



West Virginia Public Employees Insurance Agency Guidance on the enrollment of non-U.S. citizens in coverage

Revised December 13, 2024

This document is designed and intended to provide guidance and reference to employers that participate in PEIA under West Virginia Code §5-16-2 and their agency Benefit Coordinators, as well as their current and prospective employees, as it relates to the enrollment of non-U.S. citizens into PEIA coverage. It is intended to be used as a reference and not intended as legal advice nor is it intended to replace the advice of your Agency legal Counsel. This document was developed using applicable State and Federal law including, but not limited to: the United States Department of State; the United States Department of Homeland Security Citizenship and Immigration Services, and; the United States Internal Revenue Service citations with their corresponding web links provided. The links in this document were validated and working as of July 22, 2024.

It is important to note that not every possible situation nor scenario can be addressed in this guidance and for issues not addressed in this guidance you are encouraged to contact your assigned PEIA Eligibility Specialist.

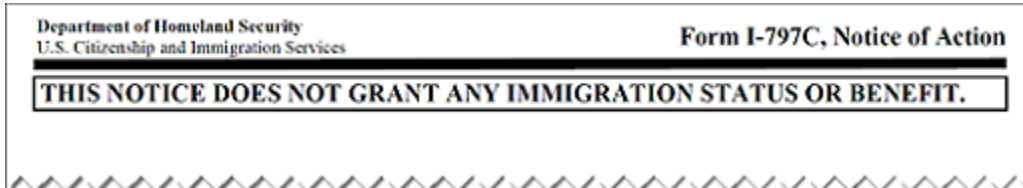
OVERVIEW AND GUIDANCE

- 1) PEIA is subject to audit by the U.S. Citizenship and Immigration Service (U.S. C.I.S.) for compliance with applicable federal law and we cannot issue insurance(s) to persons who are not in the United States legally. As the State of West Virginia is the "**Employer Sponsor**" of the PEIA Health Plan, it is our responsibility, in addition to that of the participating employer sub-group, to verify and/or validate immigration status. Further, federal law requires all employer groups participating in PEIA to validate the immigration status of their employees - please see: <https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-employees> which states: "*Employers must verify that an individual whom they plan to employ or continue to employ in the United States is authorized to accept employment in the United States. For more information about the employment authorization verification process, see our I-9 Central page.*"
- 2) Per West Virginia Code §5-16-12a. **Inspections; violations and penalties.** "*(a) Employers and employees participating in any of the Public Employees Insurance Agency plans shall provide, to the director, upon request, all documentation reasonably required for the director to discharge the responsibilities under this article. This documentation includes,*

but is not limited to, employment or eligibility records sufficient to verify actual full-time employment and eligibility of employees who participate in the Public Employees Insurance Agency plans.”

- 3) To verify eligibility for PEIA insurance, it is important for employers and their respective Benefit Coordinators to send all of the applicable and/or supporting documents for both the policyholder and their dependents at the time of submitting the Health Benefits enrollment form(s). Such forms may include, but are not necessarily limited to, one or more of the following (each situation may differ depending on the specific circumstance, i.e.):
 - a. Visas – Class(es) F, H, J, R, T, TN, TND, etc.
 - b. **I-9** forms
 - c. **I-130** forms
 - d. **I-765** forms
 - e. **I-797A** or **B** forms with the authorized change noted
 - f. **STEM extension documents** – See: <https://www.uscis.gov/working-in-the-united-states/students-and-exchange-visitors/optional-practical-training-extension-for-stem-students-stem-opt>
 - g. Visa extension documents – See: <https://www.uscis.gov/visit-the-united-states/extend-your-stay#:~:text=You%20may%20apply%20to%20extend%20your%20stay%20if%3A,remain%20valid%20for%20the%20duration%20of%20your%20stay>
 - h. Other applicable documents
- 4) The failure of an employee and/or a employer to provide the required immigration documentation necessary to establish eligibility during the PEIA defined qualifying event timeframe of the month of the event plus the following two (2) months (not ‘90’ days) shall not be grounds for an appeal of a denial of eligibility.
- 5) If enrolled in PEIA coverages, the term date(s) for the policyholder and their dependents shall be set for the expiration date(s) on their respective immigration document(s).
- 6) PEIA will apply the salary tier(s) listed on the U.S. C.I.S. documents and that information will override any salary tier information submitted by the employer agency.
- 7) As clearly stated in West Virginia Code §5-16-1 et. seq. and the PEIA Summary Plan Description (SPD), PEIA retains the final determination in employee and dependent eligibility. For more information please see: the PEIA Summary Plan Description (SPD) [current Plan year]. For additional information on the issue of the provision and/or eligibility for health insurance for non-U.S. citizens and/or immigrants, please see: <https://www.healthcare.gov/immigrants/coverage/> and <https://www.healthcare.gov/quick-guide/eligibility/>
- 8) Further, as PEIA is an “Employer Sponsored Health Plan” whereby the “**Employer**” is the State of West Virginia, any “Employee” covered under the PEIA Plan(s) must be legally permitted to work in the United States in addition to meeting PEIA’s other requirements, i.e. working at least twenty (20) hours per week. For information on U.S. Customs and Immigration (U.S. C.I.S.) Enforcement employment eligibility, please see: <https://www.uscis.gov/working-in-the-united-states>

