

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on January 16, 2007 in Room 231-N of the Capitol.

All members were present except:

Senator Ralph Ostmeyer- excused

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes Office
Connie Burns, Committee Assistant

Conferees appearing before the committee:

Mira Mdivani
Rae Ann Davis, Department of Commerce

Others attending:

See attached list.

Mira Mdivani, Attorney Immigration Law Practice, provided the committee an overview on employer immigration compliance, work visas and family immigration. (Attachment 1) It takes approximately 13 years to become a US citizen. The workforce is made up of 19% foreign born, according to a 2004 study. Approximately 11,000,000 to 20,000,000 undocumented persons from Mexico are in the U.S. (Bear Stearns study based on amount of money transferred to families) The need for legal work visas is 3.5 million per year and the available work visas fall far short of requirements.

Family Immigration - Hurdles to Jump and Family Separation

- U.S. Citizen marries a person legally in the U.S.
- U.S. Citizen marries a person illegally in the U.S. - in order to become "legal," after waiting for approval of family petition by USCIS (Approximately 12 months) and transfer of the file to the Consulate (another 12 months), the foreign spouse must leave the U.S. and wait abroad (e.g. in Mexico - currently approximately 13 - 18 months) before being able to come to the U.S. legally. Standard for I-601 Hardship Waiver; "Mere separation" of family for 10 years is not considered to be "extreme hardship"
- U.S. Legal Permanent Resident marries a person legally in the U.S. or abroad (never had illegal status)
 - a) Visa Bulletin - Allowable Levels of Immigration

If a U.S. Legal Permanent Resident (US LPR) marries a citizen of Mexico, the foreign spouse must wait in Mexico for over seven (7) years, to come to the U.S. legally. The foreign spouse is not allowed to visit the U.S. during the seven year wait; the LPR will lose U.S. residency if waits in Mexico with family.

Consequences for families: seven years of separation, children growing without a parent, divorces, crossing the border illegally to be together - what is the justification for such policy?

If the foreign spouse of a US LPR is from England: over five (5) years of wait and the wait to sponsor a brother from the Philippines; 23 years.

Legal vs. Illegal

1. US Citizen, US Lawful Permanent Resident, F-1 student, H-1B Professional Worker, H-2B seasonal worker, L-1 executive, Asylee and Refugee, Temporary Protected Status (TPS) from Honduras, El Salvador, Somalia, Lebanon, etc., "Deferred Inspection" I-130 pending based on Violence Against Women Act, T & U visas, A visa, TN Canadian and Mexican workers, "S", etc
2. Crossed the border from Mexico illegally, no visa, no passport, work permit expired.
3. 3 and 10 bars: Illegals including Out of Status

Problems:

Entered without inspection (EWI) alien married to a US citizen - no way to become legal while staying in the US.

Inconsistent policy on illegal entrants: marriage to USC and three kids not enough to cure illegal

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:30 a.m. on January 16, 2007 in Room 231-N of the Capitol.

entry but Temporary Protected Status (TPS)

Problem: Once out of status always out of status in many cases.

Children brought here without inspection and raised here, thinking they are Americans

Employer Immigration Compliance begins with outdated I-9 list and there is a severe shortage of work visas and employment based green cards.

Rae Anne Davis, Deputy Secretary, Kansas Department of Commerce, spoke to the committee on H1B and H2B visas. (Attachment 2) The US Citizenship and Immigration Services places a 66,000 nationwide limit on new petitions for H-2B workers each federal fiscal year (October 1 - September 30) which is divided in half with 33,000 available beginning October 1 and the remaining 33,000 available April 1, to provide equitable distribution across the United States. Foreign workers employed legally in the United State; any time during the last three years may be employed repeatedly and these workers are not included in the 66,000 annual petition limit. Each H-2B petition typically includes numerous workers performing the same job at the same location for the same prevailing wage. Kansas receives about 100 applications yearly, covering 5,000 - 7,000 workers. Primarily the occupations are in landscaping, construction, painting/roofing and remodeling, carnivals, and other low-skilled jobs. The qualifying criteria to apply for the H-2B visa follows:

- The job and the employer's need must be one time only, seasonal, peak load or intermittent
- The job must be for less that one year (for seasonal need, it must be less that 10 months)
- There must be no qualified and willing US workers available for the job. US workers are defined as native-born or naturalized citizens or persons already possessing legal permanent residency status

The H-1B Work Visa program allows employers to hire nonimmigrant foreign workers for the short term, but for the purpose of performing in a specialty occupation, or as a fashion model of distinguished merit and ability. As defined in federal legislation, a "specialty occupation" requires the theoretical and practical application of a body of specialized knowledge and a bachelor's degree or the equivalent in the specific speciality. Examples of specialty occupations are sciences, medicine and health care, education, biotechnology and business specialties. Many employers use the H-1B visa process to bring foreign workers into the country then apply later to change the worker's status from nonimmigrant to permanent worker. Current federal law permits 65,000 foreign workers each fiscal year to be issued H-1B visas, and may be valid for up to three years and are renewable for up to an additional three years.

Dennis Hodgins, Legislative Research, provided the committee with an overview on Federal Benefits. (Attachment 3) The information provided included immigration terms, immigration classification and visa categories, overview of immigrant eligibility for federal programs, and immigrant eligibility restrictions. An explanation of legislation in Colorado and Arizona was provided.

Kathie Sparks, Legislative Research, explained the I-9 forms and that the verification is under the federal Immigration Reform and Control Act of 1986. (Attachment 4) The federal Act requires each employer to have in his or her records a completed Form I-9, Employment Eligibility Verification, for each and every employee, including U.S. citizens hired after November 6, 1986. Unlike tax forms, I-9's are not filed with the U.S. government. The requirement is for employers to maintain I-9 records in their own files for three years after the date of hire or one year after the date the employee's employment is terminated, whichever is later. The employment eligibility verification form, lists of acceptable documents, and the statutes that cover the drivers licenses was provided.

The meeting was adjourned at noon. The next scheduled meeting is January 17, 2007.

**SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST**

DATE 1-16-07

NAME	REPRESENTING
Eric Stafford	AGC of KS
Allie Devine	Ks. Livestock Assoc.
Mike Beam	Ks. Livestock Assn
Ruth Glover	Ks. Human Rights Com.
Emily Mueller	KS Chamber
CARMEW ALLDRITT	KDOR
Alan Anderson	KDOR
Terry Mitchell	KDOR
Ted Smith	KDOTR
Mura Madhani	The Madhani Law Firm
Jennifer Smathy	Commerce
Linda J. Weaver	Ks Dept of Commerce
Bill W. Rudenbeck	Ks Dept of Commerce
Rae Anne Davis	Commerce
Grant Wallace	The Madhani Law Firm
Carl J. Toland	Interim
Katie Zubauf	Keaney & Associates
Sturgis	Don Petram
Cara M. Craner-Greene	KAMU
Josie Torres	SILCK
Melinda Lewis	El Centro, Inc.
Emily Gier	Hein Law Firm
TERRY HOLDREN	KANSAS FARM BUREAU

**KS Senate
Federal & State Affairs Committee**

U.S. Immigration Law Update

testimony by
Immigration Attorney
Mira Mdivani

January 16, 2007

U.S. Immigration Law Update

**by Immigration Attorney
Mira Mdivani**

A. Introduction

1. **19% of our workforce is foreign born** (Cato Institute 2004 study)
July 2006 Unemployment rate: 4.5 %
2. Approximately **11,000,000 (by some estimates) to 20,000,000 undocumented** persons from Mexico are in the U.S. (Bear Stearns study based on amount of money transferred to families)
3. **Unemployment rate: 4.7%**
4. Need for legal work visas: 3.5 million per year (per Bernanke) to actual (11 million +)?
5. Available **work visas fall far short of requirements: illegal immigration is "built in"**

65,000 H-1Bs
66,000 H-2Bs plus returning
6. President Bush's 2004 immigration proposal: outlined a new immigration proposal on January 7, 2004, in which he stated:

“ As a nation that values immigration and depends on immigration, we should have immigration laws that work and make us proud. Yet today we do not. Instead, we see many employers turning to the illegal labor market. We see millions of hard-working men and women condemned to fear and insecurity in a massive, undocumented economy, Illegal entry across our borders makes more difficult the urgent task of securing the homeland. **The system is not working.** Our nation needs an immigration system that serves the American economy, and reflects the American Dream.”

580
30

7. 2006 Proposed U.S. House Immigration Bill (not law yet)
 - further restrict levels of immigration
 - criminalize civil immigration violations, make them a felony
 - deport 11-20 million people
8. 2006 Proposed U.S. Senate Bill (not law yet)
 - increase enforcement, and
 - guest worker program
 - earned permanent residence
 - increase levels of legal immigration

B. How Does One Come to the U.S. “Legally” or Becomes “Legal”

1. Family
2. Employment
3. Refugees/Asylees
4. Other (e.g. Visa Lottery)

C. Family Immigration - Hurdles to Jump and Family Separation

1. U.S. Citizen marries a person legally in the U.S.
2. U.S. Citizen marries a person illegally in the U.S. - in order to become “legal,” after waiting for approval of family petition by USCIS (approximately 12 months) and transfer of the file to the Consulate (another 12 months), the foreign spouse must leave the U.S. and wait abroad (e.g. in Mexico - currently approximately 13-18 months) before being able to come to the U.S. legally.

Standard for I-601 Hardship Waiver: "Mere separation" of family for 10 years is not considered to be "extreme hardship"

3. U.S. Legal Permanent Resident marries a person legally in the U.S. or abroad (never had illegal status)

- a. Visa Bulletin - Allowable Levels of Immigration

If a U.S. Legal Permanent Resident (US LPR) marries a citizen of Mexico, the foreign spouse must wait in Mexico for

over seven (7) years

to come to the U.S. legally. The foreign spouse is not allowed to visit the U.S. during the seven year wait; LPR will lose U.S. residency if waits in Mexico with family.

Consequences for families: seven years of separation, children growing without a parent, divorces, crossing the border illegally to be together - what is the justification for such policy?

If foreign spouse of US LPR is from England:

over five (5 years) of wait

Wait to sponsor brother from the Philippines:

23 years

D. **Legal vs. Illegal**

1. U.S. Citizen, U.S. Lawful Permanent Resident, F-1 Student, H-1B Professional Worker, H-2B seasonal Worker, L-1 Executive, Asylee and Refugee, TPS from Honduras, El Salvador, Somalia, Lebanon, etc., "Deferred Inspection" I-130 pending Based on Violence Against Women Act, T & U Visas, A visa, TN Canadian and Mexican workers, "S", etc...
2. Crossed the border from Mexico Illegally, No visa, no passport, work permit expired. Legal or Illegal? May be legal, e.g. TPS or VAWA

Very serious problems with state workers trying to determine whether a person is in status or not. Real life examples:

Asylees denied driver licences, accused of fraud (illegally) by DMV worker;

denials of driver licences to H-2B workers

denials to renew driver licences for H-1B workers beyond I-94 while H-1B extension is pending;

Denials of driver licences to immigrants with pending I-485s.

3. 3 and 10 year bars, "Illegals" including "Out of Status"

Problems:

EWI (Entered Without Inspection) alien married to a U.S. citizen - problem solved - No, currently no way to become legal while staying in the U.S.

Inconsistent policy on illegal entrants: marriage to USC and three kids not enough to cure illegal entry but Temporary Protected Status (TPS) is OK

Problem: Once out of status, always out of status in many cases!

Children brought here without inspection and raised here, thinking they are Americans?

E. Who Is Legally Authorized to Work?

1. Employer Immigration Compliance begins with outdated I-9 list
2. Severe Shortage of Work Visas and Employment-Based Green Cards

Impact on Economy and Business

Opinions:

Alan Greenspan,

Former Chairman of the Federal Reserve
Congressional Testimony on Feb. 27, 2003:

“As you know, the aging of the population in the United States will have significant effects on our fiscal situation. In particular, it makes our Social Security and Medicare programs unsustainable in the long run, short of a major increase in immigration rates... Immigration, if we choose to expand it, could prove an even more potent antidote for slowing growth in the working-age population. As the influx of foreign workers in response to the tight labor markets of the 1990s showed, immigration does respond to labor shortages... An expansion of labor force participation by immigrants and [the] heightened growth of output per worker... presents the greatest potential to boost the growth of gross domestic product.”

Ben Bernanke,
Federal Reserve Chairman
October 3, 2006 speech to the Economic Club of Washington

“Higher level of immigration can help the situation” “To overcome the effects of an aging population, immigration would have to rise to 3.5 million people annually.”

Facts: 4.7 % unemployment rate - if we deport up to 20 million people, who will fuel the economic growth?

Facts: \$7 billion in unmatched social security funds paid

Problems:

Employment-based work visas:

Fight around the H-1B visas: this program should work to attract the most talented and educated people from abroad to the U.S.; instead, the number of workers is limited to 65,000 visas; complex and expensive to file, culture of “No” at USCIS; Cap is reached BEFORE fiscal year begins

H-2Bs: long and complex certification process, inflexible categories, no

category for workers in the industries where most needed, does not help employers with employees already in the country, limit of 66,000 per year

Green cards based on employment: takes years, process is restrictive, expensive, bordering on absurd

Restrictions and costs cause reverse brain-drain and outsourcing to foreign countries. Example: IBM announced 15,000 new jobs to be created, only 5,400 in the U.S. Example: factory jobs moving abroad

Jobs, taxes, spending on goods and services (which are 2/3 of our GDP) go abroad

Price to Pay for Businesses:

IRCA Regulations, Criminal Liability and Civil Sanctions

Law Suits by competitors (Commercial Cleaning case) and employees (Mendoza case)

Tyson Chicken, Wal-Mart, Mohawk, IFCO, Fischer cases

Suggested Solutions - spectrum of:

- ___ some suggest we should ban any employment-based visas and immigration
- ___ some suggest we should facilitate work visas and immigration for needed professional and essential workers
- ___ meanwhile, extremely burdensome good faith effort to comply with immigration law - immigration compliance programs for employees
- ___ Guest Worker Plan, a possible constructive solution to the temporary worker problem: **“good for our economy and good for the workers”**

“Reform must begin by confronting a basic fact of life and economics: Some of the jobs being generated in America’s growing economy are jobs American citizens are not filling... It is a program that recognizes the contribution that many undocumented workers are now

making to our economy... It will help strengthen our economy, return order to our immigration system and secure our homeland.” President George W. Bush, radio address, January 10, 2004.

A more comprehensive solution to both the “Compassion” and the “Economy” problems: Look at causes illegal immigration (shortage of work and family visas), resolve those issues while making our borders stronger.

F. **Need to Protect Our Homeland vs. Impact on Human Rights and Democracy: “Liberty and Justice for ALL”**

1. **NSEERS Re-registration Requirements** - DHS Resources May be Used Better to Secure Our Borders

NSEERS - National Security Entry-Exit Registration System - re-registration requirement repealed in December 2003: Not a single person was charged on terrorist grounds, its purported goal

Problem: the requirement is repealed, but people are still arrested, and removed for what is no longer a violation.

Problem: many people simply did not know of the requirement to register - arrested if came forward to register late.

“Therefore DHS (Department of Homeland Security) believes there is an urgent rule for the immediate implementation of this rule suspending the automatic interview requirements to avoid unnecessarily burdening the public impacted by this rule. DHS would be forced to re-allocate personnel resources from other law-enforcement functions in order to timely register aliens.”

2. **“Security Checks” Indefinitely Delay Naturalization Applications**

Over 80,000 legal immigrants unable to process with their naturalization or green card applications because the government is holding their filed pending completion of “security clearance

Kansas Senate Federal and State Affairs Committee Hearing
U.S. Immigration Law Update
Testimony by Immigration Attorney Mira Mdivani
www.uslegalimmigration.com
January 16, 2007 Page 9

checks.” In some cases, naturalization applicants who met all the requirements, have been waiting for over four years after passing their citizenship tests. Problem: no duty on behalf of the government to complete the checks.

G. Additional Questions

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July 31, 2006

U.S. Puts Onus on Employers of Immigrants

By JULIA PRESTON

CINCINNATI, July 30 — Immigration agents had prepared a nasty surprise for the Garcia Labor Company, a temporary worker contractor, when they moved against it on charges of hiring illegal immigrants. They brought a 40-count federal indictment, part of a new nationwide strategy by immigration officials to clamp down on employers of illegal immigrant laborers.

Maximino Garcia, the president of the company, which provides low-wage laborers to businesses from Pennsylvania to Texas, stood before a federal judge here on Tuesday to answer conspiracy charges of aiding illegal immigrants and money laundering. If convicted, Mr. Garcia, who pleaded not guilty, could serve 20 years in jail and forfeit his headquarters building and \$12 million.

The criminal charges against Mr. Garcia and his company were brought by the Immigration and Customs Enforcement agency, part of the Department of Homeland Security. The campaign has included at least five other federal indictments of business executives in Ohio and Kentucky and has sent payroll managers rushing to re-examine their workers' papers and rethink plans for their work force.

It also created a new environment of fear in Ohio's immigrant communities.

"It's a very uneasy feeling," said Sister Teresa Ann Wolf, a Roman Catholic nun who works with immigrant workers in Canton, Ohio. "People are afraid to leave the house to go to the store. They are afraid to come to church."

Until recently, the worst that Mr. Garcia, 43, might have expected from the immigration authorities was a civil fine and the deportation of some illegal workers. In April, with President Bush under fire from both Democrats and Republicans who accused him of being lax on employers of illegal immigrants, Homeland Security Secretary Michael Chertoff announced the new campaign. It focuses on those suspected of violations with felony charges that could lead to huge financial penalties and the seizing of assets.

The White House is hoping the increased enforcement will strengthen Mr. Bush's hand in the battle over immigration reform, Homeland Security Department officials said, by pre-empting House Republicans who are pressing a bill they passed in December that centers on enforcement and border security but does not provide a way for illegal immigrants to become legal. The president supports a bipartisan Senate measure that enhances enforcement but also opens a path to citizenship for illegal immigrant and creates a guest worker program.

