

# ALERTS

## Immigration Update

### US EMPLOYERS NOW REQUIRED TO USE NEW I-9 FORM

MVA Immigration Team

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As of April 3, 2009 a new Form I-9 is required. The new form and handbook are available at <http://www.uscis.gov/i-9>.

Of special interest, the Handbook imposes a new requirement that H-1B employees who change employers must present a Form I-797 filing receipt for the new H-1B petition as evidence of employment authorization for I-9 purposes. This requirement is a departure from the longstanding practice of permitting "credible evidence" of the petition filed by the new employer, as the law permits the H-1B beneficiary to begin working for the new employer upon filing of the new petition. H-1B petitioners and intended beneficiaries should be aware that there may be delays in the issuance and mail delivery of the I-797.

The new Handbook also requires F-1 students who are authorized to work in the "cap gap" period between the expiration of an optional practical training period and the effective date of a change of status to H-1B to present a new Form I-20 along with evidence of a timely-filed H-1B petition and request to change status to demonstrate employment eligibility. The Handbook appears to conflict with a Student and Exchange Visitor Program (SEVP) Fact Sheet issued last month, which stated that an updated Form I-20 is not required for a student to continue working. According to agency instructions in the Handbook and in a guidance memorandum recently posted to the USCIS website, F-1 students authorized to work during the cap gap must present proof of a timely-filed H-1B petition and change of status, such as an express mail receipt and a copy of the petition, to their designated school officials (DSO) to obtain a cap-gap I-20. The initial updated I-20 will authorize the student's status and work authorization through June 1, 2009. If the H-1B petition is eventually accepted for processing by U.S. Citizenship and Immigration Services and a Form I-797 filing receipt is issued, the student will need to return to the DSO with a copy of the receipt to obtain a further updated I-20 showing a continued extension.

We look forward to assisting your business with its immigration needs. Please do not hesitate to call or email your *MVA Immigration Team contact* with any questions you may have.