

# PUBLICATION

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## Certain B-1 Visa Holders Can Obtain TWIC for Port Access

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February 11, 2011

**Certain B-1 visa holders can now obtain Transportation Worker Identification Cards (TWIC) for unescorted access to secure ports, under an announcement recently made by the U.S. Department of Homeland Security's Transportation Security Administration (TSA) and the Department of State (DOS). The person must have an actual visa (i.e., not only visa waiver), and the visa must bear a special annotation reflecting that the person has shown an employer's need for port access.**

Increasingly, government programs enrolling people for identity, work, benefits, and access require the applicant to show documents establishing identity and appropriate immigration status. The Form I-9, required for every employer when hiring a worker in the U.S., is an example of this, and they require a showing of a work-authorizing immigration status. The Social Security Administration (SSA) requires proof of work-authorizing status to issue a social security card. Most state departments of motor vehicles in the U.S. require proof of identity and of a valid immigration status, though not necessarily work-authorizing status. Many federal and state welfare agencies require similar documents. Increasingly, agencies and employers are validating the identity and status against SSA and/or USCIS systems in the form of "E-Verify" (for employment) and "SAVE" (for government agency benefits). TSA conducts similar enrollment for certain "safe traveler" programs such as NEXUS and SENTRY.

Another example is TSA's requirement of proof of identity and status for enrollment for TWIC used for unescorted access to secure areas of certain U.S. port facilities. This reflects concern that someone might try to blow up a port, inject dangerous materials such as a "dirty bomb" into the stream of U.S. commerce, or interfere with detection of dangerous materials in shipments. TSA conducts a host of screening steps. In devising a regulation for the TWIC process, TSA wrestled with what kind of immigration status might be appropriate for such access.

TSA regulations categorically allow TWIC applications from the following list:

- U.S. citizens,
- Permanent residents, refugees, asylees, "nationals," and people from certain "compact states,"
- "Non-immigrants" with unrestricted work authorization (such as A, G, E or L spouse, J-2 spouse or child, K-3/K-4, N, NATO, S family, T, U, V, and Family Unity),
- Aliens with "temporary protected status" (under a waiver), and *Canadian and Mexican citizens with certain types of commercial driver's licenses.*

TSA regulations and subsequent policy statements list the following temporary visa classifications as potentially eligible:

- B-1 visitors with "Outer Continental Shelf" or "OCS" visa annotation,
- B-1/B-2 visitors with "TWIC letter received" visa annotation,
- C-1/D, E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, TN,
- F-1/M-1 students enrolled in certain maritime schools,
- R-1 religious workers sponsored by MARAD.

TSA requires an alien TWIC holder and his or her employer to retrieve and surrender a TWIC to TSA and notify TSA within 5 days if the alien's status expires or if the employment of a worker with employment-restricted immigration status ends.

Non-immigration agencies often misunderstand the nature of immigration documents, and the databases against which they seek to verify immigration status often are out of date or erroneous, sometimes requiring help by immigration counsel to resolve the matter.

## **How We Can Help**

Baker Donelson's Immigration Group regularly counsels employers on I-9 compliance. We perform private audits of I-9 documents, prepare compliance programs, and train managers and workers in implementing those programs. We evaluate particular questionable documents and situations. We help employers decide whether and how to create or store I-9 forms electronically, to use Social Security Administration's Number Verification System, or to participate in the Department of Homeland Security's "E-Verify" program. We defend sanctions actions by ICE for paperwork and "knowingly hire" violations of I-9 rules. We work with our strong Litigation Department to bring and defend claims against competitors based on employment of unauthorized aliens. We advise and defend employers and managers in the increasingly common criminal investigations and proceedings relating to employment of aliens. We coordinate our Team's services closely with our firm's well-respected Labor and Employment Law Group and with our firm's White Collar Crime Group. We provide advice and coordinate with U.S. and foreign preparers concerning U.S. taxation of international companies doing business in the U.S., and concerning the U.S. taxation of international workers placed in the U.S. and abroad.