For years, workplace raids were a low priority for immigration authorities. Testifying in June before a Senate immigration subcommittee, Richard M. Stana, a director in the Government Accountability Office, reported that civil fine notices issued to employers dropped to 3 in 2003, from 417 in 1999.

Officials at Immigration and Customs Enforcement, which was created in 2003 and is known as I.C.E., acknowledge that past efforts were lackluster.

“We found that the fines were not an effective deterrent,” said Julie L. Myers, the Department of Homeland Security assistant secretary who heads I.C.E. “Employers treated them as part of the cost of doing business.”

While the old immigration agency brought 25 criminal charges against employers in 2002, this year Immigration and Customs Enforcement has already made 445 criminal arrests of employers, officials said. Some 2,700 immigrant workers were caught up in those operations, and most were deported, the officials said.

Hiring illegal immigrants “has been a low-risk, high-reward enterprise,” said Brian M. Moskowitz, the agency’s special agent in charge for Ohio and Michigan. “We want to send the message that your cost of business just went up because you risk your livelihood, your corporate reputation and your personal freedom.”

Immigration and Customs Enforcement agents said they homed in on Garcia Labor because of a contract it had with ABX Air, a cargo airline that flies express shipments for DHL, with a fleet of 112 airplanes based at its privately owned airport in Wilmington, Ohio. From 1999 to 2005, the indictment charges, Garcia Labor sent more than 1,000 illegal immigrants, mostly Mexicans, to sort freight at ABX Air.

Companies like Garcia Labor have sprung up across the United States. Instead of hiring immigrants directly, employers create a buffer by contracting with a labor company, which is responsible for verifying its workers’ documents. Employers can argue that that they were not aware that workers provided by a contractor did not have valid papers.

According to the indictment, in a single month, May 2003, the Social Security Administration informed Mr. Garcia that 186 of his employees who were working at ABX Air had invalid Social Security numbers. Garcia Labor continued to send laborers to ABX Air even after they answered no when asked on applications if they were eligible to work in the United States, the indictment says.

“This was a huge, gaping vulnerability,” Mr. Moskowitz said. “You had people who you really don’t know who they are having access to the underbelly of an airplane.”

Two other executives associated with Garcia Labor were accused along with Mr. Garcia. His lawyer, James Perry, said he could not comment on pending litigation.

Douglas Steele, a human resources manager for ABX Air, pleaded guilty in April to one misdemeanor charge of hiring illegal immigrants and agreed to a \$10,000 fine. ABX Air said in a statement last week that the company ended its contracts with Garcia Labor in February 2005 and had sued Garcia Labor for breach of contract.

In April, federal indictments were brought against two temporary labor companies in Canton, identified as HV Connect Inc. and TN Job Service. In raids in mid-May, agents arrested four supervisors from Fischer Homes, a home builder in northern Kentucky, as well as 76 illegal immigrant workers at company construction sites.

On July 20, two other Kentucky corporations, Asha Ventures and Narayan, pleaded guilty to harboring illegal immigrants. They provided workers for Holiday Inn and other hotels in Kentucky. The next day, federal agents shut down a prosperous Chinese restaurant, Bee's Buffet in Fairfield, Ohio, and took away the owner, Jing Fei Jiang. He was charged with importing illegal Asian workers who were living in the basement of his home.

The impact of the blitz was immediate, both among illegal immigrants and American Latinos. The wave of anxiety came as immigrants were feeling new confidence after two nationwide demonstrations in the spring where they rallied for immigration reform.

"People took a giant step backwards," said Sylvia Castellanos, a leader of a Cincinnati coalition of Hispanic immigrants. Neighborhood gatherings stopped, she said. Owners of Hispanic groceries and restaurants reported slower business.

"It is causing people to watch their backs," said Rubén Castilla Herrera, a Mexican-American leader of the Latino Leadership Initiative, an Ohio group. He said Latinos were worried that they could come under law enforcement suspicion.

"All I have to do is take off my tie and I can be confused," Mr. Herrera said. "What's to say whether I am legal or illegal?" Mr. Herrera said many Ohio immigrants believed the I.C.E. raids were timed to respond to the spring marches. Agency officials said their operations were not related to the protests.

Juan Jose Perez, a lawyer in Columbus who represents many Hispanic businesses, said that under the labor laws, managers were not required to verify their workers' documents exhaustively. He said managers were scrambling to find out what they should do to protect themselves and to take care of their workers if they learned that some were illegal immigrants.

"The need for workers continues," said Mr. Perez, a Mexican-American who said he started out as a Texas farmworker and is now the head of a law firm and the chairman of the Ohio Republican Hispanic Assembly. Despite the anxiety among immigrants, "nobody is going home," he said. "They remain and become fearful and try to become more anonymous."

That was what was happening Saturday up the listing, garbage-strewn stairs of a dingy clapboard house in Cincinnati where seven immigrants from Mexico and Guatemala had been detained in an immigration agency sweep in mid-July. Some illegal immigrant residents escaped capture because they were at work that day.

"The fright nearly killed me," said Silvia T., 39, a Mexican who was one of the few building residents willing to open their door to a stranger. Two relatives were caught in the raid and deported, she said. Now she stays indoors with the jitters as rumors swirl daily about another raid.

"Migration takes us away with no respect," said Silvestre G., 55, another building resident, who is from Guatemala. "They forget that we have human blood in our veins too."

The immigrants asked that their last names not be published.

Mr. Moskowitz, the special agent, said the agency's priority was not to deport immigrant workers, but to stop

employers who built their businesses on cheap immigrant labor.

“These are not crimes of passion,” he said. “Nobody wakes up in the middle of the night and says, ‘I’m going to hire illegal aliens.’ These are people who have made a conscious decision that they can profit from this.”

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Monday January 15, 107

Visa Bulletin

Number 101
Volume VIII
Washington, D.C.

VISA BULLETIN FOR JANUARY 2007

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during January. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; the Bureau of Citizenship and Immigration Services in the Department of Homeland Security reports applicants for adjustment of status. Allocations were made, to the extent possible under the numerical limitations, for the demand received by December 7th in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits.

Only applicants who have a priority date earlier than the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date.

2. Section 201 of the Immigration and Nationality Act (INA) sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. The dependent area limit is set at 2%, or 7,320.

3. Section 203 of the INA prescribes preference classes for allotment of immigrant visas as follows:

FAMILY-SPONSORED PREFERENCES

First: Unmarried Sons and Daughters of Citizens: 23,400 plus any numbers not required for fourth preference.

Second: Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, and any unused first preference numbers:

A. Spouses and Children: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. Unmarried Sons and Daughters (21 years of age or older): 23% of the overall second preference limitation.

Third: Married Sons and Daughters of Citizens: 23,400, plus any numbers not required by first and

second preferences.

Fourth: Brothers and Sisters of Adult Citizens: 65,000, plus any numbers not required by first three preferences.

EMPLOYMENT-BASED PREFERENCES

First: Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

Second: Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

Third: Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "Other Workers".

Schedule A Workers: Employment First, Second, and Third preference Schedule A applicants are entitled to up to 50,000 "recaptured" numbers.

Fourth: Certain Special Immigrants: 7.1% of the worldwide level.

Fifth: Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of P.L. 102-395.

4. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: CHINA-mainland born, INDIA, MEXICO, and PHILIPPINES.

5. On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are available for all qualified applicants; and "U" means unavailable, i.e., no numbers are available. (NOTE: Numbers are available only for applicants whose priority date is earlier than the cut-off date listed below.)

Fam-ily	All Charge-ability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPP-INES
1st	22APR01	22APR01	22APR01	01JAN94	15DEC91
2A	15MAR02	15MAR02	15MAR02	15MAR00	15MAR02
2B	08APR97	08APR97	08APR97	01MAR92	08SEP96

3rd	01JAN99	01JAN99	01JAN99	01JAN95	08FEB91
4th	08JAN96	22JUN95	01OCT95	22JAN94	01JUL84

*NOTE: For January, 2A numbers EXEMPT from per-country limit are available to applicants from all countries with priority dates earlier than 15MAR00. 2A numbers SUBJECT to per-country limit are available to applicants chargeable to all countries EXCEPT MEXICO with priority dates beginning 15MAR00 and earlier than 15MAR02. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

	All Charge-ability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIP-PINES
Employment-Based					
1st	C	C	C	C	C
2nd	C	22APR05	08JAN03	C	C
3rd	01AUG02	01AUG02	08MAY01	15MAY01	01AUG02
Schedule A Workers	15JUN04	15JUN04	15JUN04	15JUN04	15JUN04
Other Workers	01OCT01	01OCT01	01OCT01	01OCT01	01OCT01
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
Iraqi & Afghani Translators	18SEP06	18SEP06	18SEP06	18SEP06	18SEP06
5th	C	C	C	C	C
Targeted Employment Areas/Regional Centers	C	C	C	C	C

The Department of State has available a recorded message with visa availability information which

INSTRUCTIONS

PLEASE READ ALL INSTRUCTIONS CAREFULLY BEFORE COMPLETING THIS FORM.

Anti-Discrimination Notice. It is illegal to discriminate against any individual (other than an alien not authorized to work in the U.S.) in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or citizenship status. It is illegal to discriminate against work eligible individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

Section 1 - Employee. All employees, citizens and noncitizens, hired after November 6, 1986, must complete Section 1 of this form at the time of hire, which is the actual beginning of employment. **The employer is responsible for ensuring that Section 1 is timely and properly completed.**

Preparer/Translator Certification. The Preparer/Translator Certification must be completed if Section 1 is prepared by a person other than the employee. A preparer/translator may be used only when the employee is unable to complete Section 1 on his/her own. However, the employee must still sign Section 1 personally.

Section 2 - Employer. For the purpose of completing this form, the term "employer" includes those recruiters and referrers for a fee who are agricultural associations, agricultural employers or farm labor contractors.

Employers must complete Section 2 by examining evidence of identity and employment eligibility within three (3) business days of the date employment begins. If employees are authorized to work, but are unable to present the required document(s) within three business days, they must present a receipt for the application of the document(s) within three business days and the actual document(s) within ninety (90) days. However, if employers hire individuals for a duration of less than three business days, Section 2 must be completed at the time employment begins. **Employers must record:** 1) document title; 2) issuing authority; 3) document number, 4) expiration date, if any; and 5) the date employment begins. Employers must sign and date the certification. Employees must present original documents. Employers may, but are not required to, photocopy the document(s) presented. These photocopies may only be used for the verification process and must be retained with the I-9. **However, employers are still responsible for completing the I-9.**

Section 3 - Updating and Reverification. Employers must complete Section 3 when updating and/or reverifying the I-9. Employers must reverify employment eligibility of their employees on or before the expiration date recorded in Section 1. Employers **CANNOT** specify which document(s) they will accept from an employee.

- If an employee's name has changed at the time this form is being updated/reverified, complete Block A.
- If an employee is rehired within three (3) years of the date this form was originally completed and the employee is still eligible to be employed on the same basis as previously indicated on this form (updating), complete Block B and the signature block.
- If an employee is rehired within three (3) years of the date this form was originally completed and the employee's work authorization has expired or if a current employee's work authorization is about to expire (reverification), complete Block B and:

- examine any document that reflects that the employee is authorized to work in the U.S. (see List A or C),
- record the document title, document number and expiration date (if any) in Block C, and
- complete the signature block.

Photocopying and Retaining Form I-9. A blank I-9 may be reproduced, provided both sides are copied. The Instructions must be available to all employees completing this form. Employers must retain completed I-9s for three (3) years after the date of hire or one (1) year after the date employment ends, whichever is later.

For more detailed information, you may refer to the Department of Homeland Security (DHS) Handbook for Employers, (Form M-274). You may obtain the handbook at your local U.S. Citizenship and Immigration Services (USCIS) office.

Privacy Act Notice. The authority for collecting this information is the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 USC 1324a).

This information is for employers to verify the eligibility of individuals for employment to preclude the unlawful hiring, or recruiting or referring for a fee, of aliens who are not authorized to work in the United States.

This information will be used by employers as a record of their basis for determining eligibility of an employee to work in the United States. The form will be kept by the employer and made available for inspection by officials of the U.S. Immigration and Customs Enforcement, Department of Labor and Office of Special Counsel for Immigration Related Unfair Employment Practices.

Submission of the information required in this form is voluntary. However, an individual may not begin employment unless this form is completed, since employers are subject to civil or criminal penalties if they do not comply with the Immigration Reform and Control Act of 1986.

Reporting Burden. We try to create forms and instructions that are accurate, can be easily understood and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows: 1) learning about this form, 5 minutes; 2) completing the form, 5 minutes; and 3) assembling and filing (recordkeeping) the form, 5 minutes, for an average of 15 minutes per response. If you have comments regarding the accuracy of this burden estimate, or suggestions for making this form simpler, you can write to U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, N.W., Washington, DC 20529. OMB No. 1615-0047.

NOTE: This is the 1991 edition of the Form I-9 that has been rebranded with a current printing date to reflect the recent transition from the INS to DHS and its components.

**EMPLOYERS MUST RETAIN COMPLETED FORM I-9
PLEASE DO NOT MAIL COMPLETED FORM I-9 TO ICE OR USCIS**

Form I-9 (Rev. 05/31/05)Y

Employment Eligibility Verification

Please read instructions carefully before completing this form. The instructions must be available during completion of this form. **ANTI-DISCRIMINATION NOTICE:** It is illegal to discriminate against work eligible individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins.

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #

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):

A citizen or national of the United States

A Lawful Permanent Resident (Alien #) A _____

An alien authorized to work until _____
(Alien # or Admission #) _____

Employee's Signature _____ Date (month/day/year) _____

Preparer and/or Translator Certification. (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature	Print Name
Address (Street Name and Number, City, State, Zip Code)	
Date (month/day/year)	

Section 2. Employer Review and Verification. To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s).

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____

CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) _____ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name		Date (month/day/year)
Address (Street Name and Number, City, State, Zip Code)		

Section 3. Updating and Reverification. To be completed and signed by employer.

A. New Name (if applicable)	B. Date of Rehire (month/day/year) (if applicable)
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility. Document Title: _____ Document #: _____ Expiration Date (if any): _____	

I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible 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 _____ Date (month/day/year) _____

NOTE: This is the 1991 edition of the Form I-9 that has been rebranded with a current printing date to reflect the recent transition from the INS to DHS and its components.

LISTS OF ACCEPTABLE DOCUMENTS

LIST A	LIST B	LIST C
Documents that Establish Both Identity and Employment Eligibility	Documents that Establish Identity	Documents that Establish Employment Eligibility
<ol style="list-style-type: none"> 1. U.S. Passport (unexpired or expired) 2. Certificate of U.S. Citizenship (<i>Form N-560 or N-561</i>) 3. Certificate of Naturalization (<i>Form N-550 or N-570</i>) 4. Unexpired foreign passport, with <i>I-551 stamp</i> or attached <i>Form I-94</i> indicating unexpired employment authorization 5. Permanent Resident Card or Alien Registration Receipt Card with photograph (<i>Form I-151 or I-551</i>) 6. Unexpired Temporary Resident Card (<i>Form I-688</i>) 7. Unexpired Employment Authorization Card (<i>Form I-688A</i>) 8. Unexpired Reentry Permit (<i>Form I-327</i>) 9. Unexpired Refugee Travel Document (<i>Form I-571</i>) 10. Unexpired Employment Authorization Document issued by DHS that contains a photograph (<i>Form I-688B</i>) 	<p style="font-size: 2em; margin: 0;">OR</p> <ol style="list-style-type: none"> 1. Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address 2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address 3. School ID card with a photograph 4. Voter's registration card 5. U.S. Military card or draft record 6. Military dependent's ID card 7. U.S. Coast Guard Merchant Mariner Card 8. Native American tribal document 9. Driver's license issued by a Canadian government authority <p style="text-align: center;">For persons under age 18 who are unable to present a document listed above:</p> <ol style="list-style-type: none"> 10. School record or report card 11. Clinic, doctor or hospital record 12. Day-care or nursery school record 	<p style="text-align: center;">AND</p> <ol style="list-style-type: none"> 1. U.S. social security card issued by the Social Security Administration (<i>other than a card stating it is not valid for employment</i>) 2. Certification of Birth Abroad issued by the Department of State (<i>Form FS-545 or Form DS-1350</i>) 3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal 4. Native American tribal document 5. U.S. Citizen ID Card (<i>Form I-197</i>) 6. ID Card for use of Resident Citizen in the United States (<i>Form I-179</i>) 7. Unexpired employment authorization document issued by DHS (<i>other than those listed under List A</i>)

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)



U.S. Immigration and Customs Enforcement

[Print](#)

Protecting National Security and Upholding Public Safety

Partners

Best Hiring Practices

- (✓) Use the Basic Pilot Program for all hiring.
- (✓) Establish an internal training program, with annual updates, on how to manage completion of Form I-9 (Employee Eligibility Verification Form) and how to detect fraudulent use of documents in the I-9 process.
- (✓) Permit the I-9 and Basic Pilot Program process to be conducted only by individuals who have received this training—and include a secondary review as part of each employee’s verification, to minimize the potential for a single individual to subvert the process.
- (✓) Arrange for semi-annual I-9 audits by an external auditing firm or a trained employee not otherwise involved in the I-9 process.
- (✓) Establish a self-reporting procedure for the reporting to ICE of any violations or discovered deficiencies.
- (✓) Establish a protocol for responding to no-match letters received from the Social Security Administration.
- (✓) Establish a Tip Line for employees to report activity relating to the employment of unauthorized aliens, and a protocol for responding to employee tips.
- (✓) Establish and maintain safeguards against use of the verification process for unlawful discrimination.
- (✓) Establish a protocol for assessing the adherence to the “best practices” guidelines by the company’s contractors/subcontractors.

April 5, 2005

Illegal Immigrants Are Bolstering Social Security With Billions

By EDUARDO PORTER

STOCKTON, Calif. - Since illegally crossing the Mexican border into the United States six years ago, Ángel Martínez has done backbreaking work, harvesting asparagus, pruning grapevines and picking the ripe fruit. More recently, he has also washed trucks, often working as much as 70 hours a week, earning \$8.50 to \$12.75 an hour.

