

PUBLICATION

Changes to I-9 Acceptable Documents, New I-9 and Handbook Effective February 2, 2009

December 23, 2008

Effective February 2, 2009, USCIS has amended the I-9 rules concerning the boxes a worker must check about status and concerning what documents an employer can and must accept from workers to verify their identity and employment authorization at the time of hire. The new I-9 will split the box to assert citizenship or nationality into two boxes. Expired documents are no longer acceptable for any purpose. In addition, USCIS has added some documents to and removed other documents from the list.

Citizenship and Nationality Split Out

Form I-9 first requires the worker to provide brief biographic information and to check a box asserting his or her immigration status. Before, the first box stated "A Citizen or National of the United States." The new I-9 will split that into two boxes, for a total of four boxes, so that a worker must check that he is one of the following: U.S. citizen, U.S. national, U.S. permanent resident, or alien otherwise authorized to work.

This has far more significance than it first appears. A worker who was not a citizen or national but had previously checked the combined box could argue, in some enforcement proceeding, that he had meant he was a national rather than a citizen. He would do this in order to avoid being found to have made a "false claim to U.S. citizenship," because a false claim to citizenship carries the harsh penalties of making one permanently inadmissible and permanently deportable with no waiver (other than possible "cancellation of removal" -- a very limited remedy). The law is so harsh because it has been relatively easy to make such a claim, and heavy penalties were seen as necessary to deter false claims to such a helpful status.

Now a worker who checks the "U.S. citizen" box will be subject to those harsh penalties. It would seem that USCIS might have emphasized those penalties in making this I-9 change, but it did not. Also it would seem that USCIS might have instructed employers to inquire further when a worker makes a claim to the relatively rare status of "U.S. national," but it did not, and the prospect remains that unauthorized aliens could use false documents, check the "U.S. national" box, and avoid the harshest penalties of false claim to citizenship.

[Click here to read more on this alert.](#)