

system principles set forth in 5 U.S.C. 2301(b) (1) and (2).

(c) Provide for:

(1) Initial training as an individual makes critical career transitions to become a new supervisor, a new manager, or a new executive consistent with the results of needs assessments;

(2) Continuing learning experiences, both short- and long-term, throughout an individual's career in order for the individual to achieve the mastery level of proficiency for his or her current management level and position; and

(3) Systematic development of candidates for advancement to a higher management level. Formal candidate development programs leading to noncompetitive placement eligibility represent one, but not the only, type of systematic development.

§ 412.104 Formal candidate development programs for Senior Executive Service positions.

Formal SES candidate development programs permit the certification of the executive qualifications of graduates by a Qualifications Review Board under the criterion of 5 U.S.C. 3393(c)(2)(B) and selection for the SES without further competition. The agency must have a written policy describing how the program will operate. The agency must obtain OPM approval of the program before it is conducted for the first time under these regulations and whenever there are substantive changes to the program. Agency programs must meet the following criteria.

(a) Recruitment.

(1) Recruitment for the program is from all groups of qualified individuals within the civil service, or all groups of qualified individuals whether or not within the civil service.

(2) Agencies may request an exception to the provision in paragraph (a) of this section if they can show that during the 5-year period prior to the announcement of a program they have made at least 15% of their career SES appointments from sources outside the agency. Notwithstanding this exception recruitment must be competitive and be announced at least agencywide. Graduates of these programs who have been certified by a QRB must then compete Governmentwide for entry to the SES, but do not have to obtain a second QRB certification before appointment.

(b) In recruiting, the agency, consistent with the merit system principles in 5 U.S.C. 2301(b) (1) and (2), takes into consideration the goal of achieving a diversified workforce.

(c) All candidates are selected through SES merit staffing procedures. The

number selected shall be consistent with the number of expected vacancies.

(d) Each candidate has an SES development plan covering the period of the program. The plan is prepared from a competency-based needs determination. It is approved by the Executive Resources Board.

(e) The minimum program requirements, unless an exception is obtained in advance of the beginning of the candidate's program, for an SES development plan are as follows:

(1) There is a formal training experience that addresses the executive core qualifications and their application to SES positions Governmentwide. The training experience must include interaction with a wide mix of Federal employees outside the candidate's department or agency to foster a corporate perspective but may include managers from the private sector and state and local governments. The nature and scope of the training must have Governmentwide or multi-agency applicability. If formal interagency training is used to meet this requirement, it must total at least 80 hours. If an interagency work experience is used, it must be of significantly longer duration than 80 hours.

(2) There are developmental assignments that total at least 4 months of full-time service outside the candidate's position of record. The purpose of the assignments is to broaden the candidate's experience and/or increase knowledge of the overall functioning of the agency so that the candidate is prepared for a range of agency positions.

(3) There is a member of the Senior Executive Service as a mentor.

(f) Each candidate's performance in the program is evaluated periodically, and there is a written policy for discontinuing a candidate's participation in the program. A candidate can be discontinued or may withdraw from the program without prejudice to his or her ability to apply directly for SES positions.

(g) Each candidate has a documented starting and finishing date in the program.

Subpart B—Senior Executive Service Status and Nonstatus Candidate Development Programs

§ 412.201 Purpose.

Section 3393 of title 5, United States Code, requires that career appointees to the SES be recruited either from all groups of qualified individuals within the civil service, or from all groups of qualified individuals whether or not

within the civil service. This subpart sets forth regulations establishing two types of SES candidate development programs, "status" and "non-status."

§ 412.202 "Status" programs.

Only employee serving under career appointments, or under career-type appointments as defined in § 317.304(a)(2) of this chapter, may participate in "status" candidate development programs.

§ 412.203 "Non-status" programs.

(a) *Eligibility.* Candidates are from outside Government and/or from among employees serving on other than career or career-type appointments within the civil service.

(b) *Requirements.*

(1) Candidates must be appointed using the Schedule B authority authorized by § 213.3202(j) of this chapter. The appointment may not exceed or be extended beyond 3 years.

(2) Assignments must be to a full-time position created for developmental purposes connected with the SES candidate development program. Candidates serving under Schedule B appointment may not be used to fill an agency's regular positions on a continuing basis.

(3) Schedule B appointments must be made in the same manner as merit staffing requirements prescribed for the SES, except that each agency shall follow the principle of veteran preference as far as administratively feasible. Positions filled through this authority are excluded under § 302.101(c)(6) of this chapter from the appointment procedures of part 302.