Not surprisingly, Mr. Martínez, 28, has not given much thought to Social Security's long-term financial problems. But Mr. Martínez - who comes from the state of Oaxaca in southern Mexico and hiked for two days through the desert to enter the United States near Tecate, some 20 miles east of Tijuana - contributes more than most Americans to the solvency of the nation's public retirement system.

Last year, Mr. Martínez paid about \$2,000 toward Social Security and \$450 for Medicare through payroll taxes withheld from his wages. Yet unlike most Americans, who will receive some form of a public pension in retirement and will be eligible for Medicare as soon as they turn 65, Mr. Martínez is not entitled to benefits.

He belongs to a big club. As the debate over Social Security heats up, the estimated seven million or so illegal immigrant workers in the United States are now providing the system with a subsidy of as much as \$7 billion a year.

While it has been evident for years that illegal immigrants pay a variety of taxes, the extent of their contributions to Social Security is striking: the money added up to about 10 percent of last year's surplus - the difference between what the system currently receives in payroll taxes and what it doles out in pension benefits. Moreover, the money paid by illegal workers and their employers is factored into all the Social Security Administration's projections.

Illegal immigration, Marcelo Suárez-Orozco, co-director of immigration studies at New York University, noted sardonically, could provide "the fastest way to shore up the long-term finances of Social Security."

It is impossible to know exactly how many illegal immigrant workers pay taxes. But according to specialists, most of them do. Since 1986, when the Immigration Reform and Control Act set penalties for employers who knowingly hire illegal immigrants, most such workers have been forced to buy fake ID's to get a job.

Currently available for about \$150 on street corners in just about any immigrant neighborhood in California, a typical fake ID package includes a green card and a Social Security card. It provides cover for employers, who, if asked, can plausibly assert that they believe all their workers are legal. It also means that workers must be paid by the book - with payroll tax deductions.

IRCA, as the immigration act is known, did little to deter employers from hiring illegal immigrants or to

discourage them from working. But for Social Security's finances, it was a great piece of legislation.

Starting in the late 1980's, the Social Security Administration received a flood of W-2 earnings reports with incorrect - sometimes simply fictitious - Social Security numbers. It stashed them in what it calls the "earnings suspense file" in the hope that someday it would figure out whom they belonged to.

The file has been mushrooming ever since: \$189 billion worth of wages ended up recorded in the suspense file over the 1990's, two and a half times the amount of the 1980's.

In the current decade, the file is growing, on average, by more than \$50 billion a year, generating \$6 billion to \$7 billion in Social Security tax revenue and about \$1.5 billion in Medicare taxes.

In 2002 alone, the last year with figures released by the Social Security Administration, nine million W-2's with incorrect Social Security numbers landed in the suspense file, accounting for \$56 billion in earnings, or about 1.5 percent of total reported wages.

Social Security officials do not know what fraction of the suspense file corresponds to the earnings of illegal immigrants. But they suspect that the portion is significant.

"Our assumption is that about three-quarters of other-than-legal immigrants pay payroll taxes," said Stephen C. Goss, Social Security's chief actuary, using the agency's term for illegal immigration.

Other researchers say illegal immigrants are the main contributors to the suspense file. "Illegal immigrants account for the vast majority of the suspense file," said Nick Theodore, the director of the Center for Urban Economic Development at the University of Illinois at Chicago. "Especially its growth over the 1990's, as more and more undocumented immigrants entered the work force."

Using data from the Census Bureau's current population survey, Steven Camarota, director of research at the Center for Immigration Studies, an advocacy group in Washington that favors more limits on immigration, estimated that 3.8 million households headed by illegal immigrants generated \$6.4 billion in Social Security taxes in 2002.

A comparative handful of former illegal immigrant workers who have obtained legal residence have been able to accredit their previous earnings to their new legal Social Security numbers. Mr. Camarota is among those opposed to granting a broad amnesty to illegal immigrants, arguing that, among other things, they might claim Social Security benefits and put further financial stress on the system.

The mismatched W-2's fit like a glove on illegal immigrants' known geographic distribution and the patchwork of jobs they typically hold. An audit found that more than half of the 100 employers filing the most earnings reports with false Social Security numbers from 1997 through 2001 came from just three states: California, Texas and Illinois. According to an analysis by the Government Accountability Office, about 17 percent of the businesses with inaccurate W-2's were restaurants, 10 percent were construction companies and 7 percent were farm operations.

Most immigration helps Social Security's finances, because new immigrants tend to be of working age and contribute more than they take from the system. A simulation by Social Security's actuaries found that if net immigration ran at 1.3 million a year instead of the 900,000 in their central assumption, the system's 75-year funding gap would narrow to 1.67 percent of total payroll, from 1.92 percent - savings that come out to half a trillion dollars, valued in today's money.

Illegal immigrants help even more because they will never collect benefits. According to Mr. Goss, without the flow of payroll taxes from wages in the suspense file, the system's long-term funding hole over 75 years would be 10 percent deeper.

Yet to immigrants, the lack of retirement benefits is just part of the package of hardship they took on when they decided to make the trek north. Tying vines in a vineyard some 30 miles north of Stockton, Florencio Tapia, 20, from Guerrero, along Mexico's Pacific coast, has no idea what the money being withheld from his paycheck is for. "I haven't asked," Mr. Tapia said.

For illegal immigrants, Social Security numbers are simply a tool needed to work on this side of the border. Retirement does not enter the picture.

"There will be a moment when I won't be able to continue working," Mr. Martínez acknowledges. "But that's many years off."

Mario Avalos, a naturalized Nicaraguan immigrant who prepares income tax returns for many workers in the area, including immigrants without legal papers, observes that many older workers return home to Mexico. "Among my clients," he said, "I can't recall anybody over 60 without papers."

No doubt most illegal immigrants would prefer to avoid Social Security altogether. As part of its efforts to properly assign the growing pile of unassigned wages, Social Security sends about 130,000 letters a year to employers with large numbers of mismatched pay statements.

Though not an intended consequence of these so-called no-match letters, in many cases employers who get them dismiss the workers affected. Or the workers - fearing that immigration authorities might be on their trail - just leave.

Last February, for instance, discrepancies in Social Security numbers put an end to the job of Minerva Ortega, 25, from Zacatecas, in northern Mexico, who worked in the cheese department at a warehouse for Mike Campbell & Associates, a distributor for Trader Joe's, a popular discount food retailer with a large operation in California.

The company asked dozens of workers to prove that they had cleared up or were in the process of clearing up the "discrepancy between the information on our payroll related to your employment and the S.S.A.'s records." Most could not.

Ms. Ortega said about 150 workers lost their jobs. In a statement, Mike Campbell said that it did not fire any of the workers, but Robert Camarena, a company official, acknowledged that many left.

Ms. Ortega is now looking for work again. She does not want to go back to the fields, so she is holding out for a better-paid factory job. Whatever work she finds, though, she intends to go on the payroll with the same Social Security number she has now, a number that will not jibe with federal records.

With this number, she will continue paying taxes. Last year she paid about \$1,200 in Social Security taxes, matched by her employer, on an income of \$19,000.

She will never see the money again, she realizes, but at least she will have a job in the United States.

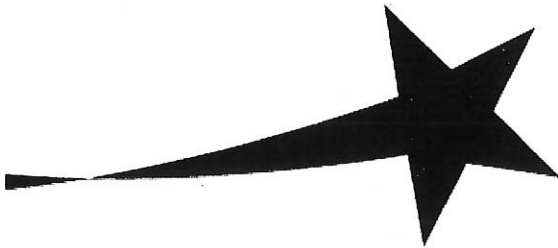
"I don't pay much attention," Ms. Ortega said. "I know I don't get any benefit."

2



KANSAS
DEPARTMENT OF COMMERCE

Steve Kelly, Acting Secretary



H-2B and H-1B Visa Program Reports

Presented by Rae Anne Davis, Deputy Secretary

to the

Senate Federal and State Affairs Committee

January 16, 2006

For more information on this topic contact:

Rae Anne Davis

Phone: (785) 296-7834

rdavis@kansascommerce.com

www.kansascommerce.com

Sen Fed & State

Attachment 2

1-16-07

H-2B and H-1B Visa Programs
to
Senate Federal and State Affairs Committee

Rae Anne Davis, Deputy Secretary
Workforce Development, Kansas Department of Commerce

January 16, 2007

Good morning Chairman Brungardt and members of the Senate Federal and State Affairs Committee. Thank you for the opportunity to brief you on the H-2B and H-1B Visa Programs. My name is Rae Anne Davis, Deputy Secretary for the Workforce Development Division of the Kansas Department of Commerce.

The H-2B visa program permits employers to hire nonimmigrant foreign workers to perform temporary nonagricultural work. The H-2B visa is issued to the employer, not the worker, and is not transferable from one employer to another or from one worker to another.

The U.S. Citizenship and Immigration Services places a 66,000 nationwide limit on *new* petitions for H-2B workers each federal fiscal year (October 1-September 30). To provide equitable distribution across the United States the petitions are divided in half, with 33,000 available beginning October 1, and the remaining 33,000 available April 1. Foreign workers employed legally in the United States any time during the last three years may be employed repeatedly and these workers are not included in the 66,000 annual petition limit.

Each H-2B petition typically includes numerous workers performing the same job at the same location for the same prevailing wage. Kansas receives about 100 applications yearly, covering 5,000-7,000 workers. Primarily the occupations are in landscaping, construction, painting/roofing and remodeling, carnivals, and other low-skilled jobs.

The qualifying criteria to apply for the H-2B visa are as follows:

- The job and the employer's need must be one time only, seasonal, peak load or intermittent;
- The job must be for less than one year (for seasonal need, it must be less than 10 months); and
- There must be no qualified and willing U.S. workers available for the job. U.S. workers are defined as native-born or naturalized citizens or persons already possessing legal permanent residency status.

The application process for the H-2B visa typically involves two to three federal agencies as well as a state agency (Department of Commerce in Kansas). The federal agencies are the U.S. Department of Labor, the U.S. Citizenship and Immigration Services and State Department (U.S. Consulate). The U.S. Department of Labor issues a labor certification to indicate the employer has advertised the position under the guidance of the state agency, the employer is

paying the prevailing wage for the occupation, and no U.S. workers were found who were willing, able and available to fill the position.

The process for filing an application, beginning with the Kansas Department of Commerce Foreign Labor Certification Unit, is as follows:

- The prospective employer files a completed ETA 750A application in duplicate. The employer must provide a statement of need and submit sufficient documentation to back up the need for temporary foreign workers. Examples are signed contracts for the period of need or payroll reports indicating the dates the employer typically needs extra workers.
- The forms and documentation are reviewed for completeness and the employer or representative is contacted for additional information or documentation if necessary. If major deficiencies are found in the application, it is returned for further action.
- The Department of Commerce establishes a prevailing wage for the occupation based upon the employer's reasonable estimation of education, training, experience and working conditions.
- A job order is posted for 10 days in Kansas JobLink. At the same time, the employer is instructed to advertise the job for three days in a paper of wide circulation. U.S. workers are asked to send resumes to the Department of Commerce Foreign Labor Certification Unit for possible referral to the employer.
- When U.S. workers are hired, it reduces the number of foreign workers the employer may legally bring into the country. For example, an employer asks for 25 workers and the state agency refers a U.S. worker who meets the employer's requirements. If the U.S. worker is hired, the number of approved foreign labor certification is reduced to 24 workers.
- At the end of the recruitment period, the employer prepares a verifiable recruitment report summarizing the results of their efforts and submits the report to the Department of Commerce. The entire file to include the application, documentation of need, and recruitment report is sent to the USDOL National Processing Center in Chicago, Illinois. At this point, the state agency has no further role in the process.
- The U.S. Department of Labor will grant certification if it is found there are no qualified U.S. workers available, or the number is insufficient to meet the employer's need, and the terms of employment will not adversely affect the wages and working conditions of U.S. workers who are similarly employed. If the Department of Commerce included in its documentation the employer refused to hire a qualified U.S. worker because there is a preference to retain or hire foreign workers the entire labor certification application could be denied. However, in the case of the H-2B visa application, the U.S. Department of Labor's denial of certification is only advisory.

The U.S. Citizenship and Immigration Services may weigh the evidence and either uphold the U.S. Department of Labor denial or decide to issue the H-2B visa.

- The labor certification application is filed with the U.S. Citizenship and Immigration Services office in St. Albans, Vermont. If the foreign workers are outside the United States, they must apply through their U.S. Consulate for issuance of the H-2B visa.

Similar to the H-2B program, the H-1B Work Visa program allows employers to hire nonimmigrant foreign workers for the short term, but for the purpose of performing in a specialty occupation, or as a fashion model of distinguished merit and ability. As defined in federal legislation, a "specialty occupation" requires the theoretical and practical application of a body of specialized knowledge and a bachelor's degree or the equivalent in the specific specialty. Examples of specialty occupations are sciences, medicine and health care, education, biotechnology and business specialties.

Many employers use the H-1B visa process to bring foreign workers into the country then apply later to change the worker's status from nonimmigrant to permanent worker. Current federal law permits 65,000 foreign workers each fiscal year to be issued H-1B visas. H-1B visas may be valid for up to three years and are renewable for up to an additional three years. When the H-1B visa expires, the foreign worker must remain outside the United States for one year before another H-1B visa petition will be approved. Certain foreign workers with applications in process may stay in H-1B status beyond the normal six-year limit, in one-year increments. Approval of a stay beyond the six-year limit is under the purview of the U.S. Citizenship and Immigration Services office serving the area of intended employment.

The Kansas Department of Commerce provides prevailing wage determinations for employers to submit with their H-1B visa petitions. The determination of the prevailing wage is based on the stated education, training, experience and working conditions for the occupation compared to the Occupational Employment Statistics wage survey. The benefit employers receive by requesting a prevailing wage determination from Commerce, or approval of their alternative wage survey, is "safe harbor". This means there will be no challenge to the prevailing wage from the U.S. Department of Labor or the U.S. Citizenship and Immigration Services. In Fiscal Year 2006, the Kansas Department of Commerce responded to approximately 1,100 employer requests for prevailing wage determinations. Attachment A is a sample of occupations described on the requests.

Thank you for the opportunity to talk with you about the H-2B and H-1B Visa Programs. I would be pleased to respond to your questions.

**Occupations Requesting H-1B Applications
Fiscal Years 2005-2006**

Business Occupations

Accountants	Director, Business Services
Actuary	Financial Analyst
Auditors	Financial Planner
Certified Public Accountants	Graphic Designer
Controllers	Management Analyst

Computer Occupations

Applications Developer	Oracle Supply Chain Specialist
Computer Information Systems Manager	Senior Programmer Analyst
Computer Programmer	Software Engineer, Applications
Consultant, IT	Software Engineer, Systems
Database Analyst	Systems Administrator
IT Manager	Systems Analyst
Network Administrator	Systems Integrator
Network Engineer	Technical Architect
Oracle Developer	

Education Occupations

Assistant Professors (various disciplines)	Instructor, Graphic Design
Associate Professors (various disciplines)	Instructor, Italian
Coach, Fencing	Instructor, Spanish
Coach, Soccer	Post Doctoral candidates (various disciplines)
Foreign Student Advisor	
Instructor, Biology	Research Associates (various disciplines)
Instructor, English	Research Associates (various disciplines)
Instructor, French	Tenured Professors (various disciplines)
Instructor, German	

Engineering Occupations

Aerospace Engineer	Hydraulic Engineer
Architectural Engineer	Industrial Engineer
Computer Hardware Engineer	Mechanical Engineer
Electrical Engineer	
Electronics Engineer	

Medical Occupations

Anesthesiologist
Audiologist
Cardiologist
General Practitioner
Internist
Medical Technologist
Nephrologists
Oncologist
Orthopedic Surgeon
Pathologist
Pharmacist
Physiatrist
Psychiatrist
Pulmonologist
Radiologist
Registered Nurse
Toxicologist
Veterinary

Other Occupations

Animal Scientist
Attorney
Chaplain
Dairy Scientist
Food Scientist
Geologist

Words used in the visa and immigration processes are very specialized.

Visa Glossary: http://travel.state.gov/visa/frvi/glossary/glossary_1363.html

USCIS Glossary

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=b328194d3e88d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=b328194d3e88d010VgnVCM10000048f3d6a1RCRD>

Immigration Terms

Alien: A foreign national who is not a United States citizen.

Asylee: An asylee is someone who has already entered the U.S. and fears persecution if sent back to their country. An asylee must also prove that they have a "well-founded fear of prosecution." An application for asylum is made in the United States to the Department of Homeland Security.

Exchange Visitor: A foreign citizen coming to the United States to participate in a particular program in education, training, research, or other authorized exchange visitor program including physicians in medical residency.

Immigrant: A person who plans to live indefinitely and permanently in the United States. Also known as a **Lawful Permanent Resident Alien** or **Lawful Permanent Residents:** Documentation is Permanent Resident Card (I-551 or "green card").

Nonimmigrant Visa (NIV): A U.S. visa allows the bearer, a foreign citizen, to apply to enter the United States temporarily for a specific purpose. Examples of persons who may receive nonimmigrant visas are tourists, students, diplomats and temporary workers.

Refugee: A person who has a well-founded fear of persecution on the basis of specific, internationally-accepted grounds if he/she should return to his/her home country. He/she applies to come to the United States in another country and enters the United States as a refugee.

Temporary Worker: A foreign worker who will work in the United States for a limited period of time. Some visas classes for temporary workers are H, L, O, P, Q and R. If you are seeking to come to the U.S. for employment as a temporary worker in the U.S. (H, L, O, P, and Q visas), your prospective employer must file a petition with the Department of Homeland Security (DHS)

Visa: A citizen of a foreign country, wishing to enter the U.S., generally must first obtain a visa, either a nonimmigrant visa for temporary stay, or an immigrant visa for permanent residence.

Visa Numbers: Congress establishes the amount of immigration each year. Immigration for immediate relatives is unlimited; however, preference categories *are* limited. To distribute the visas fairly among all categories of immigration, the Visa Office in the Department of State distributes the visas by providing visa numbers according to preference and priority date.



