



EMAIL BULLETIN

DELAYS IN ISSUANCE OF SOCIAL SECURITY NUMBERS

WHAT EMPLOYERS CAN DO WHEN FACED WITH DELAYS IN ISSUANCE OF SOCIAL SECURITY NUMBERS FOR PROSPECTIVE EMPLOYEES

28 March 2003

Since July 2002, the Social Security Administration (SSA) has required nonimmigrants seeking to obtain a Social Security Number (SSN) to provide documentary evidence of employment authorization. Further, the SSA has delayed issuance of Social Security Numbers pending confirmation of employment authorization by the U.S. Bureau of Citizenship & Immigration Services ("BCIS", formerly the INS).

In connection with this policy, on March 26, 2003, the SSA published a proposed rule providing for issuance of Social Security Numbers to only the following individuals: (1) U.S. Citizens; (2) U.S. Lawful Permanent Residents; (3) other individuals authorized for employment in the United States; and individuals who can demonstrate "a valid non-work reason" for issuance of a Social Security Number. Valid non-work reasons, according to the proposed regulations, include the need to satisfy Federal or State law requirements for Federally-funded benefits or State public assistance where eligibility for such benefits have been established.

The requirement that the SSA issue numbers only to individuals who are authorized for employment necessitates the verification with the BCIS of employment authorization, even when documentation evidencing employment authorization is presented to the SSA by the applicant in person. This means that the SSA must consult BCIS databases to determine whether a particular nonimmigrant is authorized for employment.

In the months since the SSA instituted this policy, applicants have complained of lengthy delays in obtaining SSNs. The SSA has informed applicants and the immigration bar that such delays result from the SSA's inability to confirm employment authorization by reference to BCIS databases. The problem appears to stem from delays in updating of BCIS databases by contractors responsible for data entry.

The SSA acknowledges that delays in issuance of SSNs can cause hardship and administrative difficulties for employees and employers alike. In an effort to minimize such difficulties, the SSA has developed internal mechanisms for providing assistance to employees waiting for SSNs. The SSA will do each of the following upon request and authorization by the applicant:

- Issue a notice acknowledging receipt of a non-citizen's SSN application while documents are being verified;
- Provide a non-citizen with a copy of his/her uncertified SSN application;
- Notify a non-citizen of the SSN assignment upon issuance prior to mailing and receipt of the Social Security Card;
- **Send a Notice to Third Party of Social Security Number Assignment on Form SSA-7028 to the non-citizen's employer or other interested third party. The Form SSA-7028 may be obtained and completed when applying in person for a Social Security Number.**

Additionally, it is important to emphasize that an employer need not wait for the issuance of an individual's SSN to complete the hiring process and place the individual on payroll as an employee. The Internal Revenue Service has provided instructions for withholding in such circumstances, IRS Publication 1679, A Guide to Backup Withholding for Missing and Incorrect Name/TINs, which may be found on the IRS web site at <http://www.irs.gov/pub/irs-pdf/p1679.pdf>. **While employers are permitted to have a policy requiring the production of valid SSNs in order to place someone on payroll, it is important to remember that such policies must be applied consistently to all prospective employees, not just those who are not or may not be U.S. Citizens or U.S. Lawful Permanent Residents.**