

**AILA NE Chapter Practice Pointer:
The Lawful Presence Requirement for Massachusetts
Driver’s Licenses and Identification Cards**

Note: In response to the COVID-19 pandemic, the Massachusetts Registry of Motor Vehicles (RMV) has taken a number of steps, including automatically extending certain licenses/IDs, to reduce the need for in-person transactions at this time. These measures are summarized [here](#). Please note that the RMV advises as follows:

1. If your client has a limited term license that has recently expired, or is expiring shortly, they can check whether it has been automatically extended by visiting [this link](#), clicking on “Access My Profile,” and entering their information.
2. If your client would like to renew their license online, they should request a standard license/ID. The RMV is not issuing REAL ID renewals online.
3. If your client is not able to renew online, they can make a reservation for an in-person appointment on [this webpage](#) by selecting “Make or cancel a reservation.” When asked to indicate the transaction type, select “Update lawful presence verification.”

I. The Lawful Presence Requirement

Under Chapter 90, Section 8, of the Massachusetts General Laws, applicants for a driver’s license in the Commonwealth of Massachusetts must be lawfully present in the United States. Lawful presence is required whether applying for a REAL ID license, a standard license, an identification card, or a learner's permit.

II. Defining Lawful Presence

Under 540 CMR 2.06 (available [here](#)), the following individuals are considered to be lawfully present for the purpose of applying for a Massachusetts driver’s license:

1. U.S. citizens and U.S. nationals;
2. Lawful permanent residents and conditional permanent residents;
3. Individuals with an approved application for asylum or with refugee status;
4. Individuals with a valid nonimmigrant status;
5. Individuals with a pending application for asylum;
6. Individuals with a pending or approved application for temporary protected status (TPS);
7. Individuals with approved deferred action status;
8. Individuals with a pending application for lawful permanent residence or a pending application for conditional permanent residence (pending I-751); and
9. Individuals who can otherwise document lawful presence to the satisfaction of the Registrar, in consultation with the Department of Homeland Security.

III. The 12 Month Requirement

Some foreign nationals are required to show that their current authorized stay is for a period of at least 12 months. U.S. citizens/nationals, lawful permanent residents, conditional permanent residents, asylees, and refugees are excluded from this requirement.

If the 12-month authorized stay requirement applies:

- Periods of authorized stay without a definite end are presumed to last for at least 12 months (for example, an individual with a pending adjustment application);
- The 12-month period shall be calculated from the beginning of the current period of stay, OR from the beginning of a prior period of authorized stay, if immediately preceding.

Example: a foreign worker enters in H-1B status and works for 3 years. She then obtains a 9-month extension and applies for a driver's license. At the time of application, although she can only demonstrate 9 months' future stay in the United States, she may use her prior period of stay to reach the 12 month threshold.

Example: a TPS holder whose current authorized stay expires in 6 months has an expired driver's license. She held TPS for the preceding 4 years and will therefore be eligible to renew her driver's license.

IV. Verification of Lawful Presence through SAVE

Before a license can be issued, the RMV must verify an applicant's lawful presence through SAVE (Systematic Alien Verification for Entitlements). There are 3 levels of verification:

- SAVE Step 1 (initial verification): if an applicant's lawful presence is successfully verified initially in SAVE, the clerk will receive instant confirmation and the application will continue (the license can be issued). The RMV indicates that over 90% of applicants have their lawful presence verified initially.
- SAVE Step 2 (additional verification, 3-5 days): if the SAVE system is unable to verify an applicant's lawful status initially, the clerk will be prompted to enter further information (including scans of the applicant's documents) for additional verification. The applicant will be given a letter assigning them a SAVE case number.
- SAVE Step 3 (manual review, 1-2 weeks): if SAVE is unable to verify an applicant's status through the additional verification step, they can request a third level review. In this step, the applicant's documents are sent for manual review by a SAVE specialist. No notice is provided to the applicant when a case proceeds from Step 2 to Step 3; the scanned documents are transmitted directly within SAVE.

