



CATHOLIC LEGAL IMMIGRATION NEWS

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Immigrant Access to Ten Pitfalls to Avoid with the Affidavit of Support Hassles and Hazards

By Karen A. Herrling

As an advocate for immigrant workers, I am often asked to help calculate the immigration-related risks they face on a regular basis. Some of the questions I often get include:

- If I apply for an Individual Tax Identification Number (ITIN), will I become a target of an immigration investigation?
- If I complain about a wage violation, will my employer fire me?
- If I give my employer my new, valid Social Security number, will my employer demote or terminate me?

As you well know, these questions are not easy to answer. I usually look at current law and policy, and the individual's personal situation to provide the best advice.

In recent months, the predominant question has been: "I need a driver's license to get to work, buy groceries, and bring my children to school. Should I attempt to get one at my local Department of Motor Vehicles?" As shown below, the current law, current conditions, and anecdotal information from advocates around the country, strongly suggests that the risk to undocumented immigrants is significant.

Current Law. Historically, it is states – not the federal government – that have regulated who is eligible to receive a driver's license and how they are is-

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By Charles Wheeler

In mid-July the USCIS finalized its regulations governing the affidavit of support. The new forms (I-864, I-864EZ, I-864A, and I-864W) are now required to be used in all family-based immigrant visa cases, as well as some employment-based cases. While the agency must still resolve some important issues that have resulted from these changes, we are now at a point where we can make some suggestions on how to complete the forms and avoid common pitfalls.

#1. Don't File the I-864 When It's Not Required. The agency has created a new Form I-864W that can be filed in lieu of an affidavit of support in cases where the intending immigrant has either gained 40 "qualifying quarters" or can be credited with them from a spouse or parent. The intending immigrant can only earn quarters by posting wages to a valid social security account in his or her name. This is not the same as an Individual

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NEWS FROM THE CATHOLIC NETWORK

BIA Accreditations. Glenda Bunce, Program Director, Catholic Charities Immigration Services, Diocese of Charleston, SC, reports that Ms. Micaela Montes, Immigration Caseworker, received her first-level BIA accreditation in October 2006.

New Staff. Ms. Bunce also advised that Mendi Drayton, law school graduate, has joined their Greenville office of Catholic Charities Immigration Services.

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sued. However, this historical reality changed with the passage of the REAL ID Act in May of 2005. While states are still responsible for issuing driver's licenses, this new law mandates requirements and standards that all states must follow and implement by May 2008. A state may opt out of implementing this new law, but if it does, its driver's licenses cannot be used to used for "federal purposes," like entering a federal building or boarding an airplane.

Two requirements from the REAL ID Act have significant bearing on the question of what risks undocumented immigrants face if they attempt to obtain a driver's license. First, each state's Department of Motor Vehicles (DMV) must establish "fraudulent document recognition training programs" for employees engaged in the issuance of drivers licenses. This means, theoretically, that employees in every state DMV office across the nation will receive training on how to spot phony or counterfeit documents.

Second, under the REAL ID Act, documents that individuals present to prove identity, date of birth, social security number (SSN), address of principal residence, U.S. citizenship, immigration status, and extension of immigration status, must be verified with the agency that issued that document. This means that by May 2008, DMV employees in all 50 states and the District of Columbia will need to contact agencies like the Department of State, Social Security Administration (SSA), and Department of Homeland Security (DHS), as well as local agencies, to check the validity and completeness of documents they have issued over the years. For instance, employees will need to contact SSA to verify SSNs or ineligibility for a SSN. Employees will need to contact the Department of State to verify the issuance of a passport. Employees will need to contact DHS to verify immigration status and expiration of visas. And, employees will need to contact local state agencies and companies to verify birth certificates, as well as documents that prove an individual's principal residence.

Legislation by states has also increased risks to undocumented immigrants who attempt to apply for a driver's license. Many states in recent years have passed legalization that tightens requirements and curtail the number of documents that can be used to show identity and residency. For instance, both the District of Columbia and South Dakota require a SSN for a driver's license without exception. Forty-seven states require a SSN for a driver's license only from applicants who have been assigned one or are eligible for one. Twenty-five states have lawful presence requirements. Twenty six states require that the driver's license expire on the same date as the applicant's lawful immigration status.

Current Conditions. Along with the current laws that impose stringent standards and restrictions on driver's licenses, undocumented immigrants should consider other recent anti-immigrant laws, as well as the increased level

of enforcement by federal authorities. For example, on October 26th, President George W. Bush signed a bill authorizing 700 miles of new fencing along the nearly 2,000-mile US-Mexico border. Additionally, Immigration and Customs Enforcement (ICE) has increased I-9 inspections of employers, and has brought 445 criminal charges against employers in the first 10 months of FY2006, compared to 25 in FY2002.

This federal anti-immigrant stance is also reflected in legislation implemented by the states. For instance, in Arizona one must be a U.S. citizen or have legal immigrant status to obtain health benefits. Undocumented immigrants can receive only emergency care. In Georgia, all employers must verify the legal status of employees hired on or after January 1, 2008 in order to claim a state income tax deduction on such employees' salaries. In Texas, businesses are prohibited from deducting the costs of salaries and benefits for undocumented workers from their taxable revenue. In Tennessee, businesses that knowingly employ illegal immigrants are barred from obtaining state contracts for a year. In Pennsylvania, undocumented immigrants are prohibited from working on state projects. And, earlier this year, a number of states pledged to send National Guard troops to the U.S./Mexico border. Some of these states include: Arkansas, California, Connecticut, Delaware, Kentucky, Minnesota, Montana, New Jersey, New Mexico, New York, North Carolina, South Dakota, Tennessee, Virginia, and Wisconsin.

