OVERVIEW AND ASSESSMENT OF VULNERABILITIES IN THE DEPARTMENT OF LABOR'S ALIEN LABOR CERTIFICATION PROGRAMS

Office of Inspector General
Office of Audit
Report No. 06-03-007-03-321
Date Issued: September 30, 2003

TABLE OF CONTENTS

EXECUTIVE SUMMARY

The Office of Inspector General (OIG) prepared an overview of four of the six Department of Labor (DOL) foreign labor certification programs to summarize what vulnerabilities exist in those programs. We did not review the D-1 (Crewmembers) or H-1C (Nurses in Disadvantaged Areas) certification programs although we have provided a short synopsis of those programs in chapters 5 and 6, respectively.

Permanent Alien Labor Certification Program (See chapter 1.)

The permanent foreign labor certification (FLC) program allows employers to hire foreign workers on a permanent basis only when sufficient numbers of able, willing, and qualified U.S. workers are not available to perform the job.

The program today is currently operating under the same procedures that were in existence in 1996 when the OIG conducted its last audit of this program; consequently the vulnerabilities then identified continue to exist. In 1996 we reported the following problems with the permanent foreign labor certification program:

- poor to nonexistent labor market tests performed at the time the alien actually adjusts to permanent resident status (i.e., obtains a "green card," a visa to work in the U.S. as a permanent resident);

- three-fourths of the aliens were already working for the petitioning employer, indicating the jobs were not available if a qualified U.S. worker had been found; and

- over one-third of the aliens either never worked for the sponsoring employer after adjusting to permanent resident status or left employment within 1 year of adjusting status.

A new Employment and Training Administration (ETA)-proposed system to be implemented soon will significantly speed up the time required to process applications. However the system will eliminate most, if not all, human intervention or review/screening of 80 percent of applications received. In our opinion, the system will result in reduced controls and an increased risk of fraud.

H-1B Program: Temporary Employment of Nonimmigrant Aliens In Specialty Occupations or As Fashion Models (See chapter 2.)

The H-1B visa program for the temporary employment of non-immigrants in "specialty occupations" and as fashion models currently allows 195,000 aliens per year to be hired into jobs for which qualified U.S. workers might be available. The H-1B is a "rubber stamp" program because the applicable regulation **requires** ETA to approve the labor condition application (LCA) if the form is complete and free of obvious errors. Consequently, employers file applications on-line and the applications are

electronically screened, and, if the application is complete and free of obvious errors, the application is electronically approved within minutes and returned to the employer.

In our opinion, DOL adds nothing substantial to the H-1B program. It would be more efficient if the employers filed their applications directly to the Bureau of Citizenship and Immigration Services (BCIS)[1], for visa approval.

H-2A Program: Seasonal or Temporary Employment of Nonimmigrant Alien Agricultural Workers (See chapter 3.)

Before the BCIS can approve an employer's petition for temporary or seasonal agricultural workers, the employer must file an application with the DOL, ETA, assuring that sufficient U.S. workers who are able, willing and qualified are not available, and that employing aliens will not adversely affect the wages and working conditions of similarly employed U.S. workers.

In March 1998, the OIG reported several significant program problems in addition to opportunities to enhance the overall program operation. However, many if not all of the vulnerabilities still exist. The audit concluded that the certification process is ineffective, involves extensive administrative requirements, and involves paperwork and regulations that often seem to dissociate DOL's mandate to provide assurances that U.S. worker's jobs will be protected. The DOL's division of responsibilities, with ETA's handling compliance with certification requirements and the Employment Standards Administration's (ESA) enforcing the terms of work contracts, prevents cohesive enforcement of program requirements and contributes to uncertainties over responsibilities. This division of responsibilities results in confusion, inefficiencies, and ineffectiveness.

H-2B Program: Temporary Employment of Nonimmigrant Alien Nonagricultural Workers (See chapter 4.)

The H-2B temporary nonagricultural program permits employers to hire foreign workers for a one-time job or a job of a seasonal, peak load, or intermittent need, that is less than 1 year in length, if no qualified and willing U.S. workers are available. The H-2B temporary program is time-consuming for DOL and the State Workforce Agencies (SWA). Although DOL must certify or deny the employer's applications for the H-2B program within 30 days, ETA's certification or denial is only advisory to the BCIS. The employer may appeal DOL's application denials directly to BCIS with the petition for the H-2B visa. BCIS can accept or reject DOL's denials. In our opinion, the priority DOL must put on H-2B applications because of the 30-day requirement increases the vulnerabilities in other programs where DOL has a more authoritative role.

****

We provided a draft copy of this overview to the Employment and Training Administration and invited comments. ETA did not provide comments.

[1] Formerly Immigration and Naturalization Service.

CHAPTER 1:
PERMANENT ALIEN LABOR CERTIFICATION PROGRAM

The permanent FLC program allows employers to hire foreign workers on a permanent basis. The program is based on the premise that employers will hire foreign workers only when sufficient numbers of U.S. workers who are able, willing, and qualified to perform the jobs are not available for the occupations in the areas of intended employment. The program is intended to ensure that employment of a foreign worker on a permanent basis will not adversely affect the wages and working conditions of U.S. workers that are similarly employed.

Before a U.S. employer can submit an immigration petition to the BCIS, the employer must obtain an approved "Application for Alien Employment Certification" (Form ETA 750) from the DOL's ETA. The DOL must certify to the BCIS that no qualified U.S. workers are available and willing to accept the job at the prevailing wage for that occupation in the area of intended employment.

The DOL, in concert with the local SWA, processes the ETA 750 applications. The date the application is filed with the SWA is the application's "priority date." After DOL approves the ETA 750, the employer submits the approved ETA 750 to the BCIS service center with an "Immigrant Petition for Alien Worker" (Form I-140). The priority date is the date the BCIS and Department of State use for processing petitions and visa applications, respectively.

Currently, employers use one of two methods to request approval of the permanent alien labor certification: the DOL/SWA "basic," or traditional, process; and, the "reduction in recruitment" (RIR) process. Regardless of the method followed, **the employer must comply with the qualifying criteria:**

- the employer must hire the foreign worker as a full-time employee;
- the job opening must be *bona fide*;
- the job requirements must adhere to what is customarily required for the occupation in the U.S. and may not be tailored to the worker's qualifications;
- the employer must document that the job opportunity has been and is being described without unduly restrictive job requirements, unless adequately documented as arising from business necessity; and
- the employer must pay at least the prevailing wage for the occupation in the area of intended employment.

However, employers often do not comply with the above criteria. Our 1996 audit (Report No. 06-96-002-03-321, issued May 22, 1996) found that ***virtually all***

aliens who eventually obtained permanent residence status ***were in the U. S. at the time of application****.* ***Three-fourths were already working for the petitioning employer.*** *In fact, aliens occupying the jobs sometimes interviewed U. S. workers for the jobs. In many cases, the employee was using the permanent foreign labor program to gain permanent residency status, as evidenced by the fact that the alien, not the employer, paid all the fees associated with filing for the labor certification. Our prior audit also found that employers created nonexistent jobs to help obtain permanent resident visas for relatives, friends and acquaintances. Finally, employers specifically tailored advertised job requirements to aliens' qualifications, thus eliminating qualified U. S. workers from consideration.*

Using the **basic process method,** the employer completes an Application for Alien Employment Certification (Form ETA 750), including Part A, "Offer of Employment" and Part B, "Statement of Qualifications of Alien." The application describes in detail the job duties, educational requirements, training, experience and other special capabilities the applicant must possess to do the work, and a statement of the prospective immigrant's qualifications. (The term prospective immigrant is misleading, as our past audit work has found that the "prospective immigrant" is often already in the U. S. and working for the petitioning employer.)

