

EMPLOYMENT OF NON-CITIZENS

1. Purpose

This directive establishes Department of Homeland Security (DHS) policy regarding employment of non-citizens.

2. Scope

The directive applies to all DHS organizational elements. Until such time as the DHS Office of the Chief Human Capital Officer establishes permanent, Department-wide policy regarding the employment of non-citizens, all DHS organizational elements may continue in force their existing policies and procedures with respect to the employment of non-citizens.

3. Authorities

This directive is governed by numerous Public Laws and Executive Orders, such as:

- A. 8 U.S.C. Sections 1324, 1401, 1409
- B. Appropriations Act Ban (last enacted as Section 605 of Public Law 106-67)
- C. Executive Order 11935

4. Definitions

A. **Appropriations Act Ban**: An annual, statutory ban [usually appearing in the Treasury and General Government Appropriations Act] that prohibits agencies from using appropriated funds to pay Federal employees in the continental United States, unless the employees are United States citizens or meet an exception.

B. **Citizens**: Individuals who were:

- 1. Born in the United States (the fifty states, the District of Columbia, Puerto Rico, Guam [since 1950], or the U.S. Virgin Islands);

2. Born outside the United States to parents who are citizens of the United States, one of which was physically present in the United States or one of its outlying possessions for a continuous period of one year at any time prior to the birth of the person (in some situations only one parent has to be a citizen);
 3. Naturalized as United States citizens; or,
 4. Otherwise granted citizenship under law.
- C. **Eligible non-citizens**: Individuals who are:
1. Authorized to live and work in the U.S. by the Immigration and Naturalization Service; and
 2. Nationals of a country specifically authorized by law to be employed by DHS.

5. Responsibilities

A. **DHS appointing authorities** are responsible for ensuring that non-citizens considered for employment in the competitive service meet the requirements of immigration laws; any appropriation act ban; and Executive Order 11935. DHS appointing authorities considering non-citizens for employment in the excepted service or Senior Executive Service must ensure compliance with immigration law and any appropriations act ban.

B. United States **Customs and Border Protection**, which provides personnel services for DHS Headquarters, shall:

1. Verify employment eligibility of all new employees by requiring the completion of Immigration and Naturalization Service (INS) Form I-9 (Employment Eligibility Verification) (copy attached) and checking employees' verification documents. INS Form I-9 is also available on <http://uscis.gov/graphics/formsfee/forms/index.htm>
2. Verify U.S. citizenship for individuals appointed to competitive service positions, consistent with the provisions of Executive Order 11935 and 5 CFR, Section 338.101.
3. Verify that non-citizens being considered for excepted service positions in the continental United States have appropriate authorization from the INS and meet one of the exemptions under the Appropriations Act Ban (see <http://www.opm.gov/employ/html/Citizen.htm#Citizens> for specifics).

6. Policy & Procedures

A. **Policy.**

1. DHS gives strong priority to hiring U.S. citizens and nationals, but may hire non-citizens in certain circumstances. When DHS considers non-citizens for Federal employment in the competitive service, it will follow usual selection procedures and meet the requirements of immigration law, the appropriations act ban on paying certain non-citizens, and executive order restrictions on appointing non-citizens in the competitive service.

2. When DHS considers non-citizens for Federal employment in the excepted service and senior executive service, it will meet the requirements of immigration law, the appropriations act ban on paying certain non-citizens, and any citizenship requirements that may appear in DHS' authorization and appropriations laws.

3. DHS may hire any eligible non-citizen into positions excepted from the appointment provisions of Title 5, United States Code, or from the competitive service (e.g., schedule A and Schedule B positions.) DHS cannot admit non-citizens/non-nationals to competitive examinations nor hire non-citizens/non-nationals to fill positions in the competitive service, except for situations where qualified citizens are not available and the requirements of 5 CFR, Section 316.601 are met. This restriction applies world-wide unless specific statutory authority otherwise applies.

B. **Procedures.** In cases where no qualified citizens are available to fill a competitive service position, DHS may request from the Office of Personnel Management (OPM) approval to remove the position from the competitive service and fill it with an eligible non-citizen. The request should contain thorough justification as to why a U.S. citizen cannot be hired to fill the position (including a detailed description of their efforts to recruit qualified U.S. citizens). In cases where OPM grants approval, the position remains in the excepted service for the duration it is filled by the eligible non-citizen. Non-citizens appointed in this manner do not acquire competitive status and may not be promoted or moved to other positions in the competitive service.

C. **Questions or Concerns Regarding the Process.** Any questions regarding legal authorities that pertain to the employment of non-citizens should be directed to the Office of the General Counsel.