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Immigration Classifications and Visa Categories

Immigration Classifications and Visa Categories

Nonimmigrant Visas General Information on Nonimmigrant Benefits

Nonimmigrant Classifications and Visas Government Information

Foreign Government Officials

A-1 Ambassador, public minister, career, diplomatic or consular officer, and members of immediate family.
INA Section 101(a)(15)(A)(i) 8 CFR 214.2(a)

A-2 Other foreign government official or employee, and members of immediate family.
INA Section 101(a)(15)(A)(ii) 8 CFR 214.2(a)

A-3 Attendant, servant, or personal employee of A-1 and A-2, and members of immediate family.
INA Section 101(a)(15)(A)(iii) 8 CFR 214.2(a)

Visitors

Business or Pleasure Visitors
Tips for U.S. Visas - Business or Pleasure Visitors

B-1 Temporary visitor for business
INA Section 101(a)(15)(B) 8 CFR 214.2(b)

B-2 Temporary visitor for pleasure
INA Section 101(a)(15)(B) 8 CFR 214.2(b)

Related Links:

[Temporary Workers](#)

[Temporary Benefits USCIS:](#)

[Student Visas](#)

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3-2

Visa Waiver Program

Visa Waiver Program
(Immigration.gov)
Visa Waiver Program (Dept. of State)

Aliens in Transit

C-1	Alien in transit directly through U.S.	INA Section 101(a)(15)(C)	8 CFR 214.2(c)
C-1D	Combined transit and crewman visa	INA Section 101(a)(15)(C) & (D)	8 CFR 214.2(c)
C-2	Alien in transit to UN headquarters district under Section 11.(3), (4), or (5) of the Headquarters Agreement	INA Section 101(a)(15)(C)	8 CFR 214.2(c)
C-3	Foreign government official, members of immediate family, attendant, servant, or personal employee, in transit	INA Section 212(d)(8)	8 CFR 214.2(c)
C-4	Transit without Visa, see TWOV	INA Sections 212(d)(3), and 212(d)(5)	8 CFR 212.1(f)

Crewmen

D-1	Crewmember departing on same vessel of arrival	INA section 101(a)(15)(D)	8 CFR 214.2(d)
D-2	Crewmember departing by means other than vessel of arrival	INA section 101(a)(15)(D)	8 CFR 214.2(d)

Treaty Traders and Treaty Investors

E-1	Treaty Trader, spouse and children	INA Section 101(a)(15)(E)(i)	8 CFR 214.2(e)(1)
E-2	Treaty Investor, spouse and children	INA Section 101(a)(15)(E)(ii)	8 CFR 214.2(e)(2)

Academic Students

Dept. of State: Implementation of ISEAS
Information on Student Visas
How Do I Become an Academic

Student in the United States?
 Dept. of State: Tips for U.S. Visas:
 Foreign Students
 Dept. of State: Information on
 Student Visas
 Dept. of State: What Consuls Look
 For
 Dept. of State: New Legal
 Requirements for F-1 Foreign
 Students in Public Schools
 How Do I Apply to Qualify My School
 for Foreign Student Assistance?

F-1 Academic Student INA Section 101(a)(15)(F)(i) 8 CFR 214.2(f)

F-2 Spouse or child of F-1 INA Section 101(a)(15)(F)(ii) 8 CFR 214.2(f)

For Foreign Medical Graduates (see individual categories H-1B, J-1, O-1, TN, E-2)

Foreign Government Officials to International Organizations

G-1 Principal resident representative of recognized foreign member government to international organization, and members of immediate family. INA Section 101(a)(15)(G)(i) 8 CFR 214.2(g)

G-2 Other representative of recognized foreign member government to international organization, and members of immediate family. INA Section 101(a)(15)(G)(ii) 8 CFR 214.2(e)(1)

G-3 Representative of non-recognized or nonmember government to international organization, and members of immediate family. INA Section 101(a)(15)(G)(iii) 8 CFR 214.2(G)

G-4 International organization officer or employee, and members of immediate family. INA Section 101(a)(15)(G)(iv) 8 CFR 214.2(g)

G-5	Attendant, servant, or personal employee of G-1, G-2, G-3, G-4, or members of immediate family	INA Section 101(a)(15)(G)(v)	8 CFR 214.2(g)
	<i>Temporary Workers</i>	Immigration.gov Information on Temporary Workers Dept. of State: Tips for U.S. Visas: Temporary Workers Instructions for Form I-129: Petition for a Nonimmigrant Worker How Do I Apply for Health Care Worker Certification?	
H-1B	Specialty Occupations, DOD workers, fashion models	INA Section 101(a)(15)(H)(i)(b)	8 CFR 214.2(h)(4)
H-1C	Nurses going to work for up to three years in health professional shortage areas	INA Section 101(a)(15)(H)(i)(c)	8 CFR 214.2(h)(3)
H-2A	Temporary Agricultural Worker	INA Section 101(a)(15)(H)(ii)(a)	8 CFR 214.2(h)(5)
H-2B	Temporary worker: skilled and unskilled	INA Section 101(a)(15)(H)(ii)(b)	8 CFR 214.2(h)(6)
H-3	Trainee	INA Section 101(a)(15)(H)(iii)	8 CFR 214.2(h)(7)
H-4	Spouse or child of H-1, H-2, H-3	INA Section 101(a)(15)(H)(iv)	8 CFR 214.2(h)(9)(iv)
	<i>Foreign Media Representatives</i>	Dept. of State: Revalidation of "I" Journalist Visas	
I	Visas for foreign media representatives	INA Section 101(a)(15)(I)	8 CFR 214.2(i)
	<i>Exchange Visitors</i>	Dept. of State: Implementation of ISEAS Immigration.gov Information on Exchange Visitors How Do I Get a Waiver of the Foreign Residence Requirement if I am an Exchange Visitor Dept. of State: Tips for U.S. Visas: Exchange Visitors How Do I Apply for Health Care Worker Certification?	

J-1	Visas for exchange visitors	INA Section 101(a)(15)(J)(i)	8 CFR 214.2(j)
J-2	Spouse or child of J-1	INA Section 101(a)(15)(J)(ii)	8 CFR 214.2(j)
	<i>Fiance(e) of US Citizen</i>		
K-1	Fiance(e)	INA Section 101(a)(15)(K)	8 CFR 214.2(k)
		How Do I Bring My Fiance(e) to the United States? Dept. of State: Tips for U.S. Visas: Fiance(e)s How Do I Change My Fiance(e)'s Status to Lawful Permanent Resident?	
K-2	Minor child of K-1	INA Section 101(a)(15)(K)	8 CFR 214.2(k)
K-3	Spouse of a U.S. Citizen (LIFE Act)	INA Section 101(a)(15)(K)(ii)	8 CFR 214.2(k)
		How Do I Become a K-Nonimmigrant as the Spouse or Child of a U.S. Citizen? Dept. of State: The New K and V	
K-4	Child of K-3 (LIFE Act)	INA Section 101(a)(15)(K)(iii)	8 CFR 214.2(k)
	<i>Intracompany Transferee</i>		
		Immigration.gov Information on Temporary Workers Dept. of State: Tips for U.S. Visas: Temporary Workers Instructions for Form I-129: Petition for a Nonimmigrant Worker	
L-1A	Executive, managerial	INA Section 101(a)(15)(L)	8 CFR 214.2(l)
L-1B	Specialized knowledge	INA Section 101(a)(15)(L)	8 CFR 214.2(l)
L-2	Spouse or child of L-1	INA Section 101(a)(15)(L)	8 CFR 214.2(l)
	<i>Vocational and Language Students</i>		
		Immigration.gov Information on Student Visas How Do I Become a Vocational Student in the United States? Dept. of State: Implementation of ISEAS Dept. of State: Tips for U.S. Visas: Foreign Student Visas Dept. of State: Applying for a foreign Student Visa	

Dept. of State: What Consuls Look For - Student Visas
 Dept. of State: New Legal Requirements for F-1 Foreign Students in U.S. Public Schools
 How Do I Apply to Qualify My School for Foreign Student Attendance

M-1 Vocational student or other nonacademic student
 INA Section 101(a)(15)(M)(i) 8 CFR 214.2(m)

M-2 Spouse or child of M-1
 INA Section 101(a)(15)(M)(ii) 8 CFR 214.2(m)

N-8 Parent of alien classified SK-3 "Special Immigrant"
 INA Section 101(a)(15)(N)(i)

N-9 Child of N-8, SK-1, SK-2, or SK-4 "Special Immigrant"
 INA Section 101(a)(15)(N)(ii) through (iv)

NAFTA *North American Free Trade Agreement (NAFTA)*
 (see TN, below)

North Atlantic Treaty Organization

NATO-1 Principal Permanent Representative of Member State to NATO and resident members of official staff or immediate family
 Not included in the INA
 Article 12, 5 US Treaties 1094
 Article 20, 5 US Treaties 1098
 8 CFR 214.2(s)

NATO-2 Other representatives of member State; Dependents of Member of a Force entering in accordance with the provisions of NATO Status-of-Forces agreement;
 Article 13, 5 US Treaties 1094
 Article 1, 4 US Treaties 1794
 Article 3, 4 US
 8 CFR 214.2(s)

	Members of such a Force if issued visas	Treaties 1796	
NATO-3	Official clerical staff accompanying Representative of Member State to NATO or immediate family	Article 14, 5 US Treaties 1096	8 CFR 214.2(s)
NATO-4	Official of NATO other than those qualified as NATO-1 and immediate family	Article 18, 5 US Treaties 1096	8 CFR 214.2(s)
NATO-5	Expert other than NATO officials qualified under NATO-4, employed on behalf of NATO and immediate family	Article 21, 5 US Treaties 1100	8 CFR 214.2(s)
NATO-6	Member of civilian component who is either accompanying a Force entering in accordance with the provisions of the NATO Status-of-Forces agreement; attached to an Allied headquarters under the protocol on the Status of International Military headquarters set up pursuant to the North Atlantic Treaty; and their dependents	Article 1, 4 US Treaties 1794 Article 3, 5 US Treaties 877	8 CFR 214.2(s)
NATO-7	Servant or personal employee of NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, NATO-6, or immediate family	Articles 12-20, 5 US Treaties 1094 - 1098	8 CFR 214.2(s)
	<i>Workers with Extraordinary Abilities</i>		Immigration.gov Information on Temporary Workers Dept. of State: Tips for U.S. Visas: Temporary Workers Instructions for Form I-129: Petition for a Nonimmigrant Worker How Do I Apply for Health Care Worker Certification?
O-1	Extraordinary ability in Sciences, Arts, Education,	INA Section 101(a)(15)(O)(i))	8 CFR 214.2(o)(1),

	Business, or Athletics		8 CFR 214.2(o)(2), 8 CFR 214.2(o)(3)
O-2	Alien's (support) accompanying O-1	INA Section 101(a)(15)(O)(ii)	8 CFR 214.2(o)(4)
O-3	Spouse or child of O-1 or O-2	INA Section 101(a)(15)(O)(iii)	8 CFR 214.2(o)(5)
	<i>Athletes and Entertainers</i>	Immigration.gov Information on Temporary Workers Dept. of State: Tips for U.S. Visas: Temporary Workers Instructions for Form I-129: Petition for a Nonimmigrant Worker	
P-1	Individual or team athletes	INA Section 101(a)(15)(P)(i)	8 CFR 214.2(p)(4)
P-1	Entertainment groups	INA Section 101(a)(15)(P)(i)	8 CFR 214.2(p)(4)
P-2	Artists and entertainers in reciprocal Exchange programs	INA Section 101(a)(15)(P)(ii)	8 CFR 214.2(p)(5)
P-3	Artists and entertainers in culturally unique programs	INA Section 101(a)(15)(P)(iii)	8 CFR 214.2(p)(6)
P-4	Spouse or child of P-1, 2, or 3	INA Section 101(a)(15)(P)(iv)	8 CFR 214.2(p)(8)(iii)(D)
	<i>International Cultural Exchange Visitors</i>		
Q-1	International cultural exchange visitors	Immigration.gov Information on Exchange Visitors Dept. of State: Tips for U.S. Visas: Exchange Visitors Instructions for Form I-129: Petition for a Nonimmigrant Worker INA Section 101(a)(15)(Q)(i)	8 CFR 214.2(q)
Q-2	Irish Peace Process Cultural and Training Program (Walsh Visas)	Walsh Visa Program INA Section 101(a)(15)(Q)(ii)(I)	8 CFR 214.2(q)(15)
Q-3	Spouse or child of Q-2	INA Section 101(a)(15)(Q)(ii)(II)	8 CFR 214.2(q)(15)

	<i>Religious Workers</i>	Immigration.gov Information on Temporary Workers Dept. of State: Tips for U.S. Visas: Temporary Religious Workers Instructions for Form I-129: Petition for a Nonimmigrant Worker	
R-1	Religious workers	INA Section 101(a)(15)(R)	8 CFR 214.2(r)
R-2	Spouse or child of R-1	INA Section 101(a)(15)(R)	8 CFR 214.2(r)
	<i>Witness or Informant</i>		
S-5	Informant of criminal organization information	INA Section 101(a)(15)(S)(i)	
S-6	Informant of terrorism information	INA Section 101(a)(15)(S)(ii)	
T	<i>Victims of a Severe Form of Trafficking in Persons</i>	Victims of Trafficking and Violence Protection Act of 2000 Fact Sheet on T Application Process Dept. of State: Trafficking in Persons Report Dept. of State: Foreign Affairs Manual, Section 41.84	
T-1	Victim of a severe form of trafficking in persons	INA Section 101(a)(15)(T)(i)	8 CFR 214.11
T-2	Spouse of a victim of a severe form of trafficking in persons	INA Section 101(a)(15)(T)(ii)	8 CFR 214.11(o)
T-3	Child of victim of a severe form of trafficking in persons	INA Section 101(a)(15)(T)(ii)	8 CFR 214.11(o)
T-4	Parent of victim of a severe form of trafficking in persons (if T-1 victim is under 21 years of age)	INA Section 101(a)(15)(T)(ii)	8 CFR 214.11(o)
	<i>North American Free Trade Agreement (NAFTA)</i>	Dept. of State: Professionals Under NAFTA Changes to NAFTA and new 2004 Trade Agreements	
TN	Trade visas for Canadians and Mexicans	INA Section 214(e)(2)	8 CFR 214.6 Canadians: 8 CFR 214.6(d) Mexicans: 8

CFR
214.6(e)

TD	Spouse or child accompanying TN-	INA Section 214(e)(2)	8 CFR 214.6(j)
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Transit Without Visa

TWOV	Passenger	INA Sections 212(d)(3) and 212(d)(5)	8 CFR 212.1(f)
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TWOV	Crew	INA Sections 212(d)(3) and 212(d)(5)	8 CFR 212.1(f)
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U *Victims of Certain Crimes*

U-1	Victim of Certain Criminal Activity<td>	INA Section 101(a)(15)(U)	
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U-2	Spouse of U-1	INA Section 101(a)(15)(U)	
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U-3	Child of U-1	INA Section 101(a)(15)(U)	
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U-4	Parent of U-1, if U-1 is under 21 years of age	INA Section 101(a)(15)(U)	
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Certain Second Preference Beneficiaries

How Do I Become a V-Nonimmigrant as the Spouse or Child of a U.S. Permanent Resident?
Dept. of State: The New K and V Visas

V-1	Spouse of an LPR who is the principal beneficiary of a family-based petition (Form I-130) which was filed prior to December 21, 2000, and has been pending for at least three years	INA Section 101(a)(15)(V)	8 CFR 214.15
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V-2	Child of an LPR who is the principal beneficiary of a	INA Section 101(a)(15)(V)	8 CFR 214.15
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family-based visa petition (Form I-130) that was filed prior to December 21, 2000, and has been pending for at least three years.

