

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2464-08; DHS Docket No. USCIS-2008-0073]

RIN 1615-ZA76

H-2B Petitioner's Employment-Related or Fee-Related Notification

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: This Notice announces the manner in which H-2B petitioners must notify U.S. Citizenship and Immigration Services regarding their employment of non-agricultural workers in H-2B nonimmigrant status or job placement fee information. These procedures are necessary to enable petitioners to comply with the notification requirements established by the Department of Homeland Security's regulations governing the H-2B nonimmigrant classification.

DATES: This Notice is effective January 18, 2009.

FOR FURTHER INFORMATION CONTACT:

Hiroko Witherow, Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529, telephone (202) 272-8410.

SUPPLEMENTARY INFORMATION:

I. Background

The H-2B nonimmigrant classification applies to alien workers seeking to perform non-agricultural labor or services of a temporary nature in the United States on a temporary basis. Immigration and Nationality Act (INA) sec. 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b); see 8 CFR 214.1(a)(2) (H-2B classification designation). Aliens seeking H-2B nonimmigrant status must be petitioned for by a U.S. employer. However, prior to filing the petition, the U.S. employer must complete a temporary labor certification process with the Department of Labor (DOL) for the job opening the employer seeks to fill with an H-2B worker.

After receiving a temporary labor certification, the U.S. employer files Form I-129, Petition for Nonimmigrant Worker, with the appropriate USCIS office to classify the beneficiary as an H-2B nonimmigrant. See 8 CFR 214.2(h)(5)(i)(A). Once the petition has been granted, the regulations impose additional responsibilities on H-2B

petitioners. These responsibilities include notifying DHS of certain occurrences related to their H-2B workers, as discussed below.

A. Employment-Related Notifications.

The regulations require H-2B petitioners to provide notification to DHS within 2 work days in the following instances:

- When an H-2B worker fails to report to work within 5 work days of the employment start date on the H-2B petition;
- When the temporary labor or services for which H-2B workers were hired is completed more than 30 days early; or
- When the H-2B worker absconds from the worksite or is terminated prior to the completion of the temporary labor or services for which he or she was hired.

8 CFR 214.2(h)(6)(i)(F). The regulations also require that petitioners retain evidence of the notification filed with DHS for a one-year period beginning from the date of the notification. 8 CFR 214.2(h)(6)(i)(F)(1).

B. Fee-Related Notifications.

The regulations prohibit payment or agreement to pay a fee or other compensation by a beneficiary to any facilitator, recruiter, or similar employment service as a condition of the offer of obtaining the H-2B employment. 8 CFR 214.2(h)(6)(i)(B). However, the regulations provide petitioners with the opportunity to avoid denial or revocation (on notice) of their H-2B petition if they notify DHS regarding information they obtained following the filing of their H-2B petition concerning the beneficiary's payment of prohibited fees. 8 CFR 214.2(h)(6)(i)(B)(4). Notification of a beneficiary's payment or agreement to pay the prohibited fees must be made within 2 work days of the petitioner gaining such knowledge. *Id.*

This Notice specifies the manner in which H-2B petitioners must file employment-related and fee-related notifications with DHS in order to comply with the regulations. 8 CFR 214.2(h)(6)(i)(F) and 8 CFR 214.2(h)(6)(i)(B)(4).

II. Employment-Related Notifications

A. Filing Notifications.

This Notice announces that beginning on January 18, 2009, H-2B petitioners must notify USCIS within 2 work days of an event specified in 8 CFR 214.2(h)(6)(i)(F)(1). The petitioner must include the following information in the notification.

(1) The reason for the notification;
(2) The reason for late notification, if applicable;

(3) The USCIS receipt number of the approved H-2B petition;

(4) The petitioner's name, address, telephone number, and employer identification number (EIN);

(5) The employer's name, address, and telephone number, if it is different from that of the petitioner;

(6) The name of the applicable H-2B worker;

(7) The date and place of birth of the subject H-2B worker; and

(8) The last known physical address and telephone number of the subject H-2B worker.

If all of the above information is not available, the employer must provide as much and as complete information as possible. USCIS acknowledges that petitioners may not know the names of the no-show H-2B workers if the workers are unnamed beneficiaries of the H-2B petition. Where an H-2B petitioner is reporting the failure of an H-2B worker to report to work within the prescribed time frame and the beneficiaries are unnamed, the petitioner must supply the number of workers who failed to report to work within the prescribed time frame, plus any of the additional items above that may be known or available.

Notices from employers should be provided to USCIS by e-mail. If e-mail notification is not possible paper notification via mail is acceptable. Notification by mail must be postmarked before the end of the 2 work day reporting window.

If the H-2B petition was approved by California Service Center:

By e-mail: CSC-X.H-2BAbs@dhs.gov.

By mail: California Service Center, Attn: Div X/BCU ACD, P.O. Box 30050, Laguna Niguel, CA 92607-3004.

If the H-2B petition was approved by Vermont Service Center:

By e-mail: VSC.H2BABS@dhs.gov.