The employer then submits the application to the SWA responsible for the specific job location. The SWA stamps the application's "priority date" the day it is received and completes a preliminary review of the application. The SWA also notifies the employer of potential problems, including if the minimum requirements for the position are reasonable and job-related, and determines that the wage offered meets minimum prevailing wage standards.

The SWA will work with the employer to develop a job advertisement for placement in either a journal or newspaper of general circulation in the area of intended employment, depending on the nature of the job. The ad must contain a complete description of the vacancy including job responsibilities, duties, salary and minimum qualifications (education, training, and experience). The employer must interview all candidates who apply and meet the position requirements. The SWA opens a 30-day job order and also refers applicants to the employer, based on responses to that job order. The employer is required to post the job order internally for 10 consecutive days, including responses to the overall recruitment results via normal or the established method established for employee notifications. *However, the required labor market test is not designed to survey the labor pool available at the time the alien actually adjusts to permanent resident status. Given the length of time required from the time the employer submits an application to the time the certification is approved – sometimes 2 to 3 years – there is little assurance that sufficient U. S. workers are not available and able to perform the jobs at the time the foreign workers adjust to permanent resident status.*

After the job vacancy has been advertised, the employer evaluates job candidates against the job criteria established in the application and submits a

recruitment report to the SWA detailing the applications and referrals received and candidates interviewed, including any decisions made to hire or not hire the candidates. *As previously mentioned, U. S. workers are seldom hired for these jobs because the foreign workers are, in fact, already working for the employer and simply seeking permanent resident status.*

If any qualified U.S. workers are identified, the SWA will advise the employer that due to the qualifications of the U.S. worker(s) the applications may be denied by the regional certifying officer (CO) upon review.

Once the employer has satisfactorily provided the SWA with requested documentation, the information the SWA gathered is collected and forwarded to the ETA regional office for review and a decision. Generally, the SWA notifies the employer when the application and all associated documents have been forwarded to the regional CO. Once CO has reviewed the recruitment report and accompanying documentation, the CO will issue a final determination granting or denying the application.

The CO may require additional information, interviews, or advertisement if he/she feels the employer has not met all conditions for certification. The CO may issue a Notice of Findings (NOF) indicating his/her intent to deny the application and identifying all reasons for the intended denial. The NOF will also offer the employer an opportunity to rebut the NOF within 35 days. The letter provides the employer guidance regarding the employer's right to appeal the final decision if a denial is issued.

The above basic process could sometimes take several years depending on the state in which the job is being offered. States that are popular sites for immigrant hiring, e.g. New York, Texas, or California, may take much longer than states with less activity.

For the **Reduction in Recruitment Method (RIR)**, the employer must request use of RIR when submitting the ETA 750 to the SWA. The RIR method requires the employer to document that within the last 6 months it has engaged in a pattern of recruitment in an effort to hire U.S. workers for the position, but has been unsuccessful in identifying qualified and available U.S. workers.

The employer must submit to the SWA evidence of the pattern of recruitment. In addition, a summary recruitment report must be provided of the active recruitment effort to hire U.S. workers at the prevailing wage at a minimum showing the number of U.S. workers who applied, and the reasons they were not accepted. After reviewing and processing the application, the SWA forwards the case file to the CO for review. The CO accepts the RIR effort or returns the application to the SWA for additional recruitment. If the CO feels the pattern of recruitment is appropriate to the occupation and the labor market, and does not identify any other deficiencies, the application is accepted with no need for the SWA to conduct additional supervised recruitment. Since supervised recruitment is the most time-consuming aspect of the permanent process, use of RIR can

significantly reduce the time required in the SWA/DOL process. It is possible that the DOL phase of employment-based visas can be accomplished in under 1 year using the RIR process.

While the use of RIR may reduce the length of time required to obtain permanent resident status, it is subject to the same vulnerabilities as the basic process: the alien is frequently already in the country and employed by the petitioning employer; recruitment efforts to find U. S. workers are easily circumvented; and, U. S. workers are seldom hired for the advertised positions.

If the CO approves the application, he/she returns the certified ETA 750 to the employer or agent who submitted the application. The employer must then submit to the appropriate BCIS service center, a completed "Immigrant Petition for an Alien Worker" (Form I-140), the certified Form ETA 750, and a check for the current processing fee of $135. The employer also has the option of filing via "premium processing" which costs $1,000.

After the alien worker has adjusted to permanent residency status, the DOL has no control over the immigrant from abandoning employment and remaining in the U.S. Our prior audit found that ***over one-third of the permanent FLC aliens*** *either* ***never worked for the sponsoring employer after adjusting to permanent resident status*** *or left employment within 1 year of adjusting status.*

The length of time required to process permanent labor certification applications varies from about 1 year using the RIR process to 3 years or more under the normal process. Not surprisingly, the permanent program has a backlog of about 325,000 unprocessed applications for foreign labor certification. A major factor contributing to this backlog was the extension of provision 245(i) of the INA that allowed foreign workers already in the U. S. – legally or illegally – to apply for a visa while still in the country, if they applied for permanent status by April 30, 2001. This resulted in a large influx of applications that were often found to be of poor quality and requiring considerably more staff time to process.

The current process for approving these applications involves reviews at the SWA and ETA regional office levels. ETA has published proposed rules[2] that will streamline the process for filing and processing of labor certification applications for the permanent employment of aliens in the U.S., specifically to implement the new **Program Electronic Review Management (PERM)** system.

Under the PERM system, the employer would provide the SWA the necessary information regarding the job opening for the SWA to provide the employer with a prevailing wage determination. (Note: The SWAs will no longer be the intake point for submission of applications and would not be involved in processing the applications as they are in the present system.)

[2] 67 Federal Register 30466 (May 6, 2002)

After receiving the prevailing wage determination, the employer will conduct recruitment before filing its application for alien labor certification directly with an ETA application processing center on application forms designed for automated screening and processing.

The employer must attest to the conditions listed on the Application for Alien Employment Certification form under penalty of perjury.[3] Failure to attest to any of the following conditions results in a denial of the application:

- the wage offered equals or exceeds the prevailing wage and the employer will pay the prevailing wage to the alien from the time a petition filed to adjust status is approved, or from the time the alien enters the United States to take up the certified employment after the issuance of a visa by a consular officer;

- the wage offered is not based on commissions, bonuses or other incentives, unless the employer guarantees a wage paid on a weekly, biweekly, or monthly basis;

- the job opportunity does not involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap, or citizenship;

- the employer's job opportunity is not: vacant because the former occupant is on strike or is being locked out in the course of a labor dispute involving a work stoppage; or at issue in a labor dispute involving a work stoppage;

- the employer's job opportunity's terms, conditions and occupational environment are not contrary to Federal, state or local law;

- the job opportunity has been and is clearly open to any qualified U.S. worker; and

As part of the recruitment process, employers would be required to place a job order with the SWA which would be processed the same as any other job order placed by employers. The employer would not be required to submit to ETA any documentation with its application, but would be expected to have assembled supporting documentation specified in the regulations and would be required to provide it in the event its application is selected for audit.

