

EXCERPT – SUBPART A, Chapter 2, paragraph 15.h. & i. – Pages 70-70.6

h. Businesses Owned by Persons Not Citizens of the United States

SBA can provide financial assistance to businesses that are owned by persons who are not citizens of the United States. However, the processing procedures and the terms & conditions will vary, depending upon the status of the owners assigned by the Immigration and Naturalization Service (INS).

(1) Definitions of Immigration and Naturalization Service (INS) Statuses:

(a) Naturalized Citizens are persons of foreign birth who have been granted citizenship in the United States (U.S.). These individuals are not subject to any special restrictions or requirements beyond providing evidence of their citizenship status.

(b) Legal Permanent Resident (LPR or immigrant) (also known as Permanent Resident Aliens) are persons who may live and work in the U.S. for life unless INS revokes this status through an administrative hearing.

INS revokes LPR status and deports aliens when they are convicted of criminal activity, normally a felony. Therefore, immigrants with felony convictions are not eligible unless:

(i) INS provides written documentation, identifying the specific criminal activity, stating that the LPR status is in good standing, in spite of the specific documented activity, and

(ii) AA/FA or designee authorizes processing of the application.

(c) Asylees and Refugees are persons considered political offenders by their country or are fleeing war or similar conflict who receive temporary refuge in the United States. Asylees and refugees do not automatically receive LPR status. They must apply for this status like any other alien.

(d) Non-Immigrant (Documented) Aliens are persons who are admitted to the U.S. for a specific purpose(s) and for a temporary period of time with a current/valid INS document such as a visa.

(e) Undocumented Aliens are persons in the U.S. illegally.

(f) Foreign Nationals are non-citizens of the U.S. who reside outside the U.S. and do not have an express right, via INS documentation such as a visa, to physically be within U.S. boundaries.

(g) Foreign Entities are businesses, organizations, associations, *etc.* based in another country.

(2) INS Documentation to Evidence an Alien's Status

SBA Form 912, "Statement of Personal History," requires that aliens provide their alien registration number. An alien registration number indicates that the person is in the U.S. legally. It is not evidence of INS status or eligibility for SBA's programs.

Any alien who must complete SBA Form 912 or who owns 20 percent or more of the applicant business must provide current/valid INS documents to lenders or CDCs to determine eligibility.

The INS publication titled "A Guide to Selected U.S. Travel/Identity Documents for Law Enforcement Officers" provides color photographs and facts about the most commonly used authorization documents but is not comprehensive. All SBA field offices and processing and servicing centers should obtain a copy of this publication from the nearest INS office or telephone 800-870-3676. A list of INS offices and suboffices can be found at www.ins.usdoj.gov/graphics/fieldoffices/index.htm.

SBA, lenders, and CDCs must place a photo copy of the individual's documentation in the case file.

(3) Verification of INS Status

Because fraudulent INS documents are a serious problem, lenders and CDCs must verify the INS status of each alien, including LPRs who are required to submit INS documents. You must document the findings in the application package. This applies in all cases, regardless of the processing method or loan programs. *SBAExpress* is the only exception to this requirement. For loans submitted under *SBAExpress*, verification of alien status must be completed prior to making any disbursements.

The lender or CDC submits an INS Form G-845 (845), "Document Verification Request," with supporting information to the [nearest INS office](#). INS releases information about the status of an alien to lenders or other non-governmental entities **ONLY** when a signed and dated authorization from the alien is attached to and submitted with the 845 on that alien. INS requires that authorizations provide the person's name, address, and date of birth. INS accepts either of the following authorization statements:

(a) I authorize the Immigration and Naturalization Service to release information regarding my immigration status to [name of lender/CDC], because I am applying for a U.S. Small Business Administration loan.

(b) I authorize the Immigration and Naturalization Service to release alien verification information about me to [name of lender/CDC], because I am applying for a U.S. Small Business Administration loan.

NOTE: Without this additional language, INS will not respond to the lender or CDC. It is also important not to abbreviate U.S. Small Business Administration. Individuals should submit the request on personal stationary and must not submit this statement on SBA or lender/CDC letterhead. Also, INS requires a "wet" signature on all Freedom of Information Act requests. Therefore, the Form G-845 and the statement authorizing INS to release the status information to the Lender or CDC should never be faxed to an INS Office. Due to precautions in place after September 11, 2001, INS advises that requests for individual alien status verification should not be sent via any form of "express mail."

(4) Legal Permanent Resident-Owned Small Businesses

Immigrants (LPRs) are the **ONLY** class of aliens residing in the U.S. eligible to obtain financial assistance from SBA without complying with the requirements stated in the paragraph titled "[Additional Requirements for Small Businesses in Subparagraphs \(5\) and \(6\) of This Paragraph](#)."

The primary document acceptable as evidence of LPR status is INS Form I-551 (551). INS has two versions of the 551. One is titled "Resident Alien Card." The other is titled "Permanent Resident Card." The latter is the most recent version of the 551.

INS requires replacement of the 551 every 10 years to update the photograph and security measures. Replacement may also be necessary if the 551 is lost, the individual changes name, *etc.* LPR status does not lapse and is not in jeopardy merely because the 551 document lapses.