Individuals whose applications are in SAVE Steps 2 and 3 can use the SAVE CaseCheck tool to view the status of their case (<https://www.uscis.gov/save/casecheck>). This tool tells applicants where their application is. It does not provide detailed information about the review. Once the Step 2 or Step 3 verification process has been completed, SAVE reports back to the RMV. The applicant will be informed of the results via a letter, but can also visit an RMV center to receive an update.

Note: The SAVE system is not administered by the RMV. If SAVE indicates your client is not eligible for a license, the application cannot proceed even if he/she has a paper I-94 or other documentation establishing lawful presence.

USCIS has information about the SAVE system, including an overview of the verification process, available [here](#).

V. License Validity

Massachusetts driver's licenses are generally valid for 5 years. However, certain foreign nationals will be issued *limited term* licenses that are valid only until the end of their authorized stay, or for 12 months if their stay is of indefinite duration (see above). Individuals issued *limited term* licenses include those with:

- Non-immigrant status;
- Pending asylum applications;
- Pending or approved applications for TPS;
- Deferred action status; and
- Pending applications for lawful permanent residence or conditional permanent residence.

VI. Practice Tips

- Verify in advance that your client meets the lawful presence requirement under the MA regulations.
- If your client meets the lawful presence requirement, but their status/presence is complex or nuanced, it may be helpful to provide a letter outlining their eligibility under the regulations and explaining the documents they are presenting. This may help them pass through the initial document control on entry to an RMV center, and may also be useful where SAVE escalation is required (see below). For example, if your client has an EAD card, it may be helpful to provide documentation of the underlying status on which the care is based.
- At the time of application, the RMV clerk will seek to verify your client's lawful presence through the SAVE system.
 - If your client's lawful presence expires within the next 12 months, and they are relying on prior time spent in the U.S. in order to meet the 12-month requirement,

they should explain this to the clerk. The clerk is able to authorize this by selecting a specific option on their screen (a 12-month override feature). These requests are rare, and the clerk may not be familiar with the process. **Your client may need to ask for a supervisor and or suggest the clerk call the RMV's business support services.**

- If the SAVE system is incorrectly reporting your client's status end date, this is not an issue the clerk is able to address. The RMV is not able to amend SAVE records; SAVE pulls its information directly from DHS/USCIS. It is not uncommon for errors to appear here. For example, SAVE will occasionally report incorrect status end dates where foreign nationals have pending extensions, or their applications have only recently been approved. If this occurs, please note:
 - We have found the SAVE system will often update itself over time (errors are often, but not always, corrected within a few weeks); and
 - We are investigating how foreign nationals can resolve errors in their SAVE records, but do not have a solution yet. It has been reported that it may be possible for foreign nationals to address this issue at an INFOPASS/MOD appointment, but that has not yet been verified.
- If the SAVE system does not report an expiration date for your client's lawful presence, the clerk may be able to escalate your case to SAVE steps 2 & 3. If your client's case is escalated, they should ensure the clerk scans all their status documents (including your cover letter outlining their eligibility, if applicable).
- If your client is eligible for a license/ID, but cannot obtain one, the RMV Liaison Committee may be able to assist. Before reaching out to us, please read this guidance to ensure other options have been exhausted. When contacting us, please give us an overview of the steps taken (when and where your client applied and why they were unsuccessful). If we can help, we'll indicate which documents we need. The RMV is willing to work with us on the resolution of problem cases.

VII. Additional Resources:

- MA motor vehicle regulations: <https://www.mass.gov/doc/540-cmr-2-motor-vehicle-regulations/download>
- MIRA: REAL ID and Mass. driver's licenses: What you need to know, <https://www.miracoalition.org/resources/drivers-licenses-real-id/>
- RMV Real ID Info Center: <https://www.mass.gov/guides/rmv-real-id-info-center>
- AILA Massachusetts DMV Fact Sheet (log in required): <https://www.aila.org/infonet/state/dmv-fact-sheets/massachusetts-dmv-fact-sheet>
- SAVE Resources: <https://www.uscis.gov/save/save-resources>
- SAVE CaseCheck: <https://www.uscis.gov/save/save-casecheck>