V-3 The derivative child of a V-1 or V-2 INA Section 101(a)(15)(V) 8 CFR 214.15

Humanitarian Parole [Immigration.gov Information on Humanitarian Parole](#)

Temporary Protected Status (TPS) [Immigration.gov Information on Temporary Protected Status How Do I Apply for Temporary Protected Status?](#)

TPS Temporary Protected Status INA Section 244 8 CFR 244

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TABLE 1
Overview of Immigrant Eligibility for Federal Programs

This table provides an overview of immigrant eligibility for the major federal public assistance programs. Some states provide assistance to immigrants who are not eligible for federally funded services. (TABLE UPDATED Mar. '05)

PROGRAM	“QUALIFIED” IMMIGRANTS WHO ENTERED THE U.S. BEFORE AUG. 22, 1996	“QUALIFIED” IMMIGRANTS WHO ENTERED THE U.S. ON OR AFTER AUG. 22, 1996	“NOT QUALIFIED” IMMIGRANTS
Supplemental Security Income (SSI)	<p>Eligible only if:</p> <ul style="list-style-type: none"> • Receiving SSI (or application pending) on Aug. 22, 1996 • Qualify as disabled and were lawfully residing in the U.S. on Aug. 22, 1996¹ • Lawful permanent resident with credit for 40 quarters of work^{1,2} • Were granted refugee or asylum status or withholding of deportation/removal, Cuban/Haitian entrant, or Amerasian immigrant, but only <i>during first 7 years after getting status</i> • Veteran, active duty military; spouse, unremarried surviving spouse, or child¹ • Certain American Indians born abroad 	<p>Eligible only if:</p> <ul style="list-style-type: none"> • Lawful permanent resident with credit for 40 quarters of work² (but must wait until 5 years after entry before applying) • Were granted refugee or asylum status or withholding of deportation/removal, Cuban/Haitian entrant, or Amerasian immigrant, but only <i>during first 7 years after getting status</i> • Veteran, active duty military; spouse, unremarried surviving spouse, or child¹ • Certain American Indians born abroad 	<p>Eligible only if:</p> <ul style="list-style-type: none"> • Receiving SSI (or application pending) on Aug. 22, 1996 • Certain American Indians born abroad • Victims of trafficking and their derivative beneficiaries
Food Stamps³	<p>Eligible only if:</p> <ul style="list-style-type: none"> • Are under age 18³ • Were granted refugee or asylum status or withholding of deportation/removal, Cuban/Haitian entrant, or Amerasian immigrant • Have been in “qualified” immigrant status for 5 years¹ • Are receiving disability-related assistance^{1,4} • Lawful permanent resident with credit for 40 quarters of work • Were 65 years or older and were lawfully residing in the U.S. on Aug. 22, 1996¹ • Veteran, active duty military; spouse, unremarried surviving spouse, or child¹ • Member of Hmong or Laotian tribe during the Vietnam era, when the tribe militarily assisted the U.S.; spouse, surviving spouse, or child of tribe member¹ • Certain American Indians born abroad 	<p>Eligible only if:</p> <ul style="list-style-type: none"> • Are under age 18³ • Were granted refugee or asylum status or withholding of deportation/removal, Cuban/Haitian entrant, or Amerasian immigrant • Have been in “qualified” immigrant status for 5 years¹ • Are receiving disability-related assistance^{1,4} • Lawful permanent resident with credit for 40 quarters of work • Veteran, active duty military; spouse, unremarried surviving spouse, or child¹ • Member of Hmong or Laotian tribe during the Vietnam era, when the tribe militarily assisted the U.S.; spouse, surviving spouse, or child of tribe member¹ • Certain American Indians born abroad 	<p>Eligible only if:</p> <ul style="list-style-type: none"> • Member of Hmong or Laotian tribe during the Vietnam era, when the tribe militarily assisted the U.S., spouse, surviving spouse or child of tribe member, <i>who is lawfully present in the U.S.</i> • Certain American Indians born abroad • Victims of trafficking and their derivative beneficiaries

(rev. 03/05)

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TABLE 1 (CONTINUED, p. 2 of 3)
Overview of Immigrant Eligibility for Federal Programs

PROGRAM	“QUALIFIED” IMMIGRANTS WHO ENTERED THE U.S. BEFORE AUG. 22, 1996	“QUALIFIED” IMMIGRANTS WHO ENTERED THE U.S. ON OR AFTER AUG. 22, 1996	“NOT QUALIFIED” IMMIGRANTS
Temporary Assistance for Needy Families (TANF)	Eligible ¹	Eligible only if: <ul style="list-style-type: none"> • Were granted refugee or asylum status or withholding of deportation/removal, Cuban/Haitian entrant, or Amerasian immigrant⁵ • Veteran, active duty military; spouse, unremarried surviving spouse, or child¹ • Have been in “qualified” immigrant status for 5 years or more^{1,5} 	Eligible only if: <ul style="list-style-type: none"> • Victims of trafficking and their derivative beneficiaries
Emergency Medicaid (includes labor and delivery)	Eligible	Eligible	Eligible
Full-Scope Medicaid	Eligible ⁶	Eligible only if: <ul style="list-style-type: none"> • Were granted refugee or asylum status or withholding of deportation/removal, Cuban/Haitian entrant, or Amerasian immigrant⁷ • Veteran, active duty military; spouse, unremarried surviving spouse, or child¹ • Have been in “qualified” immigrant status for 5 years or more^{1,7} 	Eligible only if: <ul style="list-style-type: none"> • Were receiving SSI on Aug. 22, 1996 (in states that link Medicaid to SSI eligibility) • Certain American Indians born abroad • Victims of trafficking and their derivative beneficiaries
State Children’s Health Insurance Program (SCHIP)⁸	Eligible	Eligible only if: <ul style="list-style-type: none"> • Were granted refugee or asylum status or withholding of deportation/removal, Cuban/Haitian entrant, or Amerasian immigrant • Veteran, active duty military; spouse, unremarried surviving spouse, or child¹ • Have been in “qualified” immigrant status for 5 years or more¹ 	Eligible only if: <ul style="list-style-type: none"> • Victims of trafficking and their derivative beneficiaries
Medicare “Premium Free” Part A (hospitalization) (eligibility based on work history)	Eligible	Eligible	Eligible only if: <ul style="list-style-type: none"> • Lawfully present, and eligibility for assistance is based on authorized employment
Premium “Buy-in” Medicare	Eligible only if: <ul style="list-style-type: none"> • Lawful permanent resident who has resided continuously in the U.S. for at least 5 years 	Eligible only if: <ul style="list-style-type: none"> • Lawful permanent resident who has resided continuously in the U.S. for at least 5 years 	Not Eligible

(rev. 03/05)

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TABLE 1 (CONTINUED, p. 3 of 3)
Overview of Immigrant Eligibility for Federal Programs

PROGRAM	“QUALIFIED” IMMIGRANTS WHO ENTERED THE U.S. BEFORE AUG. 22, 1996	“QUALIFIED” IMMIGRANTS WHO ENTERED THE U.S. ON OR AFTER AUG. 22, 1996	“NOT QUALIFIED” IMMIGRANTS
HUD Public Housing and Section 8 Programs	<p>Eligible except:</p> <ul style="list-style-type: none"> • Certain Cuban/Haitian entrants and “qualified” abused spouses and children <p>Note: If at least one member of the household is eligible based on immigration status, the family may reside in the housing, but the subsidy will be pro-rated.</p>	<p>Eligible except:</p> <ul style="list-style-type: none"> • Certain Cuban/Haitian entrants and “qualified” abused spouses and children <p>Note: If at least one member of the household is eligible based on immigration status, the family may reside in the housing, but the subsidy will be pro-rated.</p>	<p>Eligible only if:</p> <ul style="list-style-type: none"> • Temporary resident under IRCA general amnesty, or paroled into the U.S. for less than 1 year • Victims of trafficking and their derivative beneficiaries • Citizens of Micronesia, the Marshall Islands, and Palau <p>Note: For other immigrants, eligibility may depend on the date the family began receiving housing assistance, the immigration status of other household members, and the household composition.</p> <p>Also note: If at least one member of the household is eligible based on immigration status, the family may reside in the housing, but the subsidy will be pro-rated.</p>
Title XX Block Grants	Eligible	Eligible	<p>Eligible only if:</p> <ul style="list-style-type: none"> • Victims of trafficking and their derivative beneficiaries • Program or service funded by the block grant is exempt from the welfare law's restrictions
Social Security	Eligible⁹	Eligible⁹	<p>Eligible only if:</p> <ul style="list-style-type: none"> • Lawfully present⁹ • Were receiving assistance based on an application filed before Dec. 1, 1996 • Eligibility required by certain international agreements
Other Federal Public Benefits Subject to welfare law's restrictions	Eligible	Eligible	<p>Eligible only if:</p> <ul style="list-style-type: none"> • Victims of trafficking and their derivative beneficiaries
Benefits Exempt from welfare law's restrictions	Eligible	Eligible	Eligible

(rev. 3/05)

Notes appear on next page ➤

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KEY TERMS USED IN TABLE (*IMMIGRANT ELIGIBILITY FOR FEDERAL PROGRAMS*)

“Qualified” immigrants are: (1) lawful permanent residents (LPRs); (2) refugees, asylees, persons granted withholding of deportation/removal, conditional entry (in effect prior to Apr. 1, 1980), or paroled into the U.S. for at least one year; (3) Cuban/Haitian entrants; and (4) battered spouses and children with a pending or approved (a) self-petition for an immigrant visa, or (b) immigrant visa filed for a spouse or child by a U.S. citizen or LPR, or (c) application for cancellation of removal/

suspension of deportation, whose need for benefits has a substantial connection to the battery or cruelty. Parent/child of such battered child/spouse are also “qualified.” Victims of trafficking (who are not included in the “qualified” immigrant definition) and their derivative beneficiaries are eligible for benefits funded or administered by federal agencies, without regard to their immigration status. *“Not qualified” immigrants* include all noncitizens who do not fall under the “qualified” immigrant categories.

ENDNOTES

- 1 Eligibility may be affected by deeming: a sponsor’s income/resources may be added to the immigrant’s in determining eligibility. Exemptions from deeming may apply.
- 2 LPRs are eligible if they have worked 40 qualifying quarters in the U.S. Immigrants also get credit toward their 40 quarters for work performed (1) by parents when the immigrant was under 18; and (2) by spouse during the marriage (unless the marriage ended in divorce or annulment). No credit is given for a quarter worked after Dec. 31, 1996, if a federal means-tested public benefit (SSI, food stamps, TANF, Medicaid, or SCHIP) was received in that quarter.
- 3 Children are not subject to sponsor deeming in the food stamp program.
- 4 Disability-related benefits include SSI, Social Security disability, state disability or retirement pension, railroad retirement disability, veteran’s disability, disability-based Medicaid, and disability-related General Assistance if the disability determination uses criteria as stringent as those used by federal SSI.
- 5 In Indiana, Mississippi, Ohio, South Carolina, and Texas, TANF is available only to immigrants who entered the U.S. on or after Aug. 22, 1996, who are: (1) LPRs credited with 40 quarters of work; (2) veterans, active duty military (and their spouse, unmarried surviving spouse, or child); or (3) refugees, asylees, persons granted withholding of deportation/removal, Cuban/Haitian entrants, and Amerasian immigrants during the five years after obtaining this status. Indiana provides TANF to “refugees” listed in (3) regardless of the date they obtained that status. Mississippi does not address eligibility for Cuban/Haitian entrants or Amerasian immigrants.
- 6 In Wyoming, only LPRs with 40 quarters of work credit, abused immigrants, parolees, veterans, active duty military (and their spouse, unmarried surviving spouse, or child), refugees, asylees, persons granted withholding of deportation/removal, Cuban/Haitian entrants, and Amerasian immigrants who entered the U.S. prior to Aug. 22, 1996, are eligible for full-scope Medicaid.
- 7 In Alabama, Mississippi, North Dakota, Ohio, Texas, Virginia, and Wyoming, full-scope Medicaid is available only to immigrants who entered the U.S. on or after Aug. 22, 1996, who are: (1) LPRs credited with 40 quarters of work; (2) veterans, active duty military (and their spouse, unmarried surviving spouse, or child); or (3) refugees, asylees, persons granted withholding of deportation/removal, Cuban/Haitian entrants, and Amerasian immigrants during the seven years after obtaining this status. Wyoming provides full-scope Medicaid to “qualified” abused immigrants and persons paroled into the U.S., regardless of their date of entry. In Texas, Amerasian immigrants are eligible only during the five years after obtaining this status; Mississippi, and North Dakota do not address eligibility for Cuban/Haitian entrants or Amerasian immigrants.
- 8 In states that opt to cover fetuses, SCHIP provides prenatal care regardless of the mother’s immigration status. The scope of coverage depends in part on how the option is implemented.
- 9 For applications based on Social Security numbers issued on or after Jan. 1, 2004: must have been assigned a Social Security number that was, at the time assigned or at any later time, valid for work purposes. Alternatively, must have been admitted to the U.S. temporarily for business or as a crewman when the relevant work quarters were earned.

Colorado House Bill No. 1023

In 2006, Governor Bill Owens signed HB 1023 requiring applicants for governmental benefits to provide lawful presence in the United States. HB 1023 requires government entities in Colorado to verify, through a three-step process, the lawful presence of every adult seeking a governmental benefit for which citizenship is required. These three step identification process involves:

- A secure photo identification (Colorado driver's license, Colorado ID, military ID, US Coast Guard military ID, or Native American tribal document); or
- Submitting a sworn affidavit that he or she is a United States citizen or a legal permanent resident; or
- Having the application approved through the SAVE (Systematic Alien Verification for Entitlements) program.

Food stamps, medicaid benefits and others would be exempt (the list of verifiable documents is more expansive than Colorado's requirements).

Arizona's Proposition 200

Proposition 200, cited as the Arizona Taxpayer and Citizen Protection Act, would require all agencies of the State and all political subdivisions that are responsible for the administration of state and local public benefits that are not federally mandated to do the following:

- Verify the identity of each applicant for those benefits and verify that the applicant is eligible for benefits;
- Provide any other employer of the state or any of its political subdivisions with information to verify the immigration status of any applicant for those benefits and assist the employee in obtaining that information from federal immigration authorities;
- Refuse to accept any identification card issued by the state or any political subdivision of the state, including a driver's license to establish identity or determine eligibility for those benefits unless the issuing authority has verified the immigration status of the applicant;
- Require all employees of the state and its political subdivisions to make a written report to federal immigration authorities for any violation of federal immigration laws by any applicant for benefits; and

Failure to report discovered violations of federal immigration law by an employee is a class 2 misdemeanor.

Immigrant Eligibility Restrictions

CATEGORIES OF IMMIGRANTS: “QUALIFIED” & “NOT QUALIFIED”

The 1996 welfare law created two categories of immigrants for benefits eligibility purposes: “qualified” and “not qualified.” Contrary to what these names suggest, the law excluded most people in *both* groups from eligibility for many benefits, with a few exceptions. The “qualified” immigrant category includes:

- Lawful permanent residents—LPRs (persons with “green cards”).
- Refugees, persons granted asylum or withholding of deportation/removal, and conditional entrants.
- Persons granted parole by the Immigration and Naturalization Service (INS) or the Dept. of Homeland Security (DHS) for a period of at least one year.
- Cuban/Haitian entrants.
- Certain abused immigrants, their children, and/or their parents.⁷

All other immigrants, including many persons lawfully present in the U.S., are considered “not qualified.”⁸

In 2000, Congress established a new category of non-U.S. citizens, *victims of trafficking*, who,

⁷ To fall within the battered spouse or child category, the immigrant must have an approved visa petition filed by a spouse or parent, a self-petition under the Violence Against Women Act (VAWA) that sets forth a *prima facie* case for relief, or an application for cancellation of removal under the VAWA. The spouse or child must have been battered or subjected to extreme cruelty in the U.S. by a family member with whom the immigrant resided, or the immigrant’s parent or child must have been subjected to such treatment. The immigrant must demonstrate a “substantial connection” between the domestic violence and the need for the benefit being sought. And the battered immigrant, parent, or child must have moved out of the household of the abuser. Benefit agencies are encouraged to process these applications preliminarily, to inform immigrants of the resources that might become available to them should they decide to move.

⁸ Before 1996, some of these immigrants were served by benefit programs under an eligibility category called “permanently residing in the U.S. under color of law” (PRUCOL). PRUCOL is not an immigration status, but a benefit eligibility category that has been interpreted differently depending on the benefit program and the region. Generally, it means that the DHS is aware of a person’s presence in the U.S. but has no plans to deport or remove him or her from the country. Some states continue to provide services to these immigrants using state or local funds.

while not listed among the “qualified” immigrants, are eligible for most federal public benefits.⁹ In 2003, Congress clarified that “derivative beneficiaries” listed on trafficking victims’ visa applications (spouses and children of adult trafficking victims; spouses, children, parents and minor siblings of child victims) also may secure federal benefits.¹⁰

“FEDERAL PUBLIC BENEFITS” DENIED TO “NOT QUALIFIED” IMMIGRANTS

The law prohibits “not qualified” immigrants from enrolling in most “federal public benefit” programs.¹¹ However, there are important exceptions to these bars. “Federal public benefits” include a variety of safety-net services paid for by federal funds.¹² But the welfare law’s definition does not specify which programs are covered by the term, leaving that clarification to each federal benefit-granting agency. In 1998, the U.S. Dept. of Health and Human Services (HHS) published a notice clarifying which of its programs fall under the definition.¹³ The list of 31 HHS programs includes Medicaid, the State Children’s Health Insurance

⁹ The Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 107 (Oct. 28, 2000). Federal agencies are required to provide benefits and services to individuals who have been subjected to a “severe form of trafficking in persons,” without regard to their immigration status. To receive these benefits, the victim must be either under 18 years of age or certified by the U.S. Dept. of Health and Human Services (hereinafter “HHS”) as willing to assist in the investigation and prosecution of severe forms of trafficking in persons. In the certification, the HHS confirms that the person either (1) has made a bona fide application for a T visa that has not been denied, or (2) is a person whose continued presence in the U.S. is being ensured by the attorney general in order to prosecute traffickers in persons.

¹⁰ Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 4(a)(2) (Dec. 19, 2003).

¹¹ Welfare law § 401 (8 U.S.C. § 1611).

¹² “Federal public benefit” is described in the 1996 federal welfare law as (1) any grant, contract, loan, professional license, or commercial license provided by an agency of the U.S. or by appropriated funds of the U.S., and (2) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment, benefit, or any other similar benefit for which payments, or assistance are provided to an individual, household, or family eligibility unit by an agency of the U.S. or appropriated funds of the U.S.

¹³ HHS, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), “Interpretation of ‘Federal Public Benefit,’” 63 FR 41658–61 (Aug. 4, 1998).

Program (SCHIP),¹⁴ Medicare, TANF, Foster Care, Adoption Assistance, the Child Care and Development Fund, and the Low-Income Home Energy Assistance Program.

The HHS notice clarifies that not every benefit or service provided within these programs is a federal public benefit. For example, in some cases not all of a program's benefits or services are provided to an individual or household; they may extend, instead, to a community of people—as in the weatherization of an entire apartment building.¹⁵

The welfare law also attempted to force states to pass additional laws, after Aug. 22, 1996, if they choose to provide state public benefits to “not qualified” immigrants.¹⁶ Such micro-management of state affairs by the federal government is potentially unconstitutional under the Tenth Amendment.

EXCEPTIONS TO THE RESTRICTIONS

The law includes important exceptions for certain types of services. Regardless of their status, all immigrants remain eligible for emergency Medicaid, if they are otherwise eligible for their state's Medicaid program.¹⁷ The law did not restrict access to public health programs providing immunizations and/or treatment of communicable disease symptoms (whether or not those symptoms are caused by such a disease). School breakfast and lunch programs remain open to all children regardless of immigration status, and every state has opted to provide access to the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).¹⁸ Also exempted from the restrictions are in-kind services necessary to protect life or safety, as long as no individual income qualification is required. In Jan. 2001, the attorney general published a final order specifying the types of benefits that meet these criteria. The attorney general's list includes child and adult protective services; programs addressing weather emergencies

and homelessness; shelters, soup kitchens, and meals-on-wheels; medical, public health, and mental health services necessary to protect life or safety; disability or substance abuse services necessary to protect life or safety; and programs to protect the life or safety of workers, children and youths, or community residents.¹⁹

VERIFICATION RULES

When a federal agency designates a program as a federal public benefit for which “not qualified” immigrants are ineligible, the law requires the state or local agency to verify all applicants' immigration and citizenship status. But many federal agencies still have not specified which of their programs provide federal public benefits. Until they do so, state and local agencies are under no obligation to verify immigration status. Also, under an important exception contained in the 1996 immigration law, nonprofit charitable organizations are not required to “determine, verify, or otherwise require proof of eligibility of any applicant for such benefits.” This exception relates specifically to the immigrant benefits restrictions in the 1996 laws.²⁰

ELIGIBILITY FOR MAJOR FEDERAL BENEFIT PROGRAMS

SSI and Food Stamps. Congress imposed its most severe restrictions in two major programs: Supplemental Security Income (SSI), for seniors and persons with disabilities, and the Food Stamp Program.²¹ These programs initially were barred to most “qualified” immigrants, as well as “not qualified” immigrants. Although advocacy efforts in the two years following the welfare law's passage achieved a partial restoration of these benefits, significant gaps in eligibility remain.