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 210, 245a, 264, 274a and 299

[INS No. 1399 E-96]

RIN 1115-AB73

Introduction of New Employment Authorization Document

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: The Immigration and Naturalization Service (Service) is publishing a final rule introducing a more secure Employment Authorization Document (EAD), Form I-766. The

Service will begin issuing Form I-766 on or after October 4, 1996. This rule will confer authority for INS to begin issuing Form I-766 to certain classes of aliens as evidence of authorization to work temporarily in the United States. Form I-766 may be used by employees and employers for purposes of employment verification eligibility requirements on the Service Form I-9. No action is necessary for those aliens who have valid evidence of employment authorization on Service Forms I-688A and I-688B.

EFFECTIVE DATE: October 4, 1996.

FOR FURTHER INFORMATION CONTACT: MayBurn DeBoe, Senior Immigration Examiner, Immigration and Naturalization Service, Adjudications and Nationality Division, 425 I Street NW., room 3214, Washington, DC. 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION: The Service published a supplemental proposed rule (INS No. 1399S-94) in the Federal Register at 60 FR 32472-32477 on June 22, 1995. That rule, among other things, proposed to introduce a new, more secure Employment Authorization Document (EAD), Form I-766. This final rule introduces Form I-766 as a designated employment authorization document and, for Form I-688A and I-688B Employment Authorization Document holders, evidence of alien registration; while also amending 8 CFR parts 210 and 245a to reflect revised document numbers.

The Service will begin to issue Form I-766 on October 4, 1996. At this time, the Service is publishing in final form those provisions which will allow for the use of Form I-766. Form I-766 will eventually replace two existing Employment Authorization Documents, Forms I-688A and I-688B. These provisions were contained in the proposed document reduction rule (INS No. 1399-92) published on November 23, 1993, at 58 FR 61846-61850, and the supplemental proposed rule (INS No. 1399S-94) published on June 22, 1995. The Service has elected to publish only these select provisions in final form at this time. The remainder of the provisions contained in the proposed document reduction rule and supplemental proposed rule will be published in final form at a later date.

Centralized EAD Production

The Service will centralize I-766 production at the service centers. The Service has determined that utilizing state-of-the-art technology at one or more of its service centers will enable the Service to produce a more secure EAD which will benefit employers,

aliens who have been granted employment authorization, and the Service as well.

Currently, more than half of all EAD applications are filed and processed at the service centers through direct mail, and the Service plans to shift all remaining EAD applications to direct mail as a new production system becomes available in the service centers. As noted in the proposed supplemental rule, direct mail is a Service program which allows the public to file certain applications and petitions for benefits under the Immigration and Nationality Act (Act), as amended, at service centers instead of field offices. This centralization has improved inventory control, data integrity, and overall service.

Introduction of Form I-766

In the proposed rule published November 23, 1993, the Service proposed amending 8 CFR parts 210 and 245a to reflect the eventual replacement of Form I-688A with Form I-766. The Service will amend those parts to include specific references to the form number of Service-issued employment authorization documents (e.g., Form I-688B and Form I-766). In addition, current language in sections under 8 CFR parts 210 and 245a provide for employment authorization in 6-month increments. This rule amends those sections to make them consistent with language in 8 CFR 274a.12(c) which provides for employment authorization in increments not to exceed 1 year.

Related Regulatory and Process Changes

To clarify the regulatory provisions for legalization applicant work authorization in 8 CFR 274a.12, the Service is adding paragraphs to (c) (20) and (22) to include these legalization groups as classes of aliens who must apply for employment authorization while their applications are pending before the Service. The addition of these *two (2)* paragraphs will permit the Service to indicate on the EAD, the different terms and conditions of legalization applicants under sections 210 and 245A of the Act.

In addition, since Form I-688A, which is issued to legalization applicants, is designated by existing regulation as evidence of alien registration, 8 CFR part 264 will be amended to permit Form I-766, which eventually will replace Form I-688A, to be used as evidence of alien registration. Also, because an employment authorization document is considered an alien registration document for purposes of identity and employment

eligibility (List A) of the Form I-9, the Service is amending part 264 to add Forms I-688B and I-766.