After an application has been electronically received, an automated system will review it based upon various selection criteria. Applications are screened and found to be either incomplete, or are certified, denied, or selected for audit. If an audit has not been triggered by the information provided on the application or because of a random selection for audit, the application will be certified and returned to the employer. In addition, some applications would be randomly selected as a quality control measure for an audit without regard to the results of

[3] 67 Federal Register 30494 (May 6, 2002)

the computer analysis. If an application is selected for audit, the case will be sent to the appropriate ETA regional office, and the employer will be notified and required to submit full documentation to verify the information stated in or attested to on the application. The documentation and application will be sent to the appropriate ETA regional office to be reviewed by the regional CO.

The CO can certify the application, deny the application, or order supervised recruitment. If an application is denied, the employer will be able to request the Board of Alien Labor Certification Appeals (BALCA) review the CO's decision. If the employer is ordered to go through supervised recruitment, the ETA regional office, not the SWA, will supervise the process. When the recruitment is completed, the employer will submit documented evidence to the CO who will review the documentation and either certify or deny the application. If denied, the employer can appeal to the BALCA.

Once DOL has certified the application, there is no time limit for the employer to file a petition with BCIS to obtain a permanent resident visa for the alien. The process also allows for employers to substitute another alien for the alien on the DOL-approved application when the employer files a petition with BCIS. These two conditions turn the labor certification into a commodity and seriously undermine DOL's determination that the underlying job opportunity was/is open to U.S. workers. Furthermore, this "commodity" becomes subject to fraud and abuse (see section below on program fraud).

- **Program Fraud**

Given that the foreign labor certification program is one of the few avenues available for immigrants who want to enter the U.S. legally, and the large amounts of money unscrupulous agents or recruiters can earn from aliens seeking entry into the country, there is a strong incentive to commit fraud or abuse, which can have adverse affects on American wages and working conditions.

Most recently, the Washington Post reported on August 29, 2003, that the FBI arrested two Virginia lawyers and a restaurateur on federal immigration fraud charges for allegedly filing phony labor certifications to get green cards (permanent residency) for illegal immigrants. The Washington Post article stated that authorities believe the two lawyers paid the restaurateur about $5,000 to allow his name to be used on the labor certifications, but he never hired the immigrants. Once a labor certification is granted, an applicant or law firm is allowed to substitute another person to receive the green card. The newspaper article reported that authorities allege the two attorneys would file phony names and work histories for people in South Korea, then sell substitutions to local Koreans for fees between $10,000 and $50,000. The article goes on to state that, according to one informant used in the case, the lawyers charged clients $50,000 to substitute their names into an application: $10,000 as an attorney fee, $20,000 as a sponsor fee, and $20,000 as a premium for avoiding a year-long wait. Only $5,000 would go to a sponsor, and the lawyers would allegedly

keep the rest. The Washington Post estimated that the lawyers had pocketed close to $1.2 million from the scheme, much of it in cash.

During FY 2003 (through August 21, 2003), OIG's Office of Labor Racketeering and Fraud Investigations (OLRFI) obtained 168 indictments and 78 convictions related to fraud in the Foreign Labor Certification program. The following criminal cases typify the fraud cases uncovered by OLRFI:

- A joint investigation conducted with the Department of State-OIG, the BCIE, and others revealed that a Virginia attorney submitted thousands of applications for labor certifications on behalf of businesses that had no knowledge of the filings. None of the employers named by the attorney on the applications had authorized him or any of his associates to apply for labor certifications on their behalf. The attorney would later sell the approved labor certifications to other aliens for between $7,000 and $20,000. As a result of the scheme, the attorney and his co-defendant, made more than $11 million during an 18-month period. Theco-defendant's role was to go to restaurants and obtain managers' names and signatures, which he later used on the applications without the managers' knowledge. The attorney was convicted on all 57 counts of a Federal indictment, including conspiracy, labor certification fraud, false statements, immigration fraud, and money laundering. He was sentenced to 10 years in prison and was ordered to forfeit $2.3 million to pay restitution to his victims. The attorney's co-defendant pled guilty to conspiracy, labor certification fraud, money laundering, immigration fraud, and extortion. He was sentenced to over eight years' imprisonment and forfeited over $4 million in cash and real property.

- A joint investigation conducted with the BCIE and the FBI found that a Washington, D.C., immigration attorney defrauded clients who were seeking work visas and permanent resident status of more than $350,000 over an eight-year period. The attorney sold approved labor certifications and work visas without notifying the original applicants. She continued to bill and collect fees from the original applicants even though their approved documents had been sold or their cases terminated without their knowledge. She was sentenced to six years in prison and four years' supervised release and was ordered to pay nearly $400,000 in restitution to her clients.

- An investigation revealed that a Newark, New Jersey, woman who posed as an attorney and her business partner allegedly charged more than 200 alien certification applicants between $4,500 and $8,000 for each certification, amounting to nearly $2 million in fees. Both were charged with forging alien employment certifications filed with DOL. One defendant has pleaded guilty and is awaiting sentencing while the other is still awaiting trial.

CHAPTER 2:
TEMPORARY H-1B PROGRAM
FOR EMPLOYMENT OF NONIMMIGRANT ALIENS
IN SPECIALTY OCCUPATIONS OR AS FASHION MODELS

The H-1B program allows an employer to temporarily employ a foreign worker in the U.S. on a nonimmigrant basis in a specialty occupation or as a fashion model of distinguished merit and ability. The H-1B program is intended to provide U.S. businesses with timely access to the "best and the brightest" in the international labor market to meet urgent but generally temporary business needs for specialty occupations while protecting the wage levels of U.S. workers. The protection the H-1B program supposedly provides to U.S. workers is that employers are required to pay the aliens the prevailing wage for the specialty occupations. *However, the H-1B program does not require there be a shortage of U.S. workers in the occupation for which the aliens are being hired.*

To hire a foreign worker on an H-1B visa, the job must be a professional position that requires, at a minimum, a bachelor's degree in the field of specialization, except for fashion models. Current law limits the number of H-1B visas[4] to 195,000 per year through 2003. The cap on H-1B visas drops to 65,000 in 2004. An H-1B certification is valid for the period of employment indicated on the application for up to 3 years. However, a foreign worker can be in H-1B status for a maximum continuous period of 6 years. Certain foreign workers with applications for permanent alien labor certification or immigrant visa petitions in process for extended periods may stay in H-1B status beyond the normal 6-year limitation, in 1-year increments. After the H-1B visa expires, the foreign worker must remain outside the U.S. for 1 year before another H-1B petition can be approved. The alien's status, including how long the alien can remain, or not remain, in the U.S. are immigration issues, not DOL/ETA issues.