SSI, for example, continues to exclude “not qualified” immigrants who were not already receiving the benefits, as well as most “qualified” immigrants who entered the country after the welfare law passed,²² and seniors without disabilities

¹⁴ SCHIP (Title XXI of the Social Security Act) was created in § 4901 *et seq.* of the Balanced Budget Act of 1997 (hereinafter “BBA”), Pub. L. No. 105-33, 111 Stat. 552 (Aug. 5, 1997).

¹⁵ HHS, Division of Energy Assistance, Office of Community Services, Memorandum from Janet M. Fox, Director, to Low Income Home Energy Assistance Program (LIHEAP) Grantees and Other Interested Parties, re. Revision-Guidance on the Interpretation of “Federal Public Benefits” Under the Welfare Reform Law (June 15, 1999).

¹⁶ Welfare law § 411 (8 U.S.C. § 1621).

¹⁷ Welfare law § 401(b)(1)(A) (8 U.S.C. § 1611(b)(1)(A)).

¹⁸ Welfare law § 742 (8 U.S.C. § 1615).

¹⁹ U.S. Dept. of Justice (hereinafter “DOJ”), “Final Specification of Community Programs Necessary for Protection of Life or Safety under Welfare Reform Legislation,” A.G. Order No. 2353-2001, published in 66 FR 3613-16 (Jan. 16, 2001).

²⁰ IIRIRA § 508 (8 U.S.C. § 1642(d)).

²¹ Welfare law § 402(a) (8 U.S.C. § 1612(a)).

²² Most new entrants cannot receive SSI until they become citizens or secure credit for 40 quarters of work history (including work performed by a spouse during marriage, persons “holding out to the community” as spouses, and by parents before the immigrant was 18 years old).

who were in the U.S. before that date. In 2002, Congress passed the Farm Security and Rural Investment Act ("Farm Bill"), which reauthorized the Food Stamp Program. The legislation restored food stamp eligibility to three groups of "qualified" immigrants: (1) persons who have lived in the U.S. as "qualified" immigrants for at least five years; (2) children regardless of their date of entry; and (3) persons receiving disability-related assistance regardless of their date of entry.²³ The Bush Administration estimated that the Farm Bill would restore nutrition assistance to 400,000 immigrants. Even this measure, however, falls short of a full restoration.

A few states provide cash assistance to seniors and persons with disabilities who were rendered ineligible for SSI; some others provide much smaller general assistance grants to these immigrants. And about eight states provide state-funded food stamps to immigrants who were rendered ineligible for the federal program.²⁴

TANF, Medicaid & SCHIP. Congress further restricted eligibility for immigrant families by arbitrarily distinguishing between those who entered the U.S. before or "on or after" the date the law was enacted, Aug. 22, 1996. The 1996 law barred most "qualified" immigrants who entered the U.S. on or after Aug. 22, 1996, from "federal means-tested public benefits" during the five years after they secure "qualified" immigrant status.²⁵ Federal agencies clarified that "federal means-tested public benefits" are SSI, food stamps, Medicaid (except for emergency care), TANF, and SCHIP.²⁶ States

²³ Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171 (May 13, 2002).

²⁴ See *Guide to Immigrant Eligibility for Federal Programs*, National Immigration Law Center (4th ed. 2002), and updated tables at www.nilc.org/pubs/Guide_update.htm.

²⁵ Welfare law § 403 (8 U.S.C. § 1613). States were also given an option to provide or deny federal TANF and Medicaid to most "qualified" immigrants who were in the U.S. before Aug. 22, 1996, and to those who enter the U.S. on or after that date, once they have completed the federal five-year bar. Welfare law § 402 (8 U.S.C. § 1612). Only one state—Wyoming—denies Medicaid to immigrants who were in the country when the welfare law passed. Colorado's proposed termination of Medicaid to these immigrants was reversed by the state legislature in 2005 and never took effect. In addition to Wyoming, six states (Alabama, Mississippi, North Dakota, Ohio, Texas, and Virginia) do not provide Medicaid to all qualified immigrants who complete the federal five-year ban. Five states (Indiana, Mississippi, South Carolina, Texas, and Wyoming) fail to provide TANF to all qualified immigrants who complete the federal five-year ban.

²⁶ HHS, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), "Interpretation of

can receive federal funding for TANF, Medicaid, and SCHIP to serve immigrants who have completed this "five-year bar."

Refugees, persons granted asylum or withholding of deportation/removal, Cuban/Haitian entrants, Amerasian immigrants, and victims of trafficking are exempt from the five-year bar, as are veterans, active duty military and their spouses and children.

Approximately 20 states use state funds to provide TANF, Medicaid, and/or SCHIP to some or all of the immigrants who are subject to the five-year bar on federally funded services.²⁷ Some of these programs have been threatened by state budget shortfalls.

SPONSORED IMMIGRANTS

Under the 1996 welfare and immigration laws, family members and some employers eligible to file a petition to help a person immigrate must become financial "sponsors" of the immigrant by signing a contract with the government (an "affidavit of support"). Under the enforceable affidavit (Form I-864), the sponsor promises to support the immigrant and to repay certain benefits that the immigrant may use.

Congress imposed additional eligibility restrictions on immigrants whose sponsors sign an enforceable affidavit of support. When an agency is determining an LPR's financial eligibility for a program, in some cases the law requires the agency to "deem" the income of the immigrant's sponsor or the sponsor's spouse as available to the immigrant. The sponsor's income and resources are added to the immigrant's, which often disqualifies the immigrant as over-income for the program. Previously, fewer programs imposed "deeming," and when they did, it was applied for only three years. By contrast, the 1996 laws authorize deem-

"Federal Means-Tested Public Benefit," 62 FR 45256 (Aug. 26, 1997); U.S. Dept. of Agriculture (hereinafter "USDA"), "Federal Means-Tested Public Benefits," 63 FR 36653 (July 7, 1998). The SCHIP program, created after the passage of the 1996 welfare law, was later designated as a federal means-tested public benefit program. See Health Care Financing Administration, "The Administration's Response to Questions about the State Child Health Insurance Program," Question 19(a) (Sept. 11, 1997).

²⁷ See NILC's updated tables on state-funded services, at www.nilc.org/pubs/Guide_update.htm. See also "Covering New Americans: A Review of Federal and State Policies Related to Immigrants' Eligibility and Access to Publicly Funded Health Insurance," Center on Budget and Policy Priorities (Nov. 2004), available at www.kff.org/medicaid.

ing for approximately 10 years²⁸ or longer for immigrants applying for TANF, food stamps, SSI, Medicaid and SCHIP.²⁹ Domestic violence survivors and immigrants who would go hungry or homeless without assistance (the “indigence” exemption) can get benefits without deeming for at least 12 months.³⁰ The U.S. Dept. of Agriculture (USDA) issued helpful guidance on the indigence exemption and other deeming and liability issues, including exceptions from liability for sponsors who are also receiving food stamps.³¹ The HHS also issued guidance on deeming in the TANF program, for immigrants with enforceable affidavits of support who reach the end of the five-year bar and become potentially eligible for the federal program.³²

Overview of Immigrant Access Barriers

CONFUSION ABOUT ELIGIBILITY

Confusion about eligibility rules pervades benefit agencies and immigrant communities. The confusion stems from the complex interaction of the immigration and welfare laws, differences in eligibility criteria for various state and federal programs, and a lack of adequate training on the rules as clarified by federal agencies. Consequently, many eligible immigrants have mistakenly assumed that they should not seek services, and eligibility workers mistakenly have turned away eligible immigrants.

²⁸ That is, until the immigrant has credit for 40 quarters of work history.

²⁹ Welfare law § 421 (8 U.S.C. § 1631).

³⁰ IIRIRA § 552 (8 U.S.C. § 1631(e) and (f)). The domestic violence exemption can be extended for a longer period if the abuse has been recognized by U.S. Citizenship and Immigration Services (USCIS), a court, or an administrative law judge. The indigence exemption may be renewed for additional 12-month periods.

³¹ 7 C.F.R. § 274.3(c); USDA, “Non-Citizen Requirements in the Food Stamp Program” (Jan. 2003) at www.fns.usda.gov/fsp/rules/Legislation/pdfs/Non_CitizenGuidance.pdf. See also USDA’s Proposed Rule, “Food Stamp Program: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002,” 69 FR 20723, 20758–9 (Apr. 16, 2004).

³² HHS, “Deeming of Sponsor’s Income and Resources to a Non-Citizen,” TANF-ACF-PI-2003-03 (Apr. 17, 2003), at www.acf.dhhs.gov/programs/ofa/pi2003-3.htm.

PUBLIC CHARGE

The misapplication of the public charge ground of inadmissibility has contributed significantly to the chilling effect on immigrants’ access to services. The “public charge” provision in the immigration laws allows officials to deny applications for permanent residency if the authorities determine that the immigrant seeking permanent residency is “likely to become a public charge.” In deciding whether an immigrant is likely to become a public charge, immigration or consular officials look at the “totality of the circumstances,” including an immigrant’s health, age, income, education and skills, and affidavits of support. The law on public charge did not change in 1996, and the use of programs such as Medicaid or food stamps had never weighed heavily in public charge determinations. Yet shortly after enactment of the welfare law, immigration officials and judges began to prevent immigrants from reentering the U.S. or obtaining LPR status, unlawfully demanding that they repay benefits like Medicaid, and denying green cards until the applicants withdrew from programs like WIC.³³

Immigrants’ rights advocates, health care providers, and state and local governments organized to persuade federal agencies to clarify the limits of the laws. In May 1999, the INS issued guidance and a proposed regulation on the public charge doctrine.³⁴ The guidance clarifies that receipt of health care and other noncash benefits will not jeopardize the immigration status of recipients or their family members by putting them at risk of being considered a public charge.³⁵ Immigrants’ rights advocates have been monitoring the implementation of this guidance and its effect on immigrants’ willingness to seek services. Several years after the issuance of this guidance, widespread confusion and concern about the public charge rules remain.

³³ Claudia Schlosberg and Dinah Wiley, “The Impact of INS Public Charge Determinations on Immigrant Access to Health Care,” National Health Law Program and National Immigration Law Center (May 22, 1998).

³⁴ DOJ, “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,” 64 FR 28689–93 (May 26, 1999); see also DOJ, “Inadmissibility and Deportability on Public Charge Grounds,” 64 FR 28676–88 (May 26, 1999); U.S. Dept. of State, INA 212(A)(4) Public Charge: Policy Guidance, 9 FAM 40.41.

³⁵ The use of all health care programs, except for long-term institutionalization, was declared to be irrelevant to public charge determinations.

AFFIDAVIT OF SUPPORT

The 1996 laws also enacted rules that make it more difficult to immigrate to the U.S. to reunite with family members. Effective Dec. 19, 1997, relatives (and some employers) must meet strict income requirements and must sign a long-term contract—an affidavit of support—promising to maintain the immigrant at 125 percent of the federal poverty level and to repay any means-tested public benefits the immigrant may receive.³⁶ Although the federal benefits for which sponsors may be liable have been named (TANF, SSI, food stamps, nonemergency Medicaid and SCHIP), very few immigrants with enforceable affidavits of support have been eligible for these federal services. Federal agencies have issued little guidance on these provisions. Most states have not designated the programs that would give rise to sponsor liability, and we are aware of only one state that has attempted to pursue reimbursement. However, the specter of sponsor liability already has deterred eligible immigrants from applying for benefits, based on concerns about exposing their sponsors to government collection efforts.

LANGUAGE POLICIES

Many immigrants face significant linguistic and cultural barriers to obtaining benefits. Almost 18 percent of the U.S. population (5 years and older) speak a language other than English at home.³⁷ Almost 8 percent of the people living in the U.S. speak English less than very well.³⁸ These limited English proficient (LEP) residents cannot effectively apply for benefits or meaningfully communicate with a health care provider without language assistance.

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal funding from discriminating on the basis of national origin, an obligation which includes providing reasonable language assistance to LEP persons. Recipients' compliance with this requirement has been limited. In Aug. 2000, the White House issued an executive order directing federal agencies, by Dec. 11, 2000, to submit to the Dept. of Justice (DOJ) plans to improve language access to federal programs and

activities.³⁹ The DOJ published guidance emphasizing that agencies, programs, and services receiving federal funds must ensure that persons with limited English proficiency can participate effectively and explaining that failure to do so may constitute national origin discrimination prohibited by Title VI.⁴⁰ The guidance reviews "reasonable steps" that agencies should include in their plans for providing "meaningful" language access. Several agencies, including the HHS, developed and published guidance for public comment, but many remained delinquent.

The DOJ published final guidance to its recipients on June 18, 2002, after presenting two prior versions for public comment.⁴¹ The final guidance noted the DOJ's unique responsibility for ensuring consistency among federal agencies' guidance. The DOJ's guidance was followed by a letter to federal agency heads and civil rights officers from Assistant Attorney General Ralph Boyd, directing other agencies to conform their guidance to that published by the DOJ.⁴² The HHS revised its guidance to conform to the DOJ standards and published the revised guidance on Aug. 4, 2003.⁴³ To date, a number of agencies have failed to issue guidance.

Advocates will continue to monitor agencies' development of guidance, which is posted on the federal interagency language access website, www.lep.gov, as it is issued. They are encouraging states to take advantage of federal funds available for the reimbursement of language assistance services provided through Medicaid and SCHIP. And they are urging states to take language and cultural needs into account in providing benefits and implementing welfare-to-work and job training programs.

³⁹ Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," 65 FR 50121 (Aug. 16, 2000).

⁴⁰ DOJ, Civil Rights Division, "Enforcement of Title VI of the Civil Rights Act of 1964 – National Origin Discrimination Against Persons with Limited English Proficiency: Policy Guidance," 65 FR 50123 (Aug. 16, 2000).

⁴¹ "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons," 67 FR 41455 (June 18, 2002).

⁴² Letter from Assistant Attorney General Ralph Boyd to Heads of Federal Agencies, General Counsels and Civil Rights Directors, July 8, 2002, available at www.doj.gov/crt/cor/13166.htm.

⁴³ HHS, "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," 68 FR 47311–23 (Aug. 8, 2003).

³⁶ Welfare law § 423, amended by IIRIRA § 551 (8 U.S.C. § 1183a).

³⁷ U.S. Census Bureau, *Profile of Selected Social Characteristics: Census 2000 Supplemental Survey Summary Tables*.

³⁸ *Id.*

VERIFICATION AND REPORTING

Rules that require benefit agencies to verify immigration and citizenship status⁴⁴ have been misinterpreted by some agencies as allowing benefit personnel to act as immigration enforcers. Because some federal agencies still have not determined which of their programs provide federal public benefits that require verification of immigration status, some institutions are confused about their duty to screen applicants. As a condition of eligibility, some agencies demand immigration documents or Social Security numbers (SSNs) even when applicants are not legally required to submit such information. Lack of federal clarification in the reporting and verification areas led some state and local agencies to ask unnecessary questions on application forms and even to issue unnecessary warnings to immigrants in notices on the walls of agency waiting rooms. And increased scrutiny of immigrant communities in the name of national security, as well as publicity generated by proposals that would require hospitals to inquire about immigration status, raised additional privacy concerns for immigrant families, who may avoid applying for services.⁴⁵

Verification. In 1997, the DOJ issued an interim guidance for federal benefit providers to use in verifying immigration status until the DOJ issues final regulations governing verification.⁴⁶ The

⁴⁴ Welfare law § 432, amended by IIRIRA § 504 (8 U.S.C. § 1642).

⁴⁵ H.R. 3722 (Rohrabacher), defeated resoundingly in Congress, would have required hospitals, as a condition of receiving reimbursement under § 1011 of the 2003 Medicare law, to report undocumented immigrant patients to the DHS. In July 2004, the Centers for Medicare and Medicaid Services (CMS) issued a proposed policy that would require emergency health care providers to question patients about their immigration status in order to receive reimbursement for uncompensated services to undocumented persons. After health care providers and advocates expressed concerns about the proposal's deterrent effect, the CMS indicated that it would not require providers to ask direct questions about patients' immigration status. To date, the CMS has not released revised guidance on the reimbursement process.

⁴⁶ DOJ, "Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996," 62 FR 61344-416 (Nov. 17, 1997). In Aug. 1998, the agency issued proposed regulations which draw heavily on the interim guidance and the Systematic Alien Verification for Entitlements (SAVE) program; see DOJ, "Verification of Eligibility for Public Benefits," 63 FR 41662-86 (Aug. 4, 1998). Final regulations have not yet been issued. Once the regulations be-

come final, states will have two years to implement a conforming system for the federal programs they administer.

guidance provides that benefit agencies already using the DOJ's computerized Systematic Alien Verification for Entitlements (SAVE) program continue to do so. It recommends that agencies make financial and other eligibility decisions before asking the applicant for information about his or her immigration status. The guidance also states that agencies may seek information only about the person applying for benefits, and not about his or her family members.