Elimination of Certain Service-Issued Paper Documents

In the supplemental proposed rule published on June 22, 1995, the Service notified the public of its intent to eliminate from circulation an unknown number of paper work authorization documents issued prior to June 1, 1987. These pre-1987 paper work authorization documents neither adhered to uniform standards for issuance and recordkeeping nor contained security features. The Service, by its own regulation, intended that these paper documents be terminated automatically on June 1, 1988. However, the Service was not in a state of readiness to issue a secure employment authorization document on June 1, 1988 and published in the Federal Register a stay and suspension of this paragraph of its regulation. The Service is now prepared to issue a highly secure document, Form I-766. Accordingly, effective December 31, 1996, consistent with the provisions of 8 CFR 274a.14(c), this rule will lift the stay on the expiration of Service-issued paper work permits issued before June 1, 1987, that was noticed at 53 FR 20086-87 on June 1, 1988. The stay was imposed "to promote clarity in the issuance of employment authorization documents" while the Service investigated technologies for a secure, standardized employment authorization system. The technology behind Form I-766 represents an important step towards such a system. Holders of such documents will be required to obtain the new, secure Form I-766, through the prescribed process for filing an Application for Employment Authorization (Form I-765. This provision applies exclusively to paper documents evidencing periods of temporary employment authorization issued prior to June 1, 1987. Although the Service does not know the precise number of aliens holding these pre-1987 paper work permits, it is reasonable to expect that most such aliens have applied for immigration benefits under the legalization program enacted in 1986 or otherwise sought immigration benefits at which time the question of employment authorization would have been revisited.

Comments

Many of the comments received on the proposed supplement relate to sections that are not the subject of this final rule. Those will be addressed when the Service publishes the final

document reduction rule. One commenter supported the eventual elimination of the Form I-688B in conjunction with Form I-688A with the introduction of the Form I-766. However, another commenter requested that prompt adjudication of EAD applications be ensured. The commenter expressed concern that the processing time for Form I-766 will further increase overall adjudication and processing time. The commenter also encouraged the Service to engage in an aggressive informational campaign to make affected aliens aware of the need to eventually replace their EADs and to advise employers about the proposed changes so that inadvertent discrimination and verification mistakes do not occur.

The Service is prepared to institute an aggressive informational and educational campaign advising both employers and employees of the introduction of the Form I-766. The Form I-766 is a more secure card and is being introduced by the Service as a means to ensure quicker processing time, as well as greater uniformity and consistency among EADs. It is anticipated that the new EAD will ultimately result in less confusion for the employment community.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. § 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. Employers, including small entities, are required to comply with existing employment verification eligibility requirements under the Act. Introduction of the more secure EAD, Form I-766, imposes no such additional requirement. Rather, introduction of the more secure EAD and centralizing its production are intended to streamline the current process and simplify existing employment verification eligibility requirements imposed on employers.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and has been reviewed by the Office of Management and Budget (OMB). As noted in the supplementary section of this rule, this action is intended to streamline and simplify compliance

with the employment eligibility verification requirements of the Act.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibility among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

8 CFR Part 210

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 245a

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 264

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 210—SPECIAL AGRICULTURAL WORKERS

1. The authority citation for part 210 continues to read as follows:

Authority: 8 U.S.C. 1103, 1160; 8 CFR part 2.

2. In § 210.4 paragraphs (b) (2) and (3) are revised to read as follows:

§ 210.4 Status and benefits.

* * * * *

(b) * * *

(2) *Employment and travel authorization prior to the granting of temporary resident status.* Permission to travel abroad and to accept employment will be granted to the applicant after an interview has been conducted in connection with a nonfrivolous application at a Service office. If an interview appointment cannot be scheduled within 30 days from the date an application is filed at a Service office, authorization to accept employment will be granted, valid until

the scheduled appointment date. Employment authorization, both prior and subsequent to an interview, will be restricted to increments not exceeding 1 year, pending final determination on the application for temporary resident status. If a final determination has not been made prior to the expiration date on the Employment Authorization Document (Form I-766, Form I-688A or Form I-688B) that date may be extended upon return of the employment authorization document by the applicant to the appropriate Service office. Persons submitting applications who currently have work authorization incident to status as defined in § 274a.12(b) of this chapter shall be granted work authorization by the Service effective on the date the alien's prior work authorization expires. Permission to travel abroad shall be granted in accordance with the Service's advance parole provisions contained in § 212.5(e) of this chapter.

(3) *Employment and travel authorization upon grant of temporary resident status.* Upon the granting of an application for adjustment to temporary resident status, the service center will forward a notice of approval to the applicant at his or her last known address and to his or her qualified designated entity or representative. The applicant may appear at any Service office, and upon surrender of the previously issued Employment Authorization Document, will be issued Form I-688, Temporary Resident Card. An alien whose status is adjusted to that of a lawful temporary resident under section 210 of the Act has the right to reside in the United States, to travel abroad (including commuting from a residence abroad), and to accept employment in the United States in the same manner as aliens lawfully admitted to permanent residence.