Each employer seeking to hire a foreign worker must submit a completed Labor Condition Application (LCA) (Form ETA 9035 or 9035E) to the DOL, ETA. At the DOL/ETA level in the H-1B program, the LCA is not alien specific; i.e., no alien's name is listed on the application. On the LCA the employer is requesting ETA's approval for one or more positions, not specific aliens. *As a result, DOL is unable to make any assessment as to whether the alien brought in to fill the position possesses the required qualifications.*

By completing and signing the LCA, the employer agrees to several attestations regarding an employer's responsibilities, including the wages, working conditions, and benefits to be provided to the H-1B nonimmigrant. Specifically, the employer:

- documents the job title and occupational code of the position sought;

[4] There is no limit as to the number of applications that can be filed; only the number of actual visas that can be issued by BCIS is currently limited to 195,000 per year.

- states the actual wage to be paid and prevailing wage (actual wage must be at least 95% of prevailing wage);

- states the period of alien's intended employment, place of employment, and number of aliens sought;

- agrees to "labor condition statements" regarding payment of actual wage and alien's employment not adversely affecting working conditions of other U.S. workers similarly employed;

- declares under penalty of perjury that information provided is true and accurate; and

- declares that compliance will be made with DOL regulations and the INA.

The LCA contains additional attestations for certain H-1B dependent employers and employers found to have willfully violated the H-1B program requirements. These attestations impose additional obligations to recruit U.S. workers, offer positions to U.S. workers who are equally or better qualified than the H-1B nonimmigrant(s), and avoid the displacement of U.S. workers. If ETA approves the LCA, a copy of the LCA is returned to the employer.

As explained above, the LCA simply requires employers to make certain attestations that program requirements have been met. Employers are not required to provide any supporting documentation for DOL to review prior to making a determination on the LCA.

Within 1 working day after the date on which the LCA is filed with ETA, the employer must make the LCA and necessary supporting documentation available for public examination at the employer's principal place of business in the U.S. The employer may then submit a copy of the approved LCA to the BCIS with a completed petition requesting H-1B classification. The nonimmigrant worker is not allowed to begin work for the employer until BCIS grants the worker authorization to work in the U.S. for that employer or, in the case of a nonimmigrant who is already in H-1B status and is changing employment, to another H-1B employer until the new employer files a petition supported by a certified LCA.

The employer is required to maintain documentation to meet its burden of proof with respect to the validity of the statements made in its LCA and the accuracy of information provided. The documentation shall be maintained at the employer's principal place of business in the U.S. and the documentation shall be available to DOL for inspection and copying upon request.

Nonimmigrants cannot gain H-1B status on their own; i.e., a U.S. employer must sponsor them. *However, an OIG audit conducted in 1996 found some aliens who were owners of their own businesses petitioned on their own behalf. These business*

owners had someone else sign the LCA to hide the fact that they were sponsoring themselves.

Prior to filing an LCA, the employer must determine the prevailing wage for the position. Several avenues are available:

- using a determination for the occupation and area issued under the Service Contract Act or the Davis-Bacon Act;
- using a rate set forth in a collective bargaining agreement;
- requesting that a SWA prevailing wage determination be made;
- using a survey conducted by an independent authoritative source; and
- using another legitimate source of information.

Also, the employer must determine the actual wage for the position and must pay at least the higher of the two wage rates. The actual wage is the rate paid by the employer to other individuals with similar experience and qualifications for that type of work.

Our 1996 audit of the H-1B program found that employers paid the alien workers less than the wages they certified they would pay in the LCAs, thus not protecting the wages of U. S. workers in similar positions. We also found that some employers paid the alien workers as independent contractors and thus were not in an employer-employee relationship with the alien. By paying the alien workers as contractors, employers were able to avoid witholdings for income taxes, social security and Medicare. Employers also did not report the wages of the "contractors" to the State Workforce Agency and thus avoided paying state unemployment taxes.

In addition to the above requirements, the employer must inform workers of the intent to hire a foreign worker by posting the completed LCA for the position. The posting must occur in one of two methods, hard copy or electronic notice. The hard copy notice must be given to the bargaining representative for workers in the occupation or, if there is no bargaining representative, be posted for 10 consecutive days in at least two conspicuous locations at each place of employment where any H-1B nonimmigrant will be employed. The electronic notice must be distributed at each place of employment where any H-1B nonimmigrant will be employed. Distribution can be by whatever means the employer normally communicates with its employees. However, the H-1B program does not require employers to demonstrate that a shortage of U. S. workers exists in the occupation for which the aliens are being hired.

The actual filing of an LCA can be done in one of three ways: online submission, facsimile (FAX) transmission or by U.S. mail.

1. If the employer uses the LCA Online System it provides step-by-step instructions for completing and submitting the LCA (Form ETA 9035E) electronically. The employer can expect a response in minutes, unless the prevailing wage source is unknown and must be reviewed by DOL. If review is necessary, the response will be the next working day.

2. If the LCA is submitted by FAX (Form ETA 9035), the employer can usually expect a response within two working days, although DOL has seven days to process the application. The FAX (Form ETA 9035) is scanned into the electronic system by DOL staff and then the system processes the LCA.

3. An LCA (Form ETA 9035) submitted by U.S. mail is sent to Philadelphia, Pennsylvania, where it is scanned into the electronic system and processed.

ETA will return the LCA to the employer or authorized agent, not certified, when either or both of the following two conditions exist: not properly completed, or contains obvious inaccuracies.

Examples of LCAs not properly completed include the following: instances where the employer has failed to mark the attestations or has failed to state the occupational classification, number of nonimmigrants sought, wage rate, period of intended employment, place of intended employment, prevailing wage and its source, or the signature of the employer or authorized agent.

Examples of obvious inaccuracies in the LCA include the following: filing an application in error (employer has been disqualified from employing H-1B nonimmigrants), stating a wage rate below the Fair Labor Standards Act's minimum wage, submitting an LCA earlier than 6 months before the beginning date of the period on intended employment, identifying a wage rate which is below the prevailing wage listed on the LCA, or identifying wage range where the bottom of the range is lower than the prevailing wage listed on the LCA.

If the LCA is returned for correction, the employer makes appropriate changes and resubmits the application. ETA processes resubmissions as if they are new requests.

LCAs submitted by fax or by mail are processed in a couple of days, while the processing time for LCAs submitted electronically is only minutes. The electronic filing of LCAs has eliminated any backlogging of pending LCAs; however, DOL has minimal human intervention during the review process and the certification approval is simply a rubber stamp as long as the LCA is complete and free of obvious errors.

The final rule on electronic filing, includes the following statement:

> . . . the scope of the Department's review of LCAs under section 212(n)(1)(D) of the [Immigration and Nationality Act (INA)] is limited to "completeness and obvious inaccuracies". . . . Because the electronic filing system includes guidance to the employers in filling out their applications "on line," the LCAs will have fewer incomplete

> or obviously inaccurate entries and will, therefore, ordinarily be acceptable for immediate electronic certification. [5]

The OIG believes that if DOL is to have a meaningful role in the labor certification process, it should have corresponding statutory authority, not currently available, to ensure the integrity of the process, by verifying the accuracy of the information provided on LCAs. In our opinion, as the H-1B program is currently operated, DOL adds nothing substantial to the process. It would be more efficient if the employers filed their applications directly to BCIS, for visa approval.

Upon DOL certification, the employer submits to the BCIS the ETA-approved LCA, filing fees, Immigration Form I-129, and any other required supporting documentation. The fee includes a base fee of $130 plus $1000 additional for the H-1B petitions. Also the employer can receive premium-processing service (within 15 days) by submitting Form I-907 and an additional $1000.