Questions on application forms. In Sept. 2000, the HHS and the USDA issued guidance recommending that states delete from benefits application forms questions that are unnecessary and may chill participation by immigrant families.⁴⁷ The guidance confirms that only the immigration status of the applicant for benefits is relevant. It encourages states to allow family or household members who are not seeking benefits to be designated as "nonapplicants" early in the application process. Similarly, under Medicaid, TANF, and the Food Stamp Program, only the applicant must provide an SSN. SSNs are not required for persons seeking only emergency Medicaid. In June 2001, the HHS indicated that states providing SCHIP through separate programs (rather than through Medicaid expansions) are authorized, but not obligated, to require SSNs on their SCHIP applications.⁴⁸

Reporting to the DHS. Another source of fear in immigrant communities is the occasional misapplication of a 1996 reporting provision that is in fact quite narrow in scope.⁴⁹ The reporting requirement applies to only three programs (SSI, public housing, and TANF) and requires the administering agency to report to the INS (now the DHS) only persons whom the agency *knows* are not lawfully present in the U.S.⁵⁰

come final, states will have two years to implement a conforming system for the federal programs they administer.

⁴⁷ Letter and accompanying materials from HHS and USDA to State Health and Welfare Officials: "Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits" (Sept. 21, 2000).

⁴⁸ HHS, Health Care Financing Administration, Interim Final Rule, "Revisions to the Regulations Implementing the State Children's Health Insurance Program," 66 FR 33810, 33823 (June 25, 2001).

⁴⁹ Welfare law § 404, amended by BBA §§ 5564 and 5581(a) (42 U.S.C. §§ 608(g), 611a, 1383(e), 1437y).

⁵⁰ *Id.* See also H.R. Rep. 104-725, 104th Cong. 2d Sess. 382 (July 30, 1996). In other contexts, the "knowledge" requirement has been interpreted to apply only where an

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January 8, 2007

To: Senate Federal and State Affairs Committee

From: Kathie Sparks, Principal Analyst

Re: Immigration

The following memorandum will exam the state's responsibility for employment and illegal immigration; current security measures and documentation required to receive a Kansas driver's license or a birth certificate, the federal Real ID Act of 2005; and the federal Basic Pilot Program.

State Responsibility for Employment and Illegal Immigration

The state has almost no responsibility when it comes to employment of illegal immigrants. Currently, under Kansas statutes, there are no requirements for employment eligibility verification. The responsibility for verification is under the federal Immigration Reform and Control Act of 1986. The federal Act requires each employer to have in his or her records a completed Form I-9, Employment Eligibility Verification, for each and every employee, including U.S. citizens hired after November 6, 1986. A Form I-9 is attached. A form is also to be completed for:

- Providing for domestic services in a private household that are sporadic, irregular, or intermittent;
- Providing services for the employer as an independent contractor, *i.e.*, carry on independent business, contract to do a piece of work according to their own means and methods and are subject to control only as to results and for whom the employer does not set work hours or provide necessary tools to do the job, or for whom the employer does not have authority to hire and fire; and
- Providing services for the employer, under a contract, subcontract, or exchange entered into after November 6, 1986. (In such cases, the contractor is the employer for I-9 purposes; for example, a temporary employment agency.)

Unlike tax forms, I-9 forms are **not** filed with the U.S. government. The requirement is for employers to maintain I-9 records in their own files for three years after the date of hire or one year after the date the employee's employment is terminated, whichever is later. Form I-9 records may be stored at the worksite to which they relate or at a company headquarters (or other) location, but the storage choice must make it possible for the documents to be transmitted to the worksite within three days of an official request for production of the documents for inspection.

The Form I-9 is published in English only. A new employee must complete the form no later than close of business on his or her first day of work. The employee's signature holds him or her responsible for the accuracy of the information provided. The employer is responsible for ensuring that the employee completes the form in full. The employer must review documentation presented by the employee and record document information of the work in the U.S. and that the employee who presents the employment authorization document is the person to whom it was issued. The employer should supply to the employee the official list of acceptable documents (see attachment 1, page 2) for establishing identity and work eligibility.

According to the Immigration and Naturalization Services website, employers are not required to be document experts. In reviewing the genuineness of the documents presented by employees, employers are held to a reasonableness standard. The website does not give a definition of what a "reasonableness standard" is for this purpose. In addition, there are two separate and unrelated photocopy issues in the employment eligibility verification process. The first, is whether an employer may accept photocopies of identity or employment eligibility documents to fulfill I-9 requirements. The answer is that only original documents (not necessarily the first document of its kind ever issued to the employee, but an actual document issued by the issuing authority) are satisfactory, with the single exception of a certified photocopy of a birth certificate. The second, is whether the employer may or must attach photocopies of documentation submitted to satisfy Form I-9 requirements to the employee's Form I-9. The answer is that this is permissible, but not required. Where this practice is undertaken by an employer, it must be consistently applied to every employee, without regard to citizenship or national origin.

On page 2 of the attachment, please note the three columns: documents that establish both identity and employment eligibility; documents that establish identity; and documents that establish employment eligibility and the fact that the only documents that are under state control are birth certificates and drivers' licenses.

Kansas Drivers' Licenses

Current Security Measures. The following information was provided by Carmen Alldritt, Director, Division of Vehicles, Kansas Department of Revenue.

1. The Kansas drivers' licenses have the following security features: a ghost portrait of the applicant appears in the center of the license, printed data overlapping the ghost portrait; fine line printing on the back of the card; a hologram visible with ultraviolet light and a one and two-dimensional bar code on the back of the license.
2. The Legislature in 2004 passed legislation requiring the following security measures:
 - a. Every individual having a Kansas drivers' license must have a "lawful presence" in order to obtain a license and the individual is required to show proof of Kansas residency. The Department verifies the individual social security number at the time of application and has a 97 percent verification rate on the social security numbers. If the verification shows a conflict, such as another individual using that number, the individual making application is referred to the local social security office to resolve the conflict and is not given a drivers' license until the conflict is resolved.

- b. Drivers' licenses and identification cards (IDs) are now issued from a central location and returned to the customers by mail within 10 days.
- c. The Department developed a Fraud Unit that has scrutinized all the drivers' license stations in Kansas. The recent arrests in Kansas City are "an example that if people attempt to defraud the system, they will be caught."
- d. All license examiners have received two days of fraudulent document training to ensure that only individuals qualified to obtain a license/ID will receive them.

Documentation to Receive a Kansas Drivers' License. Acceptable documentation required to receive the license is as follows:

Two of the following documents must be presented. One document must be from list A, and the second document must be from lists A, C, or D. If a valid photo drivers' license issued by another state is used, a second document from list A, B, C, or D is required. Applicants presenting foreign documents must provide proof of lawful presence from list B, and a second document from list C or D. All documents presented must be the original or a certified copy; no photocopies are accepted.

A. Documentation for American Citizens or Persons Born in the United States:

1. Certified birth certificate;
2. Hospital birth certificate;
3. U.S. Passport;
4. U.S. Military ID;
5. DD 214 (discharge papers from the military);
6. Bureau of Indian Affairs Tribal Identification Card;
7. Certified Order of Adoption;
8. Certificate of naturalization with intact photo; or
9. Photo drivers' license issued by a U.S. state.

B. Documentation for Any Other Person:

1. Valid foreign passport with I-94 or valid "Processed for I-551" stamp;
2. I-94 form with refugee status (passport not required);
3. Valid I-551 INS Resident Alien/Permanent resident card, no border crosser cards;
4. Valid I-688 form (photo temporary resident) and I-688A, I-688B, and I-766 forms (photo employment authorization); or
5. Valid U.S. Military ID (dependent).

C. Proof of Name:

1. Certified marriage certificate;
2. Certified divorce decree;
3. Certified court order of name change;

4. Common Law certificate of marriage signed by both parties and notarized;
5. Valid U.S. Military ID;
6. Bureau of Indian Affairs Tribal ID Card;
7. Certified court order of adoption; or
8. Photo drivers' license or ID card issued by a U.S. state.

D. Additional Documentation to apply for a replacement Kansas Drivers' License or ID Card:

1. Valid motor vehicle registration with signature;
2. Valid motor vehicle insurance card or policy;
3. Selective Service Card with signature;
4. Valid life insurance card or policy;
5. Valid health insurance card or policy;
6. Vehicle title;
7. Diploma;
8. Professional license;
9. Kansas welfare card with photo and signature;
10. Foreign drivers' license;
11. Parole documents;
12. Baptismal certificate;
13. Medical records;
14. Kansas voter registration card;
15. Church marriage certificate;
16. Photo drivers' license or ID card issued by a U.S. state;
17. Foreign birth certificate; or
18. May recite recent driving history to satisfaction of examiner.

It appears, however, these lists are not enforceable as they do not appear in statute or rule and regulation.

However, KSA 8-246 provides a different list of replacement drivers' licenses criteria and, in discussion with Department officials, they indicated that the Department may go back to this statute until rules and regulations are adopted. Attachment 2 is a copy of KSA 8-246.

The Real ID Act. The Real ID Act establishes minimum standards for state departments of motor vehicles in order for their documents to be accepted by the federal government for personal identification. The deadline for the states to meet the new standards is May 11, 2008. The Secretary of the Department of Homeland Security may extend the deadline for a state if the state provides adequate justification for noncompliance. It also repeals the drivers' license/ID provisions of the Intelligence Reform and Terrorism Prevention Act of 2004.

The association of motor vehicles known as AAMVA conducted a survey among the states to reach an estimate of the cost associated with implementation of the Real ID Act. The survey was conducted in June of 2006. The report was averaged out to include small, medium, and large states. Kansas issued 771,862 drivers' licenses/ID cards in FY 2006 and is considered a medium-size state.

Estimated implementation costs for Kansas were calculated as follows:

One-time start up costs:	\$ 1,573,325
This includes initial programming, upgrades to capture full drivers' name and hardware for capturing photo first and imaging documents presented to prove identity.	
Ongoing costs:	\$10,860,616
This includes license fees, system fees, passport, and birth verification fees for data sharing between all states. The system to accomplish the sharing has not yet been built.	
System impact:	\$ 1,670,200
Any technology system upgrades necessary to comply with the act, including programming required to provide the interconnectivity between states that will allow the necessary data sharing.	
Business process:	\$10,703,741
This includes employee background checks and Real ID certification. One-third of these dollars will be necessary for ongoing training.	

The Department also estimates that the cost to the customer for the new required drivers' licenses may increase from \$22 to \$60 for a six-year drivers' license. Finally, Congress has yet to determine what rules will govern Real ID and allocated no funding for implementation of the Act.

Birth Certificates Security

The following information was provided by Donna Calabrese, Director and Assistant State Registrar, Kansas Office of Vital Statistics, Kansas Department of Health and Environment.

Birth Certificate Registration

- The majority (99 percent) of Kansas birth certificates are filed electronically with the Office of Vital Statistics (OVS) and the electronic web-based system has multiple security measures in place such as encryption and fire walls.
- The Medical Records of birthing facilities file a monthly report with OVS listing all births registered. This report is compared by OVS staff with the electronic and hard copies submitted.
- State law requires a neonatal metabolic test be performed on every child born in Kansas and the child's information and a blood sample (heel stick) taken at the hospital is sent directly from the hospital to the Kansas Department of Health and Environment (KDHE) lab. A match program is run weekly on the lab database and OVS database checking for a match between each birth certificate and lab report.

Birth Certificate Issuance

- Kansas Law, KSA 65-2422d(c), specifies that vital records are not open for public inspection and that any requestor for a certified copy of a birth certificate must have a direct interest in the record for personal or property rights. Therefore, all customers requesting a certified copy of a birth certificate must be the person named on the record, an immediate family member, or someone who can provide legal evidence the record is necessary for personal or property rights.
- All certified copies of birth certificates are issued from a single database and an internal multi-layer security is in place for employee access to the database and records.
- A government issued photo ID is required for all walk-in and mailed requests. Requests made using phone, fax, or internet (credit card service) must provide a drivers' license copy or other acceptable ID and the address on the credit card must match the mailing address given by the customer.
- The Department of Revenue shares an ID verification program with OVS which is used for the verification of government IDs. All state drivers' licenses, passports, visas, and social security cards are displayed, along with detailed information on security features that should be present.
- A birth/death match program is run daily to match all death certificates with corresponding birth certificates. This prevents the fraudulent use of identities of deceased individuals. This matching also is done when the death occurs in a state other than the state of birth, *i.e.*, born in Kansas, but died in Missouri, by participation in the Vital Statistics Cooperative Program (VSCP). This program involves the sharing of death information with the state of birth.

Birth Certificate Storage

- The hard copies of birth certificates are scanned and within 90 days of being filed with OVS are shipped off site for permanent storage at Underground Vaults and Storage in Hutchinson. Request for records from the storage facility can only be made by authorized OVS staff.
- Security paper used for certified copies and the original records are stored in a specially designed vault (designed when OVS moved to the Curtis Building), requiring key card entrance. The original records are kept in locked files and the security paper is stored in a separate locked area of the vault.

Ms. Calabrese believes that the State of Kansas has already met most of the security mandates specified in the Intelligence Reform and Terrorism Prevention Act of 2004. In addition, the Department believes the proposed regulations from this bill will be released in one to three months.

Federal Basic Pilot Program

The federal Department of Homeland Security (DHS) and the Social Security Administration (SSA) are jointly conducting the Basic Pilot Program. The Program involves verification checks of the SSA and DHS databases, using an automated system to verify the employment authorization of all newly hired employees.

The Program has been in operation since November 1997. Legislation signed by the President on December 3, 2003, extended the Program until November 2008, and the expanded the Program to all 50 states and the District of Columbia.

An employer's participation in the Basic Pilot Program is voluntary, and is free to participating employers, although recent legislation in Colorado requires that all employers who bid on public construction contracts participate in the Program. Users can access the Program from any Internet capable personal computer. Some features of the Internet version include: online-registration, reporting capability for users, and availability of the system 19-hours a day. To participate an employer must register and sign a Memorandum of Understanding that sets forth the responsibilities of each party. Any employers who participates in the Program must agree to a Form I-9 audit by U.S. Immigration and Customs Enforcement.

If you have any questions please do not hesitate to contact me at Kathies@klrd.state.ks.us or (785) 296-4405.

Employment Eligibility Verification

Attachment

Please read instructions carefully before completing this form. The instructions must be available during completion of this form. **ANTI-DISCRIMINATION NOTICE:** It is illegal to discriminate against work eligible individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins.

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #
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):	
		<input type="checkbox"/> A citizen or national of the United States <input type="checkbox"/> A Lawful Permanent Resident (Alien # A _____) <input type="checkbox"/> An alien authorized to work until ___/___/___ (Alien # or Admission #) _____	
Employee's Signature			Date (month/day/year)

Preparer and/or Translator Certification. (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature	Print Name
Address (Street Name and Number, City, State, Zip Code)	
Date (month/day/year)	

Section 2. Employer Review and Verification. To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s)

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): ___/___/___		___/___/___		___/___/___
Document #: _____		_____		_____
Expiration Date (if any): ___/___/___		_____		_____

CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) ___/___/___ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name		Date (month/day/year)
Address (Street Name and Number, City, State, Zip Code)		

Section 3. Updating and Reverification. To be completed and signed by employer.

A. New Name (if applicable)	B. Date of rehire (month/day/year) (if applicable)
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility.	
Document Title: _____	Document #: _____
Expiration Date (if any): ___/___/___	
I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible 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	Date (month/day/year)

LISTS OF ACCEPTABLE DOCUMENTS

LIST A		LIST B		LIST C
Documents that Establish Both Identity and Employment Eligibility		Documents that Establish Identity		Documents that Establish Employment Eligibility
	OR		AND	
<ol style="list-style-type: none"> 1. U.S. Passport (unexpired or expired) 2. Certificate of U.S. Citizenship (<i>INS Form N-560 or N-561</i>) 3. Certificate of Naturalization (<i>INS Form N-550 or N-570</i>) 4. Unexpired foreign passport, with <i>I-551 stamp</i> or attached <i>INS Form I-94</i> indicating unexpired employment authorization 5. Permanent Resident Card or Alien Registration Receipt Card with photograph (<i>INS Form I-151 or I-551</i>) 6. Unexpired Temporary Resident Card (<i>INS Form I-688</i>) 7. Unexpired Employment Authorization Card (<i>INS Form I-688A</i>) 8. Unexpired Reentry Permit (<i>INS Form I-327</i>) 9. Unexpired Refugee Travel Document (<i>INS Form I-571</i>) 10. Unexpired Employment Authorization Document issued by the INS which contains a photograph (<i>INS Form I-688B</i>) 		<ol style="list-style-type: none"> 1. Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address 2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address 3. School ID card with a photograph 4. Voter's registration card 5. U.S. Military card or draft record 6. Military dependent's ID card 7. U.S. Coast Guard Merchant Mariner Card 8. Native American tribal document 9. Driver's license issued by a Canadian government authority <p style="text-align: center; margin: 5px 0;">For persons under age 18 who are unable to present a document listed above:</p> <ol style="list-style-type: none"> 10. School record or report card 11. Clinic, doctor or hospital record 12. Day-care or nursery school record 		<ol style="list-style-type: none"> 1. U.S. social security card issued by the Social Security Administration (<i>other than a card stating it is not valid for employment</i>) 2. Certification of Birth Abroad issued by the Department of State (<i>Form FS-545 or Form DS-1350</i>) 3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal 4. Native American tribal document 5. U.S. Citizen ID Card (<i>INS Form I-197</i>) 6. ID Card for use of Resident Citizen in the United States (<i>INS Form I-179</i>) 7. Unexpired employment authorization document issued by the INS (<i>other than those listed under List A</i>)

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)

Employment Eligibility Verification

INSTRUCTIONS

PLEASE READ ALL INSTRUCTIONS CAREFULLY BEFORE COMPLETING THIS FORM.

Anti-Discrimination Notice. It is illegal to discriminate against any individual (other than an alien not authorized to work in the U.S.) in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or citizenship status. It is illegal to discriminate against work eligible individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

Section 1 - Employee. All employees, citizens and noncitizens, hired after November 6, 1986, must complete Section 1 of this form at the time of hire, which is the actual beginning of employment. The employer is responsible for ensuring that Section 1 is timely and properly completed.

Preparer/Translator Certification. The Preparer/Translator Certification must be completed if Section 1 is prepared by a person other than the employee. A preparer/translator may be used only when the employee is unable to complete Section 1 on his/her own. However, the employee must still sign Section 1.

