

Immigrant and Employee Rights Section

Avoiding unlawful discrimination under the INA's anti-discrimination provision



U.S. Department of Justice

Civil Rights Division

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January 9, 2025



IER Employer Hotline

1-800-255-8155

Monday – Friday, 9am-5pm Eastern Time

Calls can be anonymous and language services are available.

1-800-237-2515 TTY

[justice.gov/ier](https://www.justice.gov/ier)

Prohibited actions under the INA's anti-discrimination provision 8 U.S.C. § 1324b

- **Citizenship or immigration status discrimination** in hiring, firing, and recruitment
- **National origin discrimination** in hiring, firing, and recruitment
- **Unfair documentary practices** - Treating workers differently when checking their permission to work in the U.S. (such as in the Form I-9 or E-Verify processes) based on citizenship, immigration status, or national origin.
- **Retaliation** for raising concerns

Other federal and state laws might also prohibit discrimination based on citizenship, immigration status, or national origin.

Citizenship status discrimination under the INA

Generally, employers cannot treat people differently in hiring, firing, or recruitment because of their citizenship status.

Is preference in hiring based on citizenship status ever permissible under the INA?

Yes. For example:

- When required by law, regulation, executive order, government contract
- With unprotected individuals, such as those without work authorization and those requiring sponsorship

Other federal and state laws might provide additional protection from discrimination based on citizenship or immigration status.

May I ask job applicants for citizenship or immigration status information?

Generally, an employer may ask job applicants if they have the legal right to work in the United States and if they will need sponsorship for an employment visa.

Best practice

Avoid asking job applicants for their citizenship or immigration status. It may lead to discrimination or cause unsuccessful applicants who are subjected to these types of questions to believe that the employer based its decision on the applicant's citizenship status (which includes immigration status).

National origin discrimination under the INA

- Employers are not allowed to treat people differently in hiring, firing, or recruitment because of their place of birth, first language, accent, or other national origin indicator.
- IER investigates national origin claims that fall outside of the Equal Employment Opportunity Commission's jurisdiction. Generally, 4-14 employees.

Best practices for hiring and recruiting

- Treat workers consistently in recruiting and hiring regardless of their citizenship or immigration status, except in the limited situation where a law, regulation, executive order, or government contract requires you to consider candidates with certain citizenship statuses.
- Treat workers consistently in recruitment and hiring, without regard to their actual or perceived national origin.
- Don't assume that only U.S. citizens are authorized to work. Many non-U.S. citizens have permission to work in the United States.
- Don't create unnecessary hurdles for work-authorized individuals who may not have received a Social Security number yet, including some newly-arrived lawful permanent residents and workers granted refugee status.

Unfair documentary practices

Employers must follow Form I-9 and E-Verify rules consistently, regardless of a worker's citizenship, immigration status, or national origin.

May I ask for proof of a worker's specific immigration status in the Form I-9 process?

No.

Best Practice

Don't ask workers to prove their USCIS/A number, citizenship, or immigration status when they complete the Form I-9.

May I specify what documentation a worker presents to prove their permission to work in the Form I-9 process?

No. Requesting a specific document based on a worker's citizenship, immigration status, or national origin might violate the INA's antidiscrimination provision.

Best Practice

Allow all employees to show their choice of acceptable documentation for the Form I-9 process. Call USCIS or IER with questions on documentation you're not sure about.

Common document questions

Employment Authorization Document extensions

- Some EADs are eligible for extensions
- There are different kinds extensions, and the rules vary
- For some EAD extensions, it's not necessary to show additional documentation
- For other kinds of EAD extensions, it's necessary to show an *I-797 Receipt Notice* or *I-797 Notice of Continued Evidence of Work Authorization*



uscis.gov/eadautoextend

Some examples of Forms I-94 – not exhaustive

Type of Form I-94	I-94 issued to someone granted refugee status	I-94 issued to someone granted asylum	Lawful permanent resident I-94	Afghan and most Ukrainian humanitarian parolee I-94s	I-94 issued to humanitarian parolees from other countries
Form I-9 use?	List A receipt	Permanent List C	List A receipt	List A receipt	Not valid for Form I-9
How long is this document valid?	90 days	Doesn't expire	Until expiration date, or one year from admission if no expiration date	90 days	N/A
What must the worker present at the end of the validity period (if applicable)?	An unexpired EAD or a combination of a valid List B document and an unrestricted Social Security card	N/A	The actual Form I-551 (Permanent Resident Card)	An unexpired EAD (the parolee may have a List B, but wouldn't likely have an unrestricted Social Security card)	N/A

Retaliation

People who:

- File charges with IER
- Cooperate with an IER investigation
- Oppose what they reasonably believe are violations of the law IER enforces,
- Or otherwise assert their own or others' rights under the INA's antidiscrimination provision

are protected from intimidation, threats, coercion, and retaliation.



Employer Fact Sheet

How to Avoid Discrimination in the Form I-9 and E-Verify Processes

This fact sheet discusses how you, as an employer, can avoid discrimination during the process of verifying an employee's permission to work in the United States.

Employers verify employees' identity and permission to work by completing the Form I-9.

Some employers also use the E-Verify program. Employers that use E-Verify create E-Verify cases after completing the Form I-9 for an employee.

Federal law requires you to follow Form I-9 and E-Verify rules **consistently**, regardless of an employee's citizenship, immigration status, or national origin. This anti-discrimination law is found at [8 U.S.C. § 1324b](https://www.uscourts.gov/8-U.S.C.-1324b).



What's in this Document

1. **Completing the Form I-9**
 - a. Your employee completes Section 1
 - b. You complete Section 2
 - c. Some less common acceptable Form I-9 documents
 - d. You complete Supplement B for reverification and rehire (when needed)
2. **Using E-Verify**



Contact

For questions about this fact sheet, call the Civil Rights Division's **Immigrant and Employee Rights Section** at

1-800-255-8155



Employer Fact Sheet

How to Avoid Discrimination When Hiring Workers Granted Asylum or Refugee Status

This fact sheet provides information on employment rights that someone granted asylum or refugee status has and how employers can avoid unlawfully discriminating against these workers.

An employer that discriminates based on someone's citizenship, immigration status, or national origin might violate the Immigration and Nationality Act's anti-discrimination provision. This law is found at [8 U.S.C. § 1324b](https://www.uscourts.gov/8-U.S.C.-1324b).



What's in this Document

1. **Background on workers granted asylum or refugee status**
2. **Protections against citizenship status discrimination**
3. **Completing the Form I-9 for workers granted asylum or refugee status**
 - *Form I-9 Section 1*
 - *Form I-9 Section 2*
 - *Information on documentation workers granted asylum or refugee status might have*
 - *Reverification information*
4. **Workers granted asylum or refugee status can work while they wait for a Social Security number**



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