- 9) When enrolling a non-citizen, PEIA participating employers are required to provide to PEIA a copy of the U.S. Customs and Immigration Service (C.I.S.) or U.S. Department of State documentation for all who will be on the plan - the policyholder and/or any and/or all dependents. **PEIA cannot enroll persons whose Visa(s) is/are expired; persons who have "applied" for extension(s) and/or waiver(s) that have not been granted or have been denied; nor any other persons whose immigration status is in question.** An application is just that, an "application" and the application forms clearly state:



SAMPLE I-539 Form – Follow these instructions carefully:

1. Go to <http://www.uscis.gov/files/form/i-539.pdf>
2. Fill out the form using OISS instructions below, not the instructions found on the USCIS website.
3. Print and bring the completed form to your meeting with an OISS adviser.

OMB No. 1615-0003; Expires 12/31/08

**I-539, Application to Extend/
Change Nonimmigrant Status**

Department of Homeland Security
U.S. Citizenship and Immigration Services

START HERE - Please type or print in black ink.

Part 1. Information about you		For USCIS Use Only	
Family Name Seedorff	Given Name Lee	Middle Name M	Returned Date
Address - In care of: c/o Friend or Family Member's Name			Resubmitted Date
Street Number and Name 122 Burlington Street	Apt # 24A	City Lowa	State IA
Zip Code 52240	Daytime Phone #	Country of Birth United Kingdom	Country of Citizenship India
Date of Birth (mm/dd/yyyy) 07/27/1925	U.S. Social Security # (if any) 123-45-6789	A # (if any) Leave Blank	Date
Date of Last Arrival into the U.S. Exp. on (mm/dd/yyyy) put date here	From I-94 card Exp. on (mm/dd/yyyy) put date here	Felony Rec'd Date	Applicant Interviewed on Date
Part 2. Application type (See instructions for fee.) I am applying for: (Check one.) <input checked="" type="checkbox"/> a. An extension of stay in my current status. <input type="checkbox"/> b. A change of status. The new status I am requesting is: _____ <input type="checkbox"/> c. Reinstatement to student status. 2. Number of people included in this application: (Check one.) <input checked="" type="checkbox"/> a. I am the only applicant. <input type="checkbox"/> b. Members of my family are filing this application with me. The total number of people (including me) in the application is: _____ (Complete the supplements for each co-applicant.)			<input type="checkbox"/> Extension Granted to (Date): _____ Change of Status/Extension Granted New Class: From (Date): _____ To (Date): _____ If Denied: <input type="checkbox"/> Still within period of stay <input type="checkbox"/> S/D to _____
Part 3. Processing information 1. I/we request that my/our current or requested status be extended until (mm/dd/yyyy): 99 to 99 months. <input checked="" type="checkbox"/> 2. Is this application based on an extension or change of status already granted to your spouse, child, or parent? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. USCIS Receipt # _____ 3. Is this application based on a separate petition or application to give your spouse, child, or parent an extension or change of status? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, filed with this I-539. <input type="checkbox"/> Yes, filed previously and pending with USCIS. Receipt # _____ 4. If you answered "Yes" in Question 3, give the name of the petitioner or applicant: _____ If the petition or application is pending with USCIS, also give the following data: Office filed at _____ Filed on (mm/dd/yyyy) _____			Part 4. Additional information 1. For applicant #1, provide passport information. Valid to (mm/dd/yyyy) Country of Issuance: India 01/01/2076 2. Foreign Address: Street Number and Name _____ Apt # _____ 3. Race: _____ City or Town: New Delhi State or Province: Uttar Pradesh Country: India Zip/Postal Code: 122456 ALLY STATE LICENSE # _____

Form I-539 (Rev. 12/31/07)

Be sure to fill out the remaining pages of the I-539, including employment information and/or financial support information. Ask an OISS advisor if you have any questions.

- 10) We can enroll persons who have been granted an extension in writing to stay in the United States while their application for an extension or their application for a waiver is being reviewed. PEIA requires copies of that granting of the extension. These persons should have a Visa or other U.S. C.I.S. letter or document stating that is in effect. See the example of a U.S. Visa included below.