Anecdotal Information. Low wage immigrant rights advocates agree that immigrants have experienced more and more difficulties trying to obtain driver's licenses. As noted below, in many states, undocumented immigrants are being arrested and prosecuted for presenting and/or using false documents. Additionally, legal immigrants are experiencing more hassles and problems because clerks at state DMV offices reject documents they present or ask for additional documents and additional translations. Some immigrants have been threatened with deportation and many have been denied licenses for no apparent reason.

Below are comments from low wage immigrant advocates in states around the country:

- In North Carolina, any use of any false documents such as a false SSN or any other false ID is likely to result in a felony arrest.
- In New York State (not necessarily New York City), undocumented immigrants run the risk of being arrested for presenting and using noticeably false documents.
- In Ohio, many undocumented immigrants are arrested at DMV offices for presenting false documents. According to one Ohio advocate, these cases are treated much more harshly now than five years ago.

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"Individuals are now mostly charged with a state felony offense whereas five years ago it was usually charged as a misdemeanor. Also, the number of cases has skyrocketed over the last few years as it is one of the easiest ways to place undocumented individuals into removal proceedings."

- In New Jersey, a legal immigrant was arrested and taken to jail because the local DMV office thought that her documents looked phony.
- In Arizona, an LPR with an expired green card tried to get a commercial license and was told he was illegal and the local DMV office threatened to call ICE or the police and his employer.
- In Tennessee, the local DMV office is questioning the validity of the documents presented. One advocate noted that two of her clients had their valid documents confiscated because the clerks believed that were fakes. And, in one of the cases, the client was threatened with arrest.
- In Indianapolis, immigrant applicants are being turned away if their documents do not measure up. The advocate mentioned that in Indiana, applicants must have a SSN.
- In Mississippi, clerks at the local DMV offices reject the certified translation of many immigrants' birth certificates and they are told that they must go to a specific department of a specific university in Jackson, Mississippi to obtain for a new translation. Also, despite producing a certified copy of the birth certificate and a certified translation, the clerks still insist that a passport is needed. Additionally, in Mississippi legal documents such as an EADs are scrutinized and presumed false. Further, immigrant applicants are repeatedly questioned about how they obtained their documents.

Conclusion. As you are aware, state DMV offices have begun scrutinizing and checking to ensure that the documents presented to clerks for a driver's license are genuine. While this type of scrutiny exists now, it will become even more thorough and complete with the full implementation of the REAL ID Act in May 2008. As noted above, REAL ID imposes fraudulent document recognition training for all employees who issue driver's licenses. And, REAL ID's document verification requirement mandates that documents be checked with the issuing authority. This means that false documents used and presented by individuals will most likely be ferreted out and individuals subjected to arrest and prosecution.

Undocumented immigrants who attempt to apply for a driver's license face a real risk that they will be arrested and charged with presenting and/or using false documents, which is usually both a federal and state crime. This is a risk that should not be taken lightly given the potentially harsh consequences.

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Taxpayer Identification Number (ITIN). For the last 20 years or so, only non-citizens who had INS/USCIS employment authorization were eligible for a social security number that allowed posting of earnings. However, once the account was opened and the social security card issued, wages that were earned when the non-citizen no longer had valid employment authorization were still able to be posted and counted toward qualifying quarters. The same is true of earnings posted to a fictitious account or someone else's account, if the worker subsequently obtained a valid account and unscrambled his or her past earnings to gain credit for them.

The worker can only earn four quarters per calendar year, but he or she is eligible to gain credit for all the quarters earned by the spouse during marriage, assuming the couple is still married. And children can gain credit for all the quarters earned by either or both parents up until the child turned 18 (including quarters earned before the child was born). Stepchildren can gain credit for quarters earned after the stepparent relationship was formed. After age 18, the child may still count those quarters, but he or she no longer gets credit for additional ones earned by the parents.

The other way for the intending immigrant to qualify for the I-864 exemption is to be a child (other than a stepchild) under 18 who will reside in the lawful custody of at least one U.S. citizen parent after immigrating. Pursuant to the Child Citizenship Act of 2000, these children will become U.S. citizens automatically upon acquiring lawful permanent resident (LPR) status.

Complete and file Form I-864W when the intending immigrant either has the necessary 40 qualifying quarters or will derive citizenship. If the former, submit a copy of the Social Security earnings report that shows total earnings. Since the amount of wages needed to earn one quarter for Social Security coverage has increased incrementally each year (in 2006 it is \$970), it may be necessary to refer to a table that lists the amount of wages needed for each corresponding year. To access such a table, go to this Web site: http://www1.dshs.wa.gov/esa/eazmanual/Sections/CitizenAppendix_IV.htm.

The intending immigrant is no longer obligated to submit a statement verifying that the worker did not receive a means-tested public benefit during any period when quarters were earned after January 1, 1997. The I-864W is to be signed by the intending immigrant, unless the child is under 14 and the parent is a U.S. citizen. Remember that the I-864W is now required for VAWA self-petitioners and widow/widowers at the adjustment stage where prior practice did not require the filing of either an affidavit of support or exemption form.

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