By mail: Vermont Service Center, Attn: BCU ACD, 63 Lower Welden St., St. Albans, VT 05479.

III. Fee-Related Notifications

This Notice announces that on January 18, 2009, H-2B petitioners may begin filing beneficiary-paid fee notifications to USCIS pursuant to 8 CFR 214.2(h)(6)(i)(B)(4). The notification must include the following information:

(1) The USCIS receipt number of the H-2B petition;

(2) The petitioner's name, address, and telephone number;

(3) The employer's name, address, and telephone number, if it is different from that of the petitioner; and the

(4) Name and address of the facilitator, recruiter, or placement service to which alien beneficiaries paid or agreed to pay the prohibited fees.

The petitioner should submit notices to USCIS by e-mail. If e-mail notification is not feasible for the H-2B petitioner, paper notification via mail is acceptable. Notices should be sent to the following addresses. Notification by mail must be postmarked before the end of the 2 work day reporting window.

If the H-2B petition was approved by California Service Center:

By e-mail: CSC.H2BFee@dhs.gov.

By mail: California Service Center, Attn: H2BFee, P.O. Box 10695, Laguna Niguel, CA 92607-1095.

If the H-2B petition was approved by Vermont Service Center:

By e-mail:

VSC.H2BPROPLACEMENT@dhs.gov.

By mail: Vermont Service Center, Attn: BCU ACD, 75 Lower Welden St., St. Albans, VT 05479.

IV. Paperwork Reduction Act

This Notice sets forth the procedures for H-2B petitioners to notify USCIS when:

- An H-2B worker fails to report to work within 5 work days of the employment start date on the H-2B petition;
- When the temporary labor or services for which H-2B workers were hired is completed more than 30 days early; or
- When the H-2B worker absconds from the worksite or is terminated prior to the completion of the temporary labor or services for which he or she was hired.

Regulations require H-2B petitioners to retain evidence of such notification sent to USCIS for a one-year period.

This Notice further provides the procedures for H-2B petitioners to notify USCIS, after an H-2B petition has been filed, within 2 work days of learning that an H-2B alien worker paid a fee or other compensation to a facilitator, recruiter, or similar employment service as a condition of the offer of obtaining the H-2B employment.

These notification requirements are considered information collections covered under the Paperwork Reduction Act (PRA).

Since implementation will begin 30 days from the date of publication of this notice in the **Federal Register**, this new information collection has been submitted and approved by OMB under the emergency review and clearance procedures covered under the PRA. USCIS is requesting comments on this new information collection no later than

January 18, 2009. When submitting comments on the information collection, your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of any and all appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of Information Collection

a. *Type of information collection:* New information collection.

b. *Title of Form/Collection:* H-2B Petitioner's Employment-Related or Fee-Related Notification.

c. *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No form number. U.S. Citizenship and Immigration Services.

d. *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals or Households. This information collection is necessary to provide employment-related or fee-related notification by an H-2B petitioner.

e. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 700 respondents at .50 hours (30 minutes) per response.

f. *An estimate of the total of public burden (in hours) associated with the collection:* Approximately 350 burden hours.

All comments and suggestions or questions regarding additional information should be directed to the Department of Homeland Security, U.S. Citizenship and Immigration Services, Chief, Regulatory Management Division, 111 Massachusetts Avenue, NW., 3rd

Floor, Washington, DC 20529-2210, Attention: 202-272-8377.

Paul A. Schneider,

Deputy Secretary.

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DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

[CBP Dec. 08-49]

Notice of Expansion of Temporary Worker Visa Exit Program Pilot To Include H-2B Temporary Workers

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice announces that U.S. Customs and Border Protection is expanding a pilot program that implements a land-border exit system for certain temporary workers at certain designated ports of entry. Under the expansion of this pilot program, temporary workers within the H-2A and H-2B nonimmigrant classifications that enter the United States at the ports of San Luis, Arizona or Douglas, Arizona on or after August 1, 2009, must depart from either one of those ports and provide certain biographic and biometric information at one of the kiosks established for this purpose. Any nonimmigrant alien admitted under an H-2A or H-2B nonimmigrant visa at one of the designated ports of entry will be issued a CBP Form I-94, Arrival and Departure Record, and be presented with information material that explains the pilot program requirements.

DATES: The effective date of this notice is August 1, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Erin M. Martin via e-mail at ERIN.Martin@dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

A pilot program for certain temporary workers was first proposed on February 13, 2008, when the Department of Homeland Security (DHS) published a notice of proposed rulemaking (73 FR 8230) to amend its regulations regarding the H-2A nonimmigrant classification.¹

¹ The H-2A nonimmigrant classification applies to aliens seeking to perform agricultural labor or services of a temporary or seasonal nature in the United States. Immigration and Nationality Act (Act or INA) sec. 101(a)(15)(H)(ii)(a), 8 U.S.C. 1101(a)(15)(H)(ii)(a); see 8 CFR 214.1(a)(2) (designation for H-2A classification).