Section 2 - Employer. For the purpose of completing this form, the term "employer" includes those recruiters and referrers for a fee who are agricultural associations, agricultural employers or farm labor contractors.

Employers must complete Section 2 by examining evidence of identity and employment eligibility within three (3) business days of the date employment begins. If employees are authorized to work, but are unable to present the required document(s) within three business days, they must present a receipt for the application of the document(s) within three business days and the actual document(s) within ninety (90) days. However, if employers hire individuals for a duration of less than three business days, Section 2 must be completed at the time employment begins. **Employers must record:** 1) document title; 2) issuing authority; 3) document number, 4) expiration date, if any; and 5) the date employment begins. Employers must sign and date the certification. Employees must present original documents. Employers may, but are not required to, photocopy the document(s) presented. These photocopies may only be used for the verification process and must be retained with the I-9. However, employers are still responsible for completing the I-9.

Section 3 - Updating and Reverification. Employers must complete Section 3 when updating and/or reverifying the I-9. Employers must reverify employment eligibility of their employees on or before the expiration date recorded in Section 1. Employers **CANNOT** specify which document(s) they will accept from an employee.

- If an employee's name has changed at the time this form is being updated/ reverified, complete Block A.
- If an employee is rehired within three (3) years of the date this form was originally completed and the employee is still eligible to be employed on the same basis as previously indicated on this form (updating), complete Block B and the signature block.

- If an employee is rehired within three (3) years of the date this form was originally completed and the employee's work authorization has expired or if a current employee's work authorization is about to expire (reverification), complete Block B and:
 - examine any document that reflects that the employee is authorized to work in the U.S. (see List A or C),
 - record the document title, document number and expiration date (if any) in Block C, and complete the signature block.

Photocopying and Retaining Form I-9. A blank I-9 may be reproduced, provided both sides are copied. The Instructions must be available to all employees completing this form. Employers must retain completed I-9s for three (3) years after the date of hire or one (1) year after the date employment ends, whichever is later.

For more detailed information, you may refer to the INS Handbook for Employers, (Form M-274). You may obtain the handbook at your local INS office.

Privacy Act Notice. The authority for collecting this information is the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 USC 1324a).

This information is for employers to verify the eligibility of individuals for employment to preclude the unlawful hiring, or recruiting or referring for a fee, of aliens who are not authorized to work in the United States.

This information will be used by employers as a record of their basis for determining eligibility of an employee to work in the United States. The form will be kept by the employer and made available for inspection by officials of the U.S. Immigration and Naturalization Service, the Department of Labor and the Office of Special Counsel for Immigration Related Unfair Employment Practices.

Submission of the information required in this form is voluntary. However, an individual may not begin employment unless this form is completed, since employers are subject to civil or criminal penalties if they do not comply with the Immigration Reform and Control Act of 1986.

Reporting Burden. We try to create forms and instructions that are accurate, can be easily understood and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows: 1) learning about this form, 5 minutes; 2) completing the form, 5 minutes; and 3) assembling and filing (recordkeeping) the form, 5 minutes, for an average of 15 minutes per response. If you have comments regarding the accuracy of this burden estimate, or suggestions for making this form simpler, you can write to the Immigration and Naturalization Service, HQPDI, 425 I Street, N.W., Room 4034, Washington, DC 20536. OMB No. 1115-0136.

[Home](#) > [Statutes](#) > Statute

[Previous](#)

[Next](#)

8-246

Chapter 8.--AUTOMOBILES AND OTHER VEHICLES

Article 2.--DRIVERS' LICENSES

8-246. Replacement drivers' licenses. (a) If a driver's license issued under the provisions of this act is lost or destroyed, or if a new name is acquired, the person to whom such driver's license was issued may obtain a replacement upon:

(1) Furnishing satisfactory proof of the loss, destruction or name change to the division, including an affidavit stating the circumstances of the loss, destruction or name change;

(2) payment of a fee of \$8; and

(3) furnishing proof of the person's identity as provided in subsection (b).

(b) For the purposes of obtaining a replacement driver's license, proof of a person's identity shall include at least two of the following documents, one of the documents shall bear the person's signature and one of the documents shall bear the person's age or one of the documents shall bear the person's signature and age:

(1) Military identification card;

(2) military dependent identification card;

(3) military discharge papers;

(4) military D.D. 214;

(5) an original or certified copy of a state issued birth certificate;

(6) marriage license;

(7) medicare identification card;

(8) certified copy of court order specifying a change of name of the person;

(9) commercially produced school yearbook with photograph of the person, and the book is less than five years old;

(10) a passport issued by any country;

(11) alien registration documents;

(12) expired or current driver's license or identification card issued by the Kansas division of vehicles or an expired or current driver's license or identification card of another state issued by similar authority, and for any document in this item (12) the document must bear a photograph of the person;

(13) student identification card bearing the photograph of the person;

(14) employee identification card bearing the photograph of the person;

(15) a birth certificate issued by any country;

(16) a copy of any federal or state income tax return bearing the signature of the person; or

(17) an identification certificate issued by the department of corrections to an offender under the supervision of the secretary of corrections.

(c) The division may waive the furnishing of one of the documents required by subsection (b) in the case of: (1) A person who is 65 or more years of age; or (2) an inmate

who has been released on parole, conditional release or expiration of the inmate's maximum sentence. When additional clarification is needed to adequately describe any of the above items, the division shall specify such clarification in making the requirement for such item.

(d) In lieu of providing one of the documents required by subsection (b), a person may recite to the satisfaction of the driver's license examiner the recent motor vehicle operating record of the person.

(e) Any person who loses a driver's license and who, after obtaining a replacement, finds the original license shall immediately surrender the original license to the division.

History: L. 1937, ch. 73, § 13; L. 1949, ch. 104, § 17; L. 1959, ch. 49, § 14; L. 1972, ch. 26, § 1; L. 1975, ch. 36, § 17; L. 1983, ch. 32, § 1; L. 1984, ch. 36, § 1; L. 1988, ch. 46, § 1; L. 1990, ch. 42, § 3; L. 1992, ch. 310, § 2; L. 1994, ch. 24, § 2; L. 1997, ch. 36, § 2; Jan. 1, 1998.

[Home](#) > [Statutes](#) > Statute

[Previous](#)

[Next](#)

8-1324

Chapter 8.--AUTOMOBILES AND OTHER VEHICLES

Article 13.--MISCELLANEOUS PROVISIONS

8-1324. Nondriver's identification card; application for; proof of age, identity and lawful presence; fees. (a) Any resident who does not hold a current valid Kansas driver's license may make application to the division of vehicles and be issued one identification card, certified by the registrant and attested by the division as to true name, correct age, photograph and other identifying data as the division may require.

(b) An applicant who submits documentary evidence under subsection (a), issued by an entity other than a state or the United States shall also submit such proof as the division may require that the applicant is lawfully present in the United States. For the purposes of obtaining any identification card, an applicant shall submit, with the application, proof of age or proof of identity, or both, as the division may require. An applicant shall submit the applicant's social security number, which shall remain confidential and shall not be disclosed, except as provided pursuant to K.S.A. 74-2012, and amendments thereto. If the applicant does not have a social security number, the applicant shall submit a sworn statement, with the application, stating that the applicant does not have a social security number. The division shall assign a distinguishing number to the identification card. If the applicant is applying for an identification card and the applicant otherwise meets the requirements for such card, the applicant shall receive a temporary identification card until the division verifies all facts relative to such applicant's right to receive an identification card, including the age, identity, social security number and residency of the applicant.

(c) The division shall not issue an identification card to any person who is not lawfully present in the United States nor to any person who holds a current valid Kansas driver's license unless such driver's license has been physically surrendered pursuant to the provisions of subsection (e) of K.S.A. 8-1002, and amendments thereto.

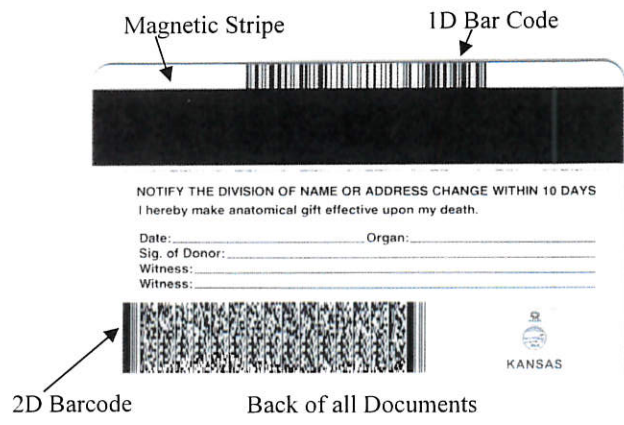
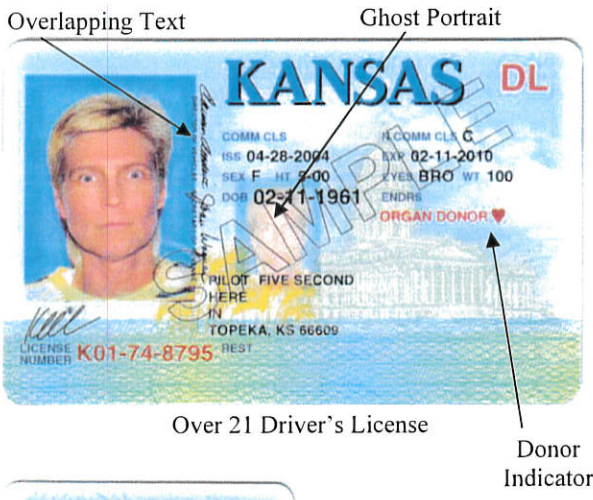
(d) The parent or guardian of an applicant under 16 years of age shall sign the application for an identification card submitted by such applicant.

(e) The division shall require payment of a fee of \$14 at the time application for an identification card is made, except that persons who are 65 or more years of age or who are handicapped, as defined in K.S.A. 8-1,124, and amendments thereto, shall be required to pay a fee of only \$10.

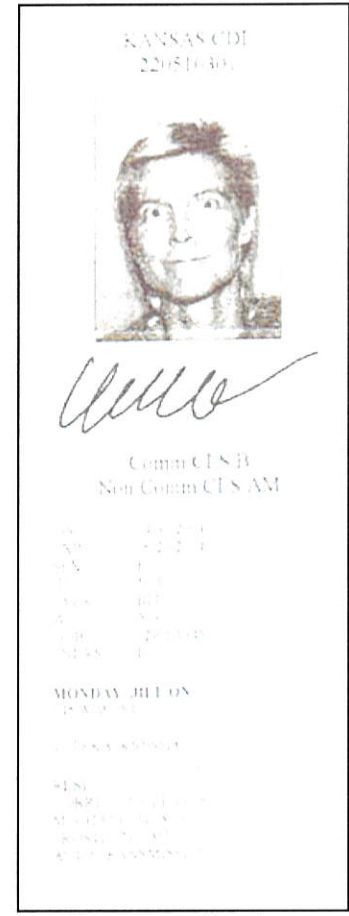
(f) For the purposes of K.S.A. 8-1324 through 8-1328, and amendments thereto, a person shall be deemed to be a resident of the state if:

- (1) The person owns, leases or rents a place of domicile in this state;
- (2) the person engages in a trade, business or profession in this state;
- (3) the person is registered to vote in this state;
- (4) the person enrolls the person's child in a school in this state; or
- (5) the person registers the person's motor vehicle in this state.

History: L. 1973, ch. 31, § 1; L. 1983, ch. 39, § 1; L. 1986, ch. 36, § 12; L. 1990, ch. 42, § 4; L. 2000, ch. 179, § 15; L. 2003, ch. 5, § 3; L. 2003, ch. 158, § 2; L. 2004, ch. 155, § 3; July 1.



- Each card is laminated with a tamper resistant coating that increases the card's security and durability. The front laminate shows a pattern of the Kansas State Seal that changes color as the document is tilted for viewing. Printed data overlaps the digital photo and ghost portrait image.
- The 1D and 2D barcodes and Magnetic Stripe on the back of each document contain text data from the front of the card.
- All documents issued to individuals less than 21 years of age will be in the "vertical" format.



[Home](#) > [Statutes](#) > Statute

[Previous](#)

[Next](#)

8-240

Chapter 8.--AUTOMOBILES AND OTHER VEHICLES

Article 2.--DRIVERS' LICENSES

8-240. Drivers' licenses and instruction permits; application for; proof of age and identity; proof of lawful presence; examination tests; reexamination; drivers' records; fees; late application penalties. (a) Every application for an instruction permit shall be made upon a form furnished by the division of vehicles and accompanied by a fee of \$2 for class A, B, C or M and \$5 for all commercial classes. Every other application shall be made upon a form furnished by the division and accompanied by an examination fee of \$3, unless a different fee is required by K.S.A. 8-241, and amendments thereto, and by the proper fee for the license for which the application is made. If the applicant is not required to take an examination the examination fee shall not be required. The examination shall consist of three tests, as follows: (1) Vision; (2) written; and (3) driving. If the applicant fails the vision test, the applicant may have correction of vision made and take the vision test again without any additional fee. If an applicant fails the written test, the applicant may take such test again upon the payment of an additional examination fee of \$1.50. If an applicant fails the driving test, the applicant may take such test again upon the payment of an additional examination fee of \$1.50. If an applicant fails to pass all three of the tests within a period of six months from the date of original application and desires to take additional tests, the applicant shall file an application for reexamination upon a form furnished by the division, which shall be accompanied by a reexamination fee of \$3, except that any applicant who fails to pass the written or driving portion of an examination four times within a six-month period, shall be required to wait a period of six months from the date of the last failed examination before additional examinations may be given. Upon the filing of such application and the payment of such reexamination fee, the applicant shall be entitled to reexamination in like manner and subject to the additional fees and time limitation as provided for examination on an original application. If the applicant passes the reexamination, the applicant shall be issued the classified driver's license for which the applicant originally applied, which license shall be issued to expire as if the applicant had passed the original examination.

(b) (1) For the purposes of obtaining any driver's license or instruction permit, an applicant shall submit, with the application, proof of age or proof of identity, or both, as the division may require. An applicant shall submit the applicant's social security number, which shall remain confidential and shall not be disclosed, except as provided pursuant to K.S.A. 74-2012, and amendments thereto. If the applicant does not have a social security number, the applicant shall submit a sworn statement, with the application, stating that the applicant does not have a social security number. The division shall assign a distinguishing number to the license or permit. If the applicant is applying for an instruction permit or driver's license and the applicant otherwise meets the requirements for such license, the applicant shall receive a temporary license or instruction permit until the division verifies all facts

relative to such applicant's right to receive an instruction permit or driver's license, including the age, identity, social security number and residency of the applicant.

(2) An applicant who submits proof of age or of identity issued by an entity other than a state or the United States shall also submit such proof as the division may require that the applicant is lawfully present in the United States.

(3) The division shall not issue any driver's license to any person who is not lawfully present in the United States.

(4) The division shall not issue any driver's license to any person who is not a resident of the state of Kansas, except as provided in K.S.A. 8-2,148, and amendments thereto.

(5) The parent or guardian of an applicant under 16 years of age shall sign the application for any driver's license submitted by such applicant.

(c) Every application shall state the name, date of birth, sex and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has been licensed as a driver prior to such application, and, if so, when and by what state or country. Such application shall state whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation or refusal. In addition, applications for commercial drivers' licenses and instruction permits for commercial licenses must include the following: The applicant's social security number; the person's signature; the person's color photograph; certifications, including those required by 49 C.F.R. 383.71(a), effective January 1, 1991; a consent to release driving record information; and, any other information required by the division.

(d) When an application is received from a person previously licensed in another jurisdiction, the division shall request a copy of the driver's record from the other jurisdiction. When received, the driver's record shall become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.

(e) When the division receives a request for a driver's record from another licensing jurisdiction the record shall be forwarded without charge.

(f) A fee shall be charged as follows:

(1) For a class C driver's license issued to a person at least 21 years of age, but less than 65 years of age, \$18;

(2) for a class C driver's license issued to a person less than 21 years of age or 65 years of age or older, or a farm permit, \$12;

(3) for a class M driver's license issued to a person at least 21 years of age, but less than 65 years of age, \$12.50;

(4) for a class M driver's license issued to a person less than 21 years of age or 65 years of age or older, \$9;

(5) for a class A or B driver's license issued to a person who is at least 21 years of age, but less than 65 years of age, \$24;

(6) for a class A or B driver's license issued to a person less than 21 years of age or 65 years of age or older, \$16; or

(7) for any class of commercial driver's license, \$18.

A fee of \$10 shall be charged for each commercial driver's license endorsement, except air brake endorsements which shall have no charge.

If one fails to make an original application or renewal application for a driver's license within the time required by law, or fails to make application within 60 days after becoming a resident of Kansas, a penalty of \$1 shall be added to the fee charged for the driver's license.

(g) Any person who possesses an identification card as provided in K.S.A. 8-1324, and amendments thereto, shall surrender such identification card to the division upon being issued a valid Kansas driver's license or upon reinstatement and return of a valid Kansas driver's license.

History: L. 1937, ch. 73, § 7; L. 1938, ch. 13, § 1; L. 1949, ch. 104, § 11; L. 1955, ch. 51, § 1; L. 1958, ch. 48, § 1 (Budget Session); L. 1959, ch. 49, § 7; L. 1963, ch. 402, § 3; L. 1969, ch. 52, § 1; L. 1973, ch. 30, § 1; L. 1975, ch. 36, § 13; L. 1982, ch. 42, § 1; L. 1986, ch. 38, § 1; L. 1990, ch. 42, § 1; L. 1990, ch. 42, § 2; L. 1990, ch. 43, § 1; L. 1990, ch. 43, § 2; L. 1991, ch. 36, § 9; L. 1993, ch. 154, § 5; L. 1996, ch. 14, § 1; L. 1996, ch. 219, § 1; L. 1997, ch. 36, § 1; L. 2000, ch. 179, § 10; L. 2003, ch. 5, § 1; L. 2003, ch. 158, § 1; L. 2004, ch. 155, § 1; July 1.