USA Visa Sample



- A Issuing Post Name
- B Control Number
- C Surname
- D Given Name
- E Visa Type / Class
- F Passport No.
- G Sex
- H Birth Date
- I Nationality
- J Entries
- K Issue Date
- L Expiration Date

There are many different types of Visas. For additional information on the types of Visas issued by the U.S. State Department and the U.S. C.I.S., please see: <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/all-visa-categories.html>

- 11) A **Passport** is not a Visa – it is merely a travel document and does not meet the requirements for PEIA Eligibility documentation. Therefore, a Passport, in and of itself, does not establish residency status within the United States nor does it establish Eligibility for PEIA coverage(s). Further, immigration documents do not waive the member's requirement(s) to produce other valid documentation of the Eligibility status of dependents, including, but not limited to: birth certificates for dependent children; marriage certificates for spouses, etc. Per the PEIA Summary Plan Description, it is the responsibility of the member to provide a certified English translation (validated by a signature and seal of the person or entity that performed the translation) of any foreign documents used in support of an Eligibility application.
- 12) Due to IRS requirements under provisions of the Affordable Care Act (think IRS 1095 forms), PEIA requires that those enrolled in health coverage(s) - both policyholders and dependents – to have valid SSNs or VSSNs. We cannot accept generic and/or "created" SSNs as they are kicked out when PEIA does data validation with the State Tax Department, WV OASIS, and/or the IRS for IRS 1095 reporting. Sadly, the submission of "bad" SSNs can result in fines and/or penalties for submitting employers. For reference, please see: <https://www.irs.gov/affordable-care-act/questions-and-answers-about-reporting-social-security-numbers-to-your-health-insurance-company> As with all PEIA enrollments, PEIA reserves the right to terminate coverage(s) for policyholders and/or dependents for who we do not have a valid SSN.
- 13) Congress has enacted a number of laws governing how executive branch agencies may regulate business behavior, track personal information, require compliance with federal law(s), and otherwise conduct business. One of those laws that impacts some of our

participating employer agencies, especially non-profit agencies, is the *Small Business Regulatory Enforcement Fairness Act (SBREFA)*. For information on this law, please see: <https://www.uscis.gov/laws-and-policy/legislation/small-business-regulatory-enforcement-fairness-act-sbrefa>

- 14) For persons with a **J-1 Visa** - typically known as a "Student Visa" - they are typically prohibited from working unless there is a specific waiver in place allowing them to be employed. Typically, per the U.S. C.I.S., those waivers do not allow the person to work more than 20 hours per week which would not meet the definition of an employee under PEIA's statutory rules. If allowed to work with a waiver, that work can only be for the sponsor of the **J-1 Visa** and cannot be transferred, i.e. "*If a person has the 'University of Anywhere' or any other non-PEIA participating employer listed as the sponsor of their J-1 Visa, they cannot work for _____.*" - so that person would need to: (a) transfer their **J-1** sponsor to a PEIA participating employer, and; (b) then get a written waiver from the U.S. C.I.S. allowing them to work >20 hours per week in order to meet the statutory PEIA eligible employee requirement. For additional information, please see: <https://j1visa.state.gov/sponsors/current/regulations-compliance/>
- 15) PEIA cannot make persons with only an "**R-1**" Visa a policyholder as an "**R-1**" Visa is a "Religious" Visa and holders of these types of Visas are typically prohibited from working outside of the religious framework stated in their Visa application. "**R-1**" Visa holders can be enrolled in PEIA as dependents. PEIA can enroll persons as a policyholder or dependent with additional endorsements such as an, "**R-1 / F-1**" endorsement. Please see: <https://www.uscis.gov/working-in-the-united-states/temporary-workers/r-1-nonimmigrant-religious-workers>
- 15) To add a dependent with a Visa, i.e. **B-2, F-2, J-2, H-2, H-4**, etc., to a policyholder's plan, PEIA is required to see all of the immigration documents for the sponsoring policyholder member if that policyholder member is not a U.S. citizen. PEIA has seen applications to add dependents to policyholders whose immigration status has not yet been verified and/or validated due to some agencies being allowed to, "auto approve" certain employee policyholder enrollments. For additional information on the immigration of dependents, please see: <https://www.uscis.gov/family/bring-children-to-live-in-the-US>
- 17) **EXPIRED Visas** - Once a person has fallen out of status - meaning that their authorization to stay in the United States on a Visa or some other document has expired - they are expected to depart the United States immediately. They are not eligible for a work permit, or indeed for any other immigration status or benefit.

In summary, PEIA values its relationship with its participating employers and hopes that the issues addressed in this guidance can eliminate confusion.

REFERENCES:

1. West Virginia Code §5-16-1 et. seq.
2. West Virginia Public Employees Insurance Agency Plan Document CSR 151-01
3. The Immigration and Nationality Act (INA) - 8 U.S.C. §1101 et seq.
4. The Patient Protection and Affordable Care Act ("PPACA"); (Public Law 111-148)
5. The Small Business Regulatory Enforcement Fairness Act (SBREFA)

6. The Patriot Act - H.R.3162 - Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001

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