a combination of one document from List B and one document from List C on the "Lists of Acceptable Documents"



# Form I-9: Section 2

1

2

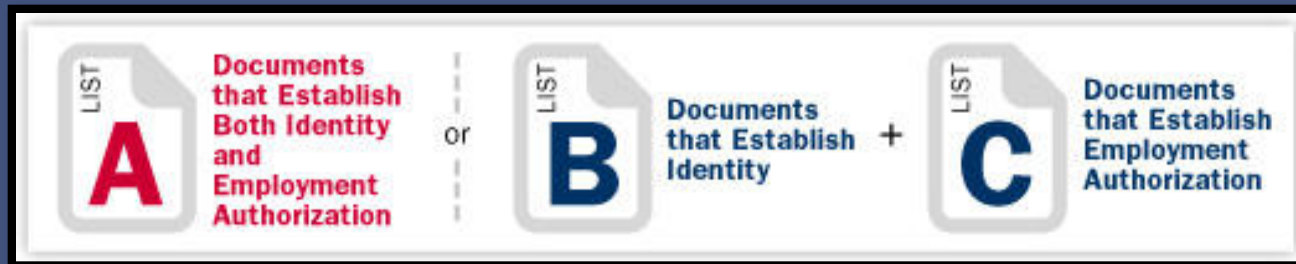
3

4

| Section 2. Employer or Authorized Representative Review and Verification   |                                      |  |  |                                     |
|--|--------------------------------------|--|--|-------------------------------------|
| <i>(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents.")</i>  |                                      |  |  |                                     |
| Employee Info from Section 1   |                                      | Last Name (Family Name)  | First Name (Given Name)                        | M.I. Citizenship/Immigration Status |
| List A<br>Identity and Employment Authorization  |                                      | OR<br>List B<br>Identity   | AND  | List C<br>Employment Authorization  |
| Document Title   | Issuing Authority                    | Document Title   | Issuing Authority                              | Document Title                      |
| Document Number  | Expiration Date (if any)(mm/dd/yyyy) | Document Number  | Expiration Date (if any)(mm/dd/yyyy)           | Document Number                     |
| Document Title   | Issuing Authority                    | <div>Additional Information</div> <div>QR Code - Sections 2 &amp; 3<br/>Do Not Write in This Space</div> |  |                                     |
| Document Number  | Expiration Date (if any)(mm/dd/yyyy) |  |  |                                     |
| Document Title   | Issuing Authority                    |  |  |                                     |
| Document Number  | Expiration Date (if any)(mm/dd/yyyy) |  |  |                                     |
| Certification: I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.<br>The employee's first day of employment (mm/dd/yyyy): _____ (See instructions for exemptions) |                                      |  |  |                                     |
| Signature of Employer or Authorized Representative   |                                      | Today's Date (mm/dd/yyyy)  | Title of Employer or Authorized Representative |                                     |
| Last Name of Employer or Authorized Representative   |                                      | First Name of Employer or Authorized Representative  | Employer's Business or Organization Name       |                                     |
| Employer's Business or Organization Address (Street Number and Name)   |                                      |  | City or Town                                   | State ZIP Code                      |

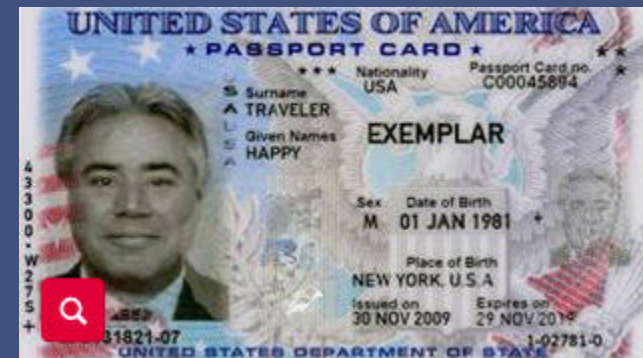
# Form I-9: Section 2

- USCIS Anti-Discrimination Notice: An employer cannot specify which document(s) the employee may present from the List of Acceptable Documents
- Form I-9 Acceptable Documents can be found on USCIS' website by clicking: Forms → I-9, Employment Eligibility Verification → I-9 Central → Acceptable Documents