The processing system used by DOL for LCAs is designed to certify applications quickly rather than screen out applications that do not meet program requirements. OIG investigations continue to identify fraud in the H-1B program (see section below on program fraud) which may result in security risks associated with aliens admitted to the U. S. by fraudulent means. DOL does not track the movement of H-1B visa holders while in the U. S. and has no way to prevent the nonimmigrant from abandoning employment and remaining in the U. S.

--Proposed Changes to Rules or Regulations

The DOL is proposing to change the rules that impact the H-1B visa program. The proposed rule would amend the regulations governing the employer's wage obligation.

The prevailing wage for the occupation classification in the area of intended employment must be determined as of the time the employer files an LCA with DOL. The new regulation provides that the employer shall base the prevailing wage on the best information available as of the time of filing the application. The Department believes that the following prevailing wage sources are, in order of priority, the most accurate and reliable: SWA determination, an independent authoritative source, or another legitimate source of wage information.

Furthermore, the proposed regulations would require that every H-1B nonimmigrant is to be paid in accordance with the employer's actual wage system, and thus to receive any pay increases which that system provides. It is undetermined when or if the proposed changes will become final rules.

--Program Fraud

[5] 66 Federal Register 63298 (December 5, 2001)

The OIG continues to identify fraud in the H-1B temporary work visa program. These cases involve fraudulent LCAs that are filed on behalf of fictitious companies and corporations, individuals who file petitions using the names of legitimate companies and corporations without their knowledge or permission, and immigration attorneys and labor brokers who collect fees and file fraudulent applications on behalf of their clients. The following criminal cases typify the fraud committed against the H-1B program:

- A joint investigation conducted with the BCIS, FBI, and others found a widespread conspiracy since 1986 to bring at least 25 Indian nationals into the United States through fraudulent abuse of the H-1B visa program.

- A joint investigation conducted with the BCIS and the Department of State found that over a 3-year period, a former immigration consultant in San Francisco, California, and her co-conspirator, a controller of a California firm specializing in convalescent care, filed hundreds of fraudulent petitions for Filipino aliens seeking admission to the United States through the H-1B visa program. Instead of placing them in high skilled jobs as required, the perpetrators placed the foreign workers in low-skilled, low-paying jobs, such as janitors, certified nursing assistants, and maintenance staff.

- A joint investigation conducted with the BCIS revealed that from July 2000 to March 2001, the CEO of a company in Austin, Texas, filed 42 H-1B visa petitions on behalf of South African information technology professionals, claiming that his company would hire the visa applicants as systems analysts, earning $42,000 per year. The investigation disclosed that the perpetrator falsified information on the forms he submitted to DOL and the INS, because the company had no jobs available for applicants when they entered the country. Once the applicants arrived in the United States, they were instructed to find their own jobs through Internet web sites, yet each applicant was charged between $850 and $2,330 to process the H-1B visa application.

- A joint investigation conducted with the BCIS uncovered a scheme involving a woman who filed approximately 200 labor condition application forms with DOL, and attested that her company had computer programming and consulting jobs (supposedly paying $40,000 to $60,000 per year) for aliens in the United States when in fact there were no such jobs available. By completing and filing the labor condition applications with DOL, the woman caused visa petitions to be issued by what was then the INS. The petitions granted visa status to numerous aliens who arrived in the United States from India without employment in the computer industry. Some of the aliens admitted to paying approximately $3,000 each for obtaining the visas.

CHAPTER 3:
H-2A PROGRAM
FOR THE TEMPORARY EMPLOYMENT OF NONIMMIGRANT ALIEN AGRICULTURAL WORKERS

The H-2A temporary or seasonal agricultural workers program establishes a means for agricultural employers who anticipate a shortage of U.S. workers to bring nonimmigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature.

Temporary or seasonal agricultural employment is performed at certain seasons of the year, usually in relation to the production and/or harvesting of a crop, or for a limited time period of less than 1 year when an employer can show that the need for the foreign worker(s) is truly temporary.

A proprietorship, a partnership, or a corporation can file an H-2A application for temporary or seasonal agricultural workers. An association of agricultural producers may file as a sole employer, a joint employer with its members, or as an agent of its members. An agent may be authorized by the employer to act on the employer's behalf in all phases of the application process. The authorized agent may be an individual, an attorney, or an entity (such as an association). Associations may file master applications on behalf of their members.

Before the BCIS can approve an employer's petition for temporary or seasonal agricultural workers, the employer must file an application with the DOL, ETA. By filing the application, the employer is assuring that sufficient U.S. workers who are able, willing and qualified are not available, and that employing aliens will not adversely affect the wages and working conditions of similarly employed U.S. workers.

The appropriate CO must receive the original application for alien employment certification at least 45 calendar days before the first date on which workers are needed. A simultaneous copy of the application must also be filed with the SWA in the state where the work will be performed. If the initial application is accepted or amended within the required time frame and complies with the regulations, the CO will make a certification determination 30 calendar days before the date on which the workers are needed.

The Department's ESA, Wage and Hour Division (WHD), has responsibility for enforcing provisions of workers' term of conditions of employment (wage rate, hours, housing, meals, etc.).

Once the employer files the application (Forms ETA 750 and 790) and all required assurances, the CO reviews it promptly. Within 7 calendar days after receiving an application, the CO will notify the employer or agent in writing of the decision to accept or reject the application. Copies of the notification will be sent to the SWA and to the employer or agent by FAX or next day delivery mail.

OIG conducted an audit of the H-2A program for the period October 1, 1995, through September 30, 1996. The primary audit objective was to determine the DOL's effectiveness in meeting its H-2A program responsibilities. This audit found that applications for workers were not processed within statutory time frames. The sample tested in the prior audit reflected that in 60 percent of applications filed (193 of 318) the employers were not notified of ETA's action within the requisite 7-day period. ETA missed the 7-day requirement by an average of 15 days.

After ETA accepts the employer's application, within 23 days of the anticipated date of need, the employer must provide ETA with evidence that the housing inspections and other program requirements have been completed. ETA must provide the employer with its decision to certify the numbers of workers requested (all or in part), no later than 20 days before the first date of need. The sample tested in the prior OIG audit reflected that ETA missed the 20-day requirement on 40 percent of the certifications tested (130 of 318) by an average of 8 days.

If the application is accepted, the CO notifies the employer/agent and the SWA that the application process includes independent positive recruitment efforts within a multi-state region of traditional or expected labor supply and requires the SWA to place a job order into appropriate intrastate and interstate clearances.

Our prior audit of the H2A program found that Interstate job orders assist in addressing local shortages by advertising openings in areas where a surplus of available labor exists. However, agricultural clearance orders received little attention and resulted in few referrals of U.S. workers.

Although the SWAs are ETA's partner in helping recruit U.S. workers, most employers used other means to recruit farm workers. In recent years, an increasing proportion of agricultural workers are in the U.S. illegally. A 1995 DOL study conservatively estimated that 37 percent of the agricultural workforce, or 600,000 workers, were illegal foreign workers. In contrast, ETA certified only about 18,000 crop workers during Fiscal Year 1996. Consequently, most employers recruit farm workers from a large population of unauthorized foreign workers.