Replacement may take more than a year. Acceptable forms of evidence when the 551 has been submitted to INS for replacement or has an expired date include the following:

* A temporary stamp by INS on the individual's passport that says, "Processed for I-551 - Temporary Evidence of Lawful Permanent Residence;"

* INS Form I-327, "Re-entry Permit," issued to LPRs in lieu of passports, which is valid for only 2 years.

* INS Form I-797, "Notice of Action," a receipt issued to an alien when the 551 is lost or surrendered for renewal or changes (e.g., a name change because of marriage or divorce).

Conviction of criminal activity of a felony nature is the primary basis for termination of LPR status and/or deportation. INS holds administrative hearings to determine whether to impose termination of LPR status and/or deportation.

NOTE: SBA requires that the 551 or an acceptable substitute must be current at the time it is submitted with an application. SBA will return the application without accepting it for processing if the INS documentation is not currently in force.

(5) Small Businesses Owned by Foreign Nationals or Foreign Entities

To be eligible an applicant small business owned by a foreign national or a foreign entity must have a place of business located in the U.S.; operate primarily within the U.S.; pay taxes to the U.S.; and use American products, materials, and labor.

As a result of this, the business and its employees are subject to U.S. and local taxes.

(6) Businesses Owned by Non-immigrant Aliens Residing in the U.S.

Businesses owned by documented aliens may be eligible. They must have current/valid INS documentation permitting them to reside in the U.S. legally. The documentation/status of each alien must be verified with INS. Aliens must comply with the requirements stated in the subparagraph titled "Additional Requirements for Small Businesses in Subparagraphs (5) and (6) of This Paragraph" and meet SBA's other credit and eligibility criteria.

Businesses owned by undocumented (illegal) aliens are not eligible for SBA assistance.

Businesses owned by aliens who are subject to the Immigration Reform and Control Act of 1986 (IRCA) might be eligible under limited circumstances. IRCA invests INS with the authority to grant illegal aliens lawful temporary resident status under its provisions. Some aliens already enjoy this status. INS can grant it to others in accordance with the provisions of IRCA.

IRCA prohibits financial assistance to businesses owned 20 percent or more by such individuals for a period of 5 years after INS grants the alien lawful status.

This disqualification does not apply to Cuban or Haitian entrants or alien entrants subject to IRCA who are aged, blind, or disabled. The definition of blind or disabled is equivalent to SBA's criteria for determining eligibility for assistance to any small business owned by disabled individuals.

All applicants self-certify that they are eligible under IRCA by certifying that they have received and read SBA Form 1261, "Statements Required by Law and Executive Orders." This form includes a certification that IRCA does not apply to them.

(7) Additional Requirements for Small Businesses in Subparagraphs (5) and (6) of This Paragraph

Businesses and their owner(s) in this category must comply with Appendix 3, "Restrictions on Foreign Controlled Enterprises," of this SOP. They **MUST** also meet the following:

(a) Provide evidence that separate continual and consistent management (in addition to the owners) exists and will continue indefinitely. The management must have U.S. citizenship or **verified** LPR status. The potential for absentee ownership is much greater for businesses in this category. Management must have operated the business for at least 1 year prior to the application date. The application must contain assurance that management is expected to continue in place indefinitely.

This requirement prevents financial assistance to "start-up" businesses owned by aliens who do not have LPR status.

The personal guarantee of management must be considered as a loan condition and if not required, the loan report must explain why.

(b) Pledge collateral within the jurisdiction of the U.S. sufficient to pay the loan any time during its life (based on SBA's definition of collateral in SUBPART "A", Chapter 4, para. 1h). This requirement is mandatory for reasons of eligibility for these types of businesses for the life of the loan.

However, the credit decision on these applications must be based primarily on repayment ability and other credit factors, not collateral.

All Authorizations for loans to alien (other than LPR)-owned and foreign-owned small businesses must include this requirement. Lenders participating in expedited loan programs (e.g., PLPs, *SBAExpress*, CLPs, *LowDoc*, etc.); CDCs (including PCLPs); and SBA personnel must comply with this requirement for the entire life of the loan.

NOTE: In order for a business not to be subject to these additional requirements, it must be at least 51 percent owned by individuals who are U.S. citizens and/or who have LPR Status from INS and control the management and daily operations of the business. This can only be waived by the AA/FA or designee.

i. Restrictions on Businesses Involved in International Trade

Whenever an applicant indicates that they conduct international trade, the lender or CDC must verify that the U.S. Government does not restrict trade with any country where the applicant does business. Verification consists of reviewing the Export-Import Bank's current "Country Limitation Schedule" (CLS). When an applicant conducts commercial trade in a country that the list identifies as unlawful with which to trade (referenced on the CLS as footnote #7), the application is not eligible and cannot be accepted for processing, even if the purpose of the proceeds is to finance a transaction to a non restricted country.

This schedule lists all countries with which commercial activity is unlawful. If the lender tells SBA orally instead of in writing, you must document the oral statement in the case file. The CLS is made available by Ex-Im Bank and is updated as needed or annually. A current schedule can be obtained via the internet address: <http://www.exim.gov/country/cntlimit.html>.