# Form I-9: Section 2

## Acceptable Documents: List A





# Form I-9: Section 2

## Acceptable Documents:

### List B



### List C



# Form I-9: Section 3

Section 3 should be completed by employers in either a reverification or rehire situation

| Section 3. Reverification and Rehires (To be completed and signed by employer or authorized representative.)   |                                   |   |                                   |
|--|-----------------------------------|---|-----------------------------------|
| A. New Name (if applicable)  |                                   |   | B. Date of Rehire (if applicable) |
| Last Name (Family Name)  | First Name (Given Name)           | Middle Initial                                | Date (mm/dd/yyyy)                 |
| Doe  | Jim                               | A   | Date Employee Begins Employment   |
| C. If the employee's previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below.   |                                   |   |                                   |
| Document Title   | Document Number                   | Expiration Date (if any) (mm/dd/yyyy)         |                                   |
| EAD  | ABC0000000000                     | 01/01/2020                                    |                                   |
| I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual. |                                   |   |                                   |
| Signature of Employer or Authorized Representative   | Today's Date (mm/dd/yyyy)         | Name of Employer or Authorized Representative |                                   |
| Jane Doe   | Date Employer Completes Section 3 | Jane Doe                                      |                                   |

# Form I-9: Section 3

|  |                             |   |                                   |                  |
|--|-----------------------------|---|-----------------------------------|------------------|
| Employee Name from Section 1:  |                             | Last Name (Family Name) ?                       | First Name (Given Name) ?         | Middle Initial ? |
| <b>Section 3. Reverification and Rehires</b> (To be completed and signed by employer or authorized representative.)  |                             |   |                                   |                  |
| A. New Name (if applicable) ?  |                             |   | B. Date of Rehire (if applicable) |                  |
| Last Name (Family Name) ?  | First Name (Given Name) ?   | Middle Initial ?                                | Date (mm/dd/yyyy) ?               |                  |
| C. If the employee's previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below.   |                             |   |                                   |                  |
| Document Title ?   | Document Number ?           | Expiration Date (if any) (mm/dd/yyyy) ?         |                                   |                  |
| I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual. |                             |   |                                   |                  |
| Signature of Employer or Authorized Representative ?   | Today's Date (mm/dd/yyyy) ? | Name of Employer or Authorized Representative ? |                                   |                  |