Many of the benefits that must be included in a job offer and other conditions that must be satisfied are dependent upon what prevailing practices and prevailing wage rates exist in the same occupation, crop, and area.

An employer must meet specific requirements, such as conducting appropriate recruitment, paying prevailing wages, and providing housing, meals, transportation, workers compensation insurance, tools and supplies, three-fourths anticipated work (contract) period guarantee, and ongoing recruitment efforts for 50 percent of the contract period.

During our prior audit, a sample of Fiscal Year 1996, H-2A certifications indicated that neither the SWAs' efforts nor the employers' required recruiting efforts resulted in significant numbers of U.S. workers being placed in agricultural jobs; 2 percent (252 of 10,134) were filled by U.S. workers.

Our prior audit also noted that:

- *SWAs' efforts to recruit workers were often passive and few domestic referrals came from local, intrastate, or interstate activities.*

- *Some SWAs were hesitant to refer workers to employers because they believed sincere efforts to employ them would not be made.*

- *Typically, the SWAs' records did not distinguish workers referred by the SWAs efforts from those referred through employers' recruitment.*

- *Widespread use of fraudulent documents* ***(Form I-9, Employment Eligibility Verification)*** *by agricultural workers went undetected by the BCIS. As a result, growers, DOL and the SESAs often could not distinguish unauthorized foreign job applicants from U.S. workers. Evidence suggested that the SWAs had in some instances referred unauthorized workers, believing they were U.S. workers, to fill requested H-2A jobs. No procedures were in place to verify an individual's legal status before he/she was hired.*

- *Employers were not required to document their efforts to recruit U.S. workers and to continue cooperation with the SWAs in local, intrastate and interstate recruitment.*

Other conditions state that the employer must keep accurate records with respect to a worker's earnings. The worker must be provided with a complete statement of hours worked and related earnings on each payday. The employer must pay the worker at least twice monthly or more frequently if it is the prevailing practice to do so. The employer must provide a copy of a work contract or the job order to each worker.

In emergency situations the CO may waive the 45-day filing requirement, provided there is sufficient time to obtain sufficient labor market information on an expedited basis in order to make a determination of U.S. workers' availability. None of the minimum conditions of employment (wages, housing, other benefits) are waived.

Our prior audit found that ETA's data representing a total of the nation's seasonal crop workforce was unreliable regarding the number of job openings in the U.S. Also, ETA did not maintain nationwide data on its certification activities to evaluate program activities. Instead, each regional office was expected to maintain a log of activities. Both the means used to collect data and the data being collected were found to be inconsistent. Regional data collection

procedures ranged from manual tabulation to data entry and storage in a variety of data processing formats. Data available among offices was also inconsistent, as the statistics collected depended upon the data elements each office felt was useful. ETA's national office obtained program information either through telephone calls to the regional offices or through manually prepared documents. As needed, ETA obtained statistics from each region for the number of applications certified, number of job openings, and amount of certification fees collected. ETA did not maintain and analyze data needed to help evaluate the program's effectiveness, such as applicant referrals and placements.

If the application is not accepted, the CO will notify both the employer and SWA in writing within (7) calendar days after receipt of the application. The notice of non-acceptance will state why the employer's application is not acceptable. It will identify what revisions are required for the application to be accepted, inform the employer that they have 5 calendar days from the date of the notice in which to resubmit the application with modifications to correct any deficiencies and what procedures the employer may use to appeal the CO's nonacceptance. If the employer resubmits an application with modifications, the amended application must be filed with the CO, and a copy to the SWA.

The CO will deny the certification for any of the following reasons:

- the application does not meet the required time frames (except in emergency situations) and enough time is no available to test the availability of U.S. workers;

- enough able, willing and qualified eligible U.S. workers are available to fill all the employer's job opportunities;

- the employer has not complied with the worker's compensation requirements;

- the employer has not satisfactorily complied with positive recruitment requirements;

- the employer, since the application was accepted for consideration, has adversely affected the wages, working conditions, or benefits of U.S. workers; or

- after appropriate notice and opportunity for a hearing, the CO determines that the employer has substantially violated a material term or condition of a previous H-2A certification within the last 2 years.

Our prior audit found that ETA's decision to certify an application was often based on incomplete information. Certifications of applications were routinely issued without complete information on the results of efforts to recruit U.S. workers or without documentation that the petitioning employers' housing had been inspected and was acceptable.

If the CO determines that the employer has complied with the recruitment assurances, the adverse effect criteria, all time requirements, and other appropriate requirements established by law and regulation, then the CO will grant the temporary foreign agricultural labor certification for the number of job opportunities for which it has been determined there are not sufficient U.S. workers available. After certification has been granted, the employer must continue to recruit U.S. workers until the H-2A workers have departed for the place of work and throughout 50 percent of the work period. Also, the SWA will continue to refer to the employer qualified and eligible U.S. workers who are seeking employment and who apply and qualify for the job opportunity for up to 50 percent of the contract period, and the employer must hire these U.S. workers.

The 50 percent recruitment rule may burden employers and workers. While the intent of this requirement is to ensure that domestic workers continue to be afforded job opportunities, it could burden employers and result in foreign workers being dismissed without the means to return home. Agricultural employers have indicated that they believe the requirement should be changed because it could result in having H-2A workers replaced after the employer had borne the expenses of transporting, training, and housing foreign workers. Thus, an agricultural employer could be required to choose between paying more workers than needed or displacing trained workers with new workers. Further, it could result in unjust injury to displaced foreign workers.

The ESA, WHD has a primary role in investigating and enforcing the terms and conditions of employment for workers admitted to the U. S. under the H2A program. ESA is responsible for enforcing the contractual obligations employers have toward employees and may assess civil money penalties and recover unpaid wages. Administrative proceedings and/or injunctive actions through Federal courts may be instituted to compel compliance with an employer's contractual obligations to employees.

ETA is responsible for administering sanctions relating to violations of the regulations. For substantial violations this sanction is the denial of certification for up to 3 years. For less than substantial violations, as a condition for certification in a subsequent year, the CO may require the employer to comply with special procedures designed to enhance the recruitment and retention of U.S. workers during the season.

DOL's division of responsibilities, with ETA handling compliance with certification requirements and ESA enforcing the terms of work contracts, prevents cohesive enforcement of program requirements and contributes to uncertainties over responsibilities.

ESA has no authority to issue sanctions against employers for violating program requirements. Sanctions are ETA's responsibility. Our prior audit of the

H-2A program found little evidence of interface between the two entities and concluded that the authority to apply sanctions would be more effective if combined with the authority to investigate wage and working condition violations and invoke penalties. It would allow one agency to have more complete knowledge and more effectively address the activities of unscrupulous employers.

Proposed Changes to Rules or Regulations

ETA published H-2A program implementing regulations[6], identifying DOL's responsibilities, as an interim final rule with a request for comments on June 1, 1987. We are unaware of any changes to these regulations in more than 16 years.

[6] 52 Federal Register 20496 (June 1, 1987)

CHAPTER 4:
H-2B TEMPORARY PROGRAM
FOR THE EMPLOYMENT OF NONIMMIGRANT ALIEN
NONAGRICULTURAL WORKERS

The H-2B program allows employers to hire foreign workers to come to the U.S. and perform temporary nonagricultural work when U.S. workers are not available. Work performed under H-2B visas work must be a *one-time occurrence*, or a *seasonal, peak load,* or *intermittent* need*.* The job must be for less than 1 year (10 months is the time period utilized). If extraordinary circumstances establish a need that requires the alien worker's services for more than a year, a new application must be filed. Under no instance may the time for a particular job be certified to exceed 3 unbroken years. During each fiscal year, the BCIS may issue H-2B status to 66,000 foreign workers.

The employer applies for H-2B certification at least 60 days, but not more than 120 days, before the worker is needed. The certification request may contain multiple openings of the same job and rate of pay. The certification is issued to the employer, not the worker(s), and is not transferable from one employer to another or from one worker to another. These procedures do not apply to applications filed on behalf of aliens in the entertainment industry and in professional team sports.

The employer files an application (Form ETA 750) to the SWA local or state office serving the area of proposed employment, including documentation of any efforts to recruit U.S. workers the employer made before filing the application. Also, the employer must provide a convincing statement explaining why the job opportunity is temporary and that the employer's need for the work is either a one-time, seasonal, peak, or intermittent need.

The SWA reviews the job offer for completeness, and:

- instructs the employer on mandatory recruitment, appropriateness of the wages and working conditions offered;
- opens a job order for 10 days;
- issues ad instructions; and
- refers qualified candidates to the employer for interviews.

After the interviews of job applicants are completed, the employer must prepare a recruitment report summarizing its efforts to hire U.S. workers. The report must include the name, address, and the lawful reason for not hiring the applicants.

When the SWA has finalized its process, the application file is forwarded to the DOL regional CO. The application must be either certified or denied within 30 days of receipt.

The application will be certified if the CO finds that qualified U.S. workers are not available and that the terms of the employment will not adversely affect the wages and working conditions of workers similarly employed in the U.S. The DOL decision is only an advisory to the BCIS; employers may appeal DOL's application denials directly to BCIS. The BCIS may accept or reject the DOL advice.

In our opinion, the priority DOL must put on H-2B applications because of the 30-day requirement for certification or denial – which is advisory only -- increases the vulnerabilities in other programs where DOL has a more authoritative role.

Applications for forestry workers, aerospace engineers, construction workers and boilermakers have special processing procedures. Most of the special procedures involve recruitment and instances of national emergency situations.

To obtain the H-2B work visa, the employer must submit the DOL certification or notice of denial, an Immigration form (I-129), and filing fees to support its petition filed with the BCIS. Once the BCIS has approved the petition, the employer will receive written notification, and in the case of aliens not already in the U.S., the designated embassy or consulate will be notified.

Aliens not currently in the U.S. must obtain a visa from an embassy or consulate office prior to entering the U.S.

The existence of an approved BCIS petition does not ensure the alien will be issued a visa. Consulate officials are required to obtain sufficient documentation from applicants to establish the applicant's eligibility to receive a nonimmigrant visa. If the consulate official finds the applicant eligible, a visa will be issued that includes the type of status approved and the period of validity.

DOL has an indirect role for minimizing national security risk posed by foreign labor programs. ETA's role is to determine whether the employer truly needs foreign labor and to ensure that the presence of foreign laborers will not negatively impact U.S. workers' wages and working conditions. Additionally, the ESA, WHD must ensure that employers are not encouraging alien workers to abandon the worksite by not fulfilling their contractual obligations as to benefits, wages, and working conditions. If ETA and WHD do not perform their roles diligently, the result could be an unnecessary influx of alien workers and an increased national security risk.

Proposed Changes to Rules or Regulations

The OIG is unaware of any legislative changes regarding the H-2B program. However, we understand DOL, ETA is reviewing and updating the General Administration Letter for this program.

CHAPTER 5:
D-1 PROGRAM
CREWMEMBERS CERTIFICATION

Performance of longshore work at U.S. ports by D-1 crewmembers on foreign vessels is generally prohibited with few exemptions. The Department of Labor is responsible for administering two of those exemptions.

- that the use of alien crewmembers to perform longshore work is the prevailing practice for the activity at that port, there is no strike or lockout at the place of employment, and that notice has been given to U.S. workers or their representatives.

- before using alien crewmen to perform longshore activities in the State of Alaska, the employer will make a bona fide request for and employ U.S. longshore workers who are qualified and available in sufficient numbers from contract stevedoring companies, labor organizations recognized as exclusive bargaining representatives of U.S. longshore workers, and private dock operators.

Employers in these ports are required to file an attestation directly to the Chief, Division of Foreign Labor Certification, with the Department of Labor. The attestations are valid for one year.

Violations may produce penalties to the employer of up to $5,000 for each crewmember wrongfully performing longshore work, and could bar vessels owned or chartered by the employer from entering all U.S. ports for up to one year. There has been no activity under the prevailing practice exception since the enactment of legislation creating a separate exception for the performance of longshore work at locations in the State of Alaska.

OIG has not performed audit work in the D-1 program.

CHAPTER 6
H-1C PROGRAM
NURSES IN DISADVANTAGED AREAS

The Nursing Relief for Disadvantaged Areas Act of 1999 (NRDAA) allows qualifying hospitals to employ temporary foreign workers (nonimmigrants) as Registered Nurses (RNs) for up to three years under H-1C visas. Only 500 H-1C visas can be issued each year during the four year period of the H-1C program (2000-2004). The sponsoring employer must pay a filing fee of $250 for each application filed with the DOL.

H-1C nurses may be admitted for a period of three years; thus far, the law does not provide for an extension of that time frame.

OIG has not performed audit work in the H-1C Program.

APPENDIX 1

SUMMARY OF FOREIGN LABOR CERTIFICATION PROCESSES

	Permanent	H-1B	H-2A	H-2B
Employers:				
Submit application/petition to SWA	√			√
Submit application/petition simultaneously to SWA and ETA			√	
Submit labor condition application or petition to DOL/ETA		√		
Make the application available for public examination		√		
Conduct appropriate recruitment	√		√	√
Pay prevailing wages	√	√	√	√
Provide housing, meals, transportation, workers' compensation insurance, tools and supplies			√	
Submit recruitment report to SWA	√		√	√
Rebut Notice of Findings	√			
Continue recruitment efforts to find qualified U. S. workers for 50 percent of the work contract period			√	
Appeal denial to BALCA	√		√	
Revise denied application within 5 calendar days and resubmit to ETA, with a copy to the SWA			√	
Keep accurate records with respect to workers' earnings			√	
File Immigration Petition for an Alien Worker with BCIS	√	√	√	√
File approved application with BCIS	√	√	√	√
Provide ETA with evidence that housing inspections and other program requirements have been completed			√	

APPENDIX 1

SUMMARY OF FOREIGN LABOR CERTIFICATION PROCESSES

	Permanent	H-1B	H-2A	H-2B
SWAs:				
Review employer's application	√		√	√
Develop a job advertisement/job orders	√		√	√
Refer qualified U. S. applicants	√		√	√
If qualified U. S. workers are identified, notify employer that application will likely be denied	√			
Continue to refer qualified U. S. workers to the employer throughout 50 percent of the work period			√	
Forward application to ETA Regional Office	√			√
DOL/ETA:				
CO reviews application and may require additional interviews or issue a Notice of Findings indicating intent to deny	√			
Issue Final Determination/Certification	√	√	√	√
Review online LCA and respond in minutes		√		
Review LCA submitted by fax and process within 7 working days		√		
Scan LCA received by U. S. mail into the online system		√		
Return improperly completed LCAs to employer or authorized agent		√		
Process resubmissions as if they are new requests		√		
Issue statement of acceptance or non-acceptance of application to employer and SWA within 7 days of receiving application			√	
DOL/ESA:				
Investigate and enforce terms and conditions of employment			√	

APPENDIX 2

SUMMARY OF VULNERABILITIES

PERMANENT ALIEN LABOR CERTIFICATION PROGRAM	• Employers do not comply with the qualifying criteria
	• Labor market test does not protect U. S. workers
	• RIR process subject to same vulnerabilities as the basic process
	• DOL has no control over the immigrant abandoning employment and remaining in the U. S.
	• Proposed PERM system lacks many internal controls
	• Program remains highly susceptible to fraud

APPENDIX 2

SUMMARY OF VULNERABILITIES

H-1B PROGRAM FOR EMPLOYMENT OF NONIMMIGRANT ALIENS IN SPECIALTY OCCUPATIONS OR AS FASHION MODELS	• Program does not require there be a shortage of U.S. workers in the occupation for which the aliens are being hired
	• DOL is unable to make any assessment as to whether the alien brought in to fill the position possesses the required qualifications
	• Employers are not required to provide any supporting documentation for DOL to review prior to making a determination on the LCA
	• Employers may not comply with program requirements, e.g., paying aliens less than the prevailing wage, or categorizing aliens as independent contractors to avoid paying state unemployment taxes
	• Electronic filing leads to little human intervention during review process
	• DOL has no control over the immigrant abandoning employment and remaining in the U. S.
	• Program remains highly susceptible to fraud

APPENDIX 2

SUMMARY OF VULNERABILITIES

H-2A PROGRAM FOR THE TEMPORARY EMPLOYMENT OF NONIMMIGRANT ALIENS AGRICULTURAL WORKERS	• Applications for foreign workers not processed within statutory time frames.
	• SWA job orders for domestic agricultural workers received little attention, resulted in few referrals of U. S. workers and even fewer placements.
	• Most employers do not use SWAs to recruit farm workers and may be recruiting from a large population of foreign workers who are in the U. S. illegally.
	• Employers were not required to document their efforts to recruit U. S. workers.
	• Data on the nation's seasonal crop workforce and number of job openings may be unreliable.
	• ETA did not maintain and analyze data needed to evaluate H-2A program effectiveness.
	• Application certifications were often based on incomplete information on the results of efforts to recruit U. S. workers or without documentation that the petitioning employers' housing had been inspected and was acceptable.
	• The rule requiring SWAs to refer U. S. workers to employers throughout 50 percent of the work period may burden employers and result in foreign workers being dismissed without the means to return home.
	• DOL's division of responsibilities, with ETA handling compliance with certification requirements and ESA enforcing terms of work contracts prevents cohesive enforcement of program requirements.
	• After more than 16 years, H-2A regulations have not been issued in final form.

APPENDIX 2

SUMMARY OF VULNERABILITIES

H-2B TEMPORARY PROGRAM FOR THE EMPLOYMENT OF NONIMMIGRANT ALIEN NONAGRICULTURAL WORKERS	The priority DOL must put on H-2B applications because of the 30-day requirement for certification or denial – which is advisory only – may increase the vulnerabilities in other programs where DOL has a more substantive role.
	If ETA and WHD do not perform their roles diligently, the unintended consequence may be an unnecessary influx of alien workers who abandon the worksite.

APPENDIX 3

ABBREVIATIONS

BALCA	Board of Alien Labor Certification Appeals
BCIS	Bureau of Citizenship & Immigration Services
CFR	Code of Federal Regulations
CO	Certifying Officer
DOJ	United States Department of Justice
DOL	United States Department of Labor
ESA	Employment Standards Administration
ETA	Employment and Training Administration
FLC	Foreign Labor Certification
INA	Immigration and Nationality Act
LCA	Labor Condition Application
NOF	Notice of Findings
OIG	Office of Inspector General
OLRFI	Office of Labor Racketeering and Fraud Investigations
PERM	Program Electronic Review Management
RIR	Reduction In Recruitment
SWA	State Workforce Agency
TMS	Technology & Management Services, Inc.
WHD	Wage & Hour Division

APPENDIX 4

BACKGROUND

The Department's foreign labor certification programs provide employers access to foreign labor. The permanent, H-2A and H-2B programs are designed to ensure that the admission of alien workers does not adversely affect the job opportunities, wages, and working conditions of American workers or legal resident aliens. The H-1B Visa Specialty Workers program helps employers compete in the global market by giving them access to highly qualified individuals in specialty occupations.

The Department of Labor (DOL), Employment and Training Administration (ETA), has responsibility for approving (certifying) applications for aliens to work in the United States. For the permanent, H-1B, and H-2A programs, the employer must receive DOL's approval (certification) of the appropriate application before the employer can petition the Bureau of Citizenship and Immigration Services (BCIS), formerly Immigration and Naturalization Service (INS), for the appropriate visa that allows the alien to work in the U.S. Although DOL must certify or deny the employer's applications for the H-2B program, ETA's decision to certify or deny an employer's application is only advisory to the BCIS with the petition for the H-2B visa. BCIS can accept or reject DOL's decision.

Abuses of these programs may result in economic harm to American workers and businesses, exploitation of foreign workers, and security risks associated with aliens who are admitted to this country by fraudulent means. Hence, according to the DOL Inspector General, Foreign Labor Certification is one of his top ten concerns.

Based on the above, the OIG, Office of Audit conducted an overview of the four major foreign labor certification programs to identify potential vulnerabilities.

APPENDIX 5

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

For 4 of the Department's 6 Foreign Labor Certification Programs (Permanent, H-1B, H-2A, and H-2B), we reviewed the purpose of each program; current program processes; proposed changes, if any, to rules, regulations and/or process; and previous audits or studies completed to summarize each program's vulnerabilities.

Scope

For each of the four programs we reviewed, we determined both current and potential future vulnerabilities, especially if proposed changes in rules and/or regulations are a factor. We did not review the D-1 (Crewmembers) or H-1C (Nurses in Disadvantaged Areas) certification programs.

Methodology

The overview included:

- gaining an understanding of each program from sources such as Federal Registers, the Internet, past audit reports, interviews and discussions with appropriate Foreign Labor Certification personnel in both the ETA national and regional offices, and attending a meeting among personnel from the Department of Justice, ETA and the OIG, Office of Labor Racketeering (OLFRI) and Fraud Investigations;

- reviewing previously issued audit reports to determine if the issues identified in those reports have been resolved; and

- reviewing written summaries of OLFRI investigative cases.

We provided a draft copy of this overview to the Employment and Training Administration and invited comments. ETA did not provide comments.

APPENDIX 5
SAMPLE FORMS

ETA Form 750, Application for Alien Employment Certification, Part A

OMB Approval No. 44-R1301

U.S. DEPARTMENT OF LABOR
Employment and Training Administration

APPLICATION FOR ALIEN EMPLOYMENT CERTIFICATION

IMPORTANT: READ CAREFULLY BEFORE COