

The Green Card

Welcome to the Newsletter of the FBA's Immigration Law Section

LARRY BURMAN, SECTION CHAIR

Quote of the Month

"If you wish in the world to advance ...
your merits you're bound to enhance ...
you must stir it and stump it
and blow your own trumpet
Or, trust me, you haven't a chance. "

Sir William Gilbert



From the Editor

Well, the Green Card is moving along. Please send your contributions, news items, etc. This is YOUR Section newsletter, so express yourself!

The biggest event of the ILS year is rapidly approaching. And by that, I mean the Memphis TN immigration seminar (May 18-19, 2012). This year you will have to choose between a night at the International BBQ Festival, and a fabulous river cruise, with great food and name entertainment. The menu is a Chinese/Southern Home-style buffet—is that international enough? Get your registration in quickly; attendance is limited to 400. Unfortunately our FBA block of rooms at the Marriott is full, but check the FBA/ ILS website

for alternate hotels, and the seminar brochure.

Incidentally, Section members are always needed for panels and presentations. If you would like to participate next year, contact Barry Frager in September.

The annual meeting of the Section will be held in Memphis on Saturday, May 19, 2012 at 4:30 pm. If you are in Memphis for the seminar (as you should be!), please attend. We will nominate officers for the coming year (starts October 1), and transact any other business that comes before the meeting.



News You Can Use

Newark NJ – The Immigration Court has moved, to another floor in the same building. The new address is 970 Broad Street, Room 1200, Newark, NJ 07102.

Washington DC - Section member, immigration genius, and our regular columnist, Hon. Paul W. Schmidt, has accepted appointment as adjunct professor of immigration law at Georgetown University Law School.

Send your "News You Can Use" notices to Larry Burman at lburman@aol.com. ◆

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Reforming Illegal Immigration One Social Security Number at a Time: E-Verify 101

EILEEN M.G. SCOFIELD AND KYLE R. WOODS

The recently-enacted Georgia Illegal Immigration Reform and Enforcement Act of 2011, or IIREA (formerly Georgia HB 87), is the further spread of E-Verify at a state level. The purpose of this article though is to assist all employers in understanding their obligations under E-Verify.

E-Verify is an internet-based system operated by U.S. Citizenship and Immigration Services (USCIS) in partnership with the Social Security Administration. The service allows employers to enter information regarding new hires into the online database and receive confirmation that a person is or is not authorized to work in the United States. Since IIREA will eventually require all employers in Georgia with more than 10 employees to use E-Verify for new hires, a summary of the E-Verify process will prove useful.

E-VERIFY 101

The first step in using E-Verify is to enroll. Enrollment involves entering into a Memorandum of Understanding (MOU) with USCIS. The MOU is a non-negotiable form document outlining the rules and procedures of E-Verify, and it is available on the USCIS website. Enrollment takes only a few minutes, and the MOU can be signed electronically during the online enrollment process.

Once enrolled, employers must begin using E-Verify for all new hires. E-Verify operates in tandem with the traditional I-9 process and does *not* replace the employer's need to retain completed I-9 forms. After completing the I-9, the employer must input the employee's I-9 data into the online E-Verify system. This must be done within three days of hiring a new employee.

Generally within seconds of submitting the I-9 data, the employer will receive either a confirmation, a social security tentative nonconfirmation (TNC), or a Department of Homeland Security verification notification. A confirmation indicates that the employee is authorized to work, and the employer can close the E-Verify case at this point. Similarly, a DHS notification is handled by the department of homeland security and requires no further employer action. If a TNC is issued, however, the employer must take additional steps.

In the event of a TNC, the employer must notify the employee as soon as possible. E-Verify provides a notification form. The employee may then decide whether or not to contest the TNC and should sign the notice form. If the employee does not contest the TNC, the employer may close the E-Verify case and may terminate the employee with no civil or criminal liability.

If the employee decides to contest the TNC, the employer must not terminate the employee while the case is

outstanding. The employee should be referred to the Social Security Administration (SSA). The employee then has eight business days to contest the TNC with the SSA. When this is finished, the SSA will either issue a confirmation or a final nonconfirmation (FNC). Either response allows the employer to close the case, and an FNC allows the employer to terminate the employee with no civil or criminal liability. In some instances, the SSA will refer the case to the DHS, and in those circumstances, the employer will be notified of additional steps to be taken.

The final step is to resolve and close the case in the E-Verify system by filling out the online form and indicating the results. This is used for statistical and enforcement purposes by E-Verify.

TOP FIVE E-VERIFY PITFALLS

There are several mistakes that employers (particularly first-time users) are likely to make when using E-Verify. Here are five mistakes to avoid:

1. Forgetting to follow standard I-9 procedures. Remember that E-Verify is no substitute for maintaining your I-9 form, and you can still be subject to fines for failure to complete and maintain I-9 forms as required.
2. Using E-Verify as a screening tool. It is forbidden to use E-Verify to screen potential hires. You may only open an E-Verify case for someone you have actually hired.
3. Failure to terminate after an FNC. E-Verify shares its information with Immigration and Customs Enforcement (ICE), and if you fail to terminate an employee (and indicate this in the case resolution), it is highly likely that an ICE officer may contact you to audit your employment compliance.
4. Failure to close your E-Verify case. This is an important step in the process, and it is easy to overlook.
5. Using E-Verify on existing employees. This is *not allowed* unless your company is a contractor with the federal government *and* your federal contract has specific language requiring verification of existing employees. Therefore, to ensure a case has been closed, the employer must follow E-Verify prompts to close the case affirmatively.

Additional information is available at www.uscis.gov. ♦

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*Published by the Immigration Law Section of
the Federal Bar Association*

*1220 N. Fillmore St., Suite 444
Arlington, VA 22201*