



Memorandum

TO: January Contreras
Citizenship and Immigration Services Ombudsman

FROM: Alejandro N. Mayorkas /S/ January 28, 2010
Director

SUBJECT: Response to Recommendation 43, Temporary Acceptance of Filed Labor Condition Applications for Certain H-1B Filings

I appreciate your office's work regarding the Labor Condition Application (LCA) process and welcome the insights and recommendations you offered on this important topic. Our response is provided below.

Recommendation

The CIS Ombudsman recommends that USCIS:

- Reinstatement of USCIS' previous practice of temporarily accepting an H-1B petition (Form I-129) supported by proof of timely filing of an LCA application with DOL, and issue a Request for Evidence (RFE) whereby the H-1B petitioner later provides the certified LCA.
- Establish a temporary policy under which USCIS would excuse late H-1B filings where the petitioner has documented an LCA submission to DOL that was improperly rejected.

USCIS Response

1. **Reinstatement of USCIS' previous practice of temporarily accepting an H-1B petition (Form I-129) supported by proof of timely filing of an LCA application with DOL, and issue a Request for Evidence (RFE) whereby the H-1B petitioner later provides the certified LCA.**

On November 5, 2009, USCIS announced that for a 120-day period it would temporarily accept H-1B petitions filed without LCAs that have been certified by DOL. However, USCIS will only accept such H-1B petitions if they are filed at least 7 calendar days after the LCAs were filed with DOL and include evidence of these LCA filings. The only acceptable evidence of filing is a copy of DOL's e-mail giving notice of receipt of the LCA.

Petitioners who seek to take advantage of this temporary flexibility in the normal filing procedures for H-1B petitions must wait until they receive an RFE before they can submit the DOL-certified LCA to USCIS in support of the H-1B petition. The certified LCA must be the same LCA filed with the original petition, unless the petitioner provides an LCA that was certified prior to the submission of the H-1B petition. USCIS will give petitioners a period of 30 calendar days to submit a DOL-certified LCA in response to the RFE. USCIS can only approve H-1B petitions that include certified LCAs.

2. Establish a temporary policy under which USCIS would excuse late H-1B filings where the petitioner has documented an LCA submission to DOL that was improperly rejected.

USCIS will continue to excuse late filings, per 8 CFR 214.1(c)(4) or 8 CFR 248.1(b). The late filing will be considered in instances whereby the delay in filing the petition requesting an extension of H-1B stay or change of nonimmigrant status to H-1B was related to LCA issuance delays beyond the control of the petitioner and/or denials by DOL due to FEIN check issues. Applicants who would like USCIS to consider a late filing should submit evidence indicating that the filing was delayed through no fault of the petitioner or beneficiary along with their H-1B petition.