1

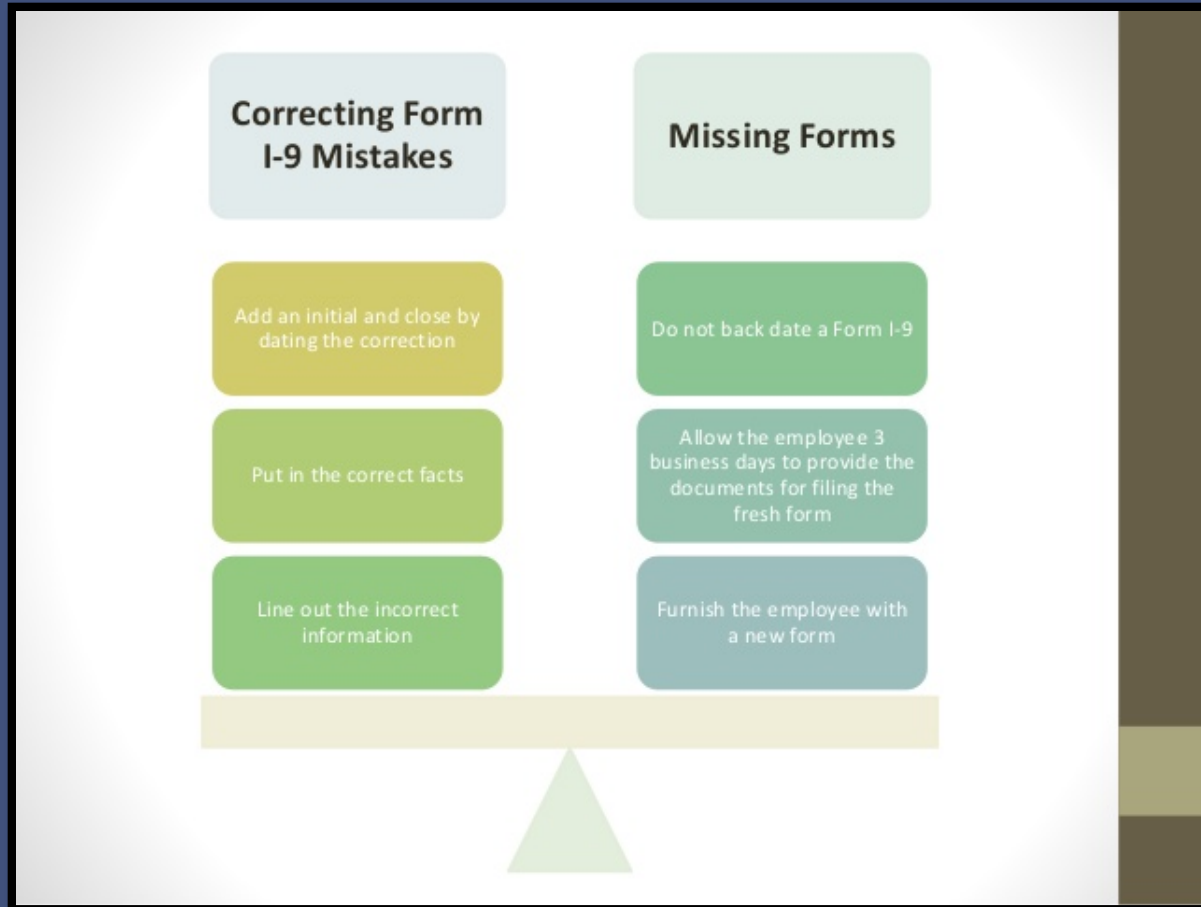
3

4

2



# Correcting I-9 Forms



# Retention of Documents

## Retention of I-9

- Duration of employment
- Later of either 3 years after date of hire or 1 year after termination of employment ended
- Copies of form I-9

The screenshot shows the 'Retention' section of the E-Verify Form I-9. It includes the E-Verify logo and the U.S. Citizenship and Immigration Services seal. The text states that Forms I-9 must be retained for 3 years after the date of hire or 1 year after the date of termination, whichever is later. An example is provided for John Smith, who was hired on November 1, 2014, and terminated on July 5, 2016. The calculation shows that 3 years after hire is November 1, 2017, and 1 year after termination is July 5, 2017. The final retention date is November 1, 2017. The form is identified as 'Revised Form I-9, Employment Eligibility Form' with a date of 1/4/2017 and a page number of 21.

**E-Verify**

U.S. Citizenship and Immigration Services

### Retention

Forms I-9 must be retained for:

3 years after the date you hire an employee

or

1 year after the date employment terminates, whichever is later.

Example:

John Smith was hired on November 1, 2014, and on July 5, 2016, employment was terminated.

November 1, 2014 + 3 years = November 1, 2017

July 5, 2016 + 1 year = July 5, 2017

The retention date is November 1, 2017

PRESENTATION Revised Form I-9, Employment Eligibility Form DATE 1/4/2017 21

# Part 4: Immigration Audit Process

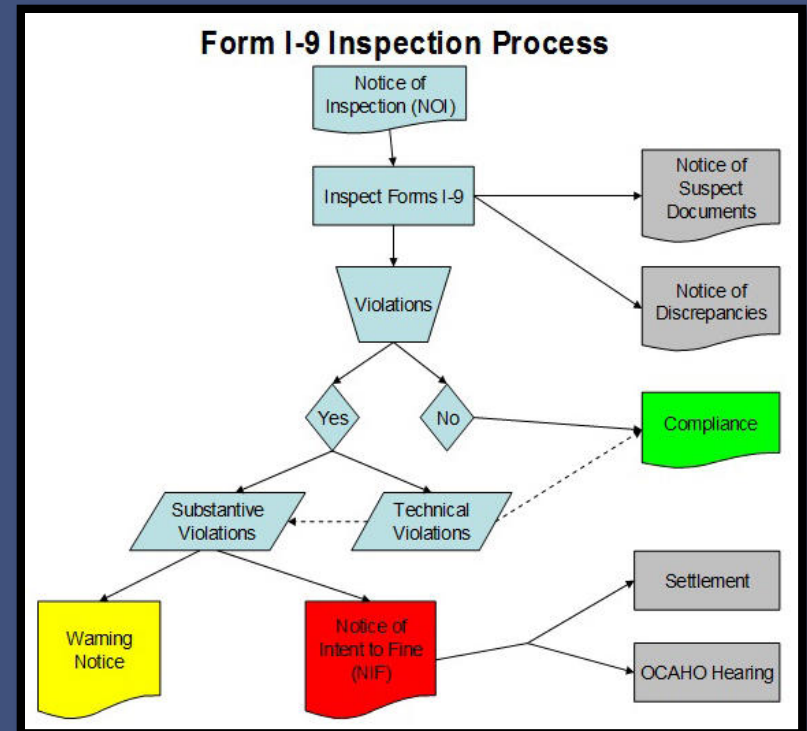
Businesses are receiving Notices of Inspection (“NOI”) from DHS’ Immigration and Customs Enforcement (“ICE”) Division



# Results of Inspection

Following an inspection of documents, ICE will provide notification to an employer. The most common notices include:

- Notice of Suspect Documents
- Notice of Discrepancies
- Notice of Technical/Procedural Failures
- Warning Notice
- Notice of Intent to Fine (NIF)



# Notice of Intent to Fine (NIF)

ICE will issue a NIF if there is evidence of violations for substantive, uncorrected technical, knowing hire and continuing to employ



# Technical or Substantive Violations



# Penalties for Non-Compliance

- Monetary penalties may range from \$375 to \$16,000 per violation
- Penalties for substantive violations, including failing to submit an I-9 when requested by ICE, range from \$110 to \$1,100 per violation. 8 CFR §274a.10(b)(2)
- Five criteria in determining size of penalty





# Fraud - Generally

18 U.S.C. § 1546(a)

Anyone who knowingly makes a false statement on an application to USCIS for anything requiring a representation under oath of a material fact (i.e. visas, work authorizations, sponsorship applications for alien employees) is subject to imprisonment for up to 25 years. Foreign nationals may be imprisoned and/or removed from the U.S.

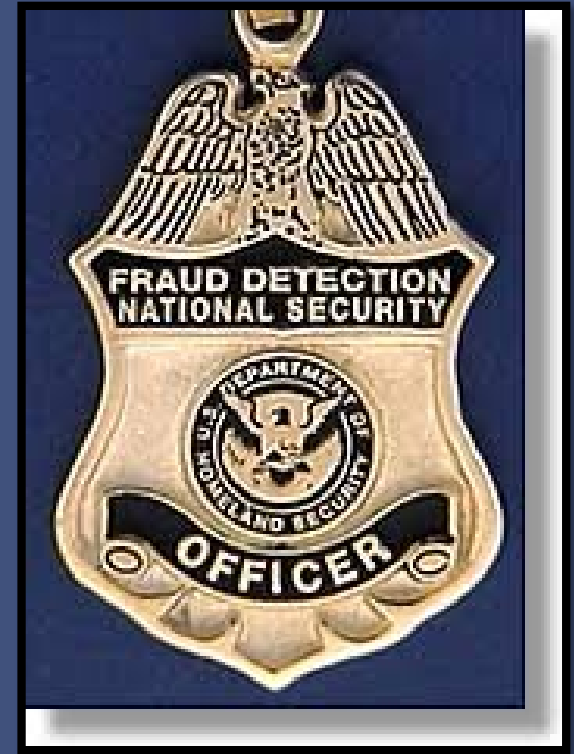
# Document Fraud



# Fraud Investigations

Fraud Detection and National Security Directorate (FDNS): developed to enhance national security and ensure that the right benefits are offered to correct beneficiaries

FDNS developed Administrative Site Visit and Verification Program (ASVVP) to enable FDNS to randomly visit employers that have submitted I-129 petitions on behalf of employees



# FDNS Site Visits

Examples of FDNS questions to employer:

- How many persons employed
- How long has company been in business
- Number of H-1B employees employed – full and part-time
- Number of lawful permanent residents or foreign nationals

Examples of FDNS questions to employee:

- Employee's title, responsibilities and salary
- Employee's education
- Who paid the H-1B filing and legal fees



# FDNS Site Visits

How to prepare for FDNS site visits:


- Establish protocols
  - Verify credentials
  - Counsel involvement
- Train stakeholders
  - Do not guess
  - Ask for time
  - Coach employees in advance, including reception
  - Counsel review



# Part 5: Recent Changes in Immigration Law



# USCIS Will No Longer Provide Deference to Prior Adjudications for Nonimmigrant Petitions

|  |   |
|--|---|
|  | <p>U.S. Department of Homeland Security<br/>U. S. Citizenship and Immigration Services<br/><i>Office of the Director (MS 2000)</i><br/>Washington, DC 20529-2000</p>  <p>U.S. Citizenship<br/>and Immigration<br/>Services</p> |
| October 23, 2017   | PM-602-0151   |
| Policy Memorandum  |   |
| SUBJECT: Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status |   |

# USCIS Issues New Form to Obtain Work Authorization Document and Social Security Number Simultaneously



U.S. Citizenship and  
Immigration Services

## **New USCIS Form Streamlines Process to Obtain a Work Authorization Document and Social Security Number Simultaneously**

[Versión en español](#)

Release Date: Oct. 2, 2017



# The DHS Terminates Deferred Action for Childhood Arrivals (DACA) Program



U.S. Department of  
Homeland Security

## Memorandum on Rescission Of Deferred Action For Childhood Arrivals (DACA)

Release Date: September 5, 2017

# USCIS Expands In-Person Interview Requirements for Certain Permanent Residency Applications



U.S. Citizenship and  
Immigration Services

## **USCIS to Expand In-Person Interview Requirements for Certain Permanent Residency Applicants**

Release Date: Aug. 28, 2017

# USCIS is Denying Pending Forms I-131 for Abandonment Due to International Travel



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

## Practice Alert: USCIS Is Denying Pending Forms I-131 for Abandonment Due to International Travel

*AILA Doc. No. 17081867 | Dated August 18, 2017*

# Questions?



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