* * * * *

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT

3. The authority citation for part 245a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1255a and 1255a note.

4. In § 245a.2 paragraph (n)(2) heading, and paragraphs (n)(2)(ii) and (n)(3) are revised to read as follows:

§ 245a.2 Application for temporary residence.

* * * * *

(n) * * *

(2) *Employment authorization prior to the granting of temporary resident status.*

* * * * *

(ii) If an interview appointment cannot be scheduled within 30 days from the date an application is filed at a Service office, authorization to accept employment will be granted, valid until the scheduled appointment date. Employment authorization, both prior and subsequent to an interview, will be restricted to increments of 1 year, pending final determination on the application for temporary resident status. If a final determination has not been made prior to the expiration date on the Employment Authorization Document (Form I-766, Form I-688A or Form I-688B), that date may be extended upon return of the employment authorization document by the applicant to the appropriate Service office.

(3) *Employment and travel authorization upon grant of temporary resident status.* Upon the granting of an application for adjustment to temporary resident status, the service center will forward a notice of approval to the applicant at his or her last known address and to his or her qualified designated entity or representative. The applicant may appear at any Service office and, upon surrender of the previously issued Employment Authorization Document, will be issued Form I-688, Temporary Resident Card, authorizing employment and travel abroad.

* * * * *

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

5. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1201a, 1301-1305.

6. In § 264.1 paragraph (b) is amended by adding the entries for "Form I-766" and "Form I-688B" to the listing of forms, in proper numerical sequence, to read as follows:

§ 264.1 Registration and fingerprinting.

* * * * *

(b) * * *

Form No. and Class

* * * * *

I-688B, Employment Authorization Document.

I-766, Employment Authorization Document.

* * * * *

PART 274A—CONTROL OF EMPLOYMENT OF ALIENS

7. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

8. Section 274a is amended by revising paragraph (b)(1)(v)(A)(6) and removing and reserving paragraphs (b)(1)(v)(A)(7) and (b)(1)(v)(A)(10) to read as follows:

§ 274a.2 Verification of employment eligibility.

* * * * *

(b) * * *

(1) * * *

(v) * * *

(A) * * *

(6) An unexpired Employment Authorization Document issued by the Immigration and Naturalization Service which contains a photograph, Form I-766; Form I-688, Form I-688A, or Form I-688B;

(7) [Reserved]

* * * * *

(10) [Reserved]

* * * * *

9. In § 274a.12, new paragraphs (c)(20) and (c)(22) are added, to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(20) Any alien who has filed a completed legalization application pursuant to section 210 of the Act (and part 210 of this chapter). Employment authorization shall be granted in increments not exceeding 1 year during the period the application is pending (including any period when an administrative appeal is pending) and shall expire on a specified date.

* * * * *

(22) Any alien who has filed a completed legalization application pursuant to section 245A of the Act (and part 245a of this chapter). Employment authorization shall be granted in increments not exceeding 1 year during the period the application is pending (including any period when an administrative appeal is pending) and shall expire on a specified date.

* * * * *

10. In 274a.14 paragraphs (c)(1) and (c)(2) are revised to read as follows:

§ 274a.14 Termination of employment authorization.

* * * * *

(c) *Automatic termination of temporary employment authorization granted prior to June 1, 1987—(1)*

Temporary employment authorization granted prior to June 1, 1987, pursuant to 8 CFR 274a.12(c) (§ 109.1(b) contained in the 8 CFR edition revised as of January 1, 1987), shall automatically terminate on the date specified by the Service on the document issued to the alien, or on December 31, 1996, whichever is earlier. Automatic termination of temporary employment authorization does not preclude a subsequent application for temporary employment authorization.

(2) A document issued by the Service prior to June 1, 1987, that authorized temporary employment authorization for any period beyond December 31, 1996, is null and void pursuant to paragraph (c)(1) of this section. The alien shall be issued a new employment authorization document upon application to the Service if the alien is eligible for temporary employment authorization pursuant to 274A.12(c).

* * * * *

PART 299—IMMIGRATION FORMS

11. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

12. Section 299.1 is amended by adding the entry for "Form I-766" in proper numerical sequence to the listing of forms, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
I-766	01-03-96	Employment Authorization Document.
*	*	*

Dated: May 20, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96-22426 Filed 9-3-96; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

Issuance of Report on the NRC Regulatory Agenda

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of NRC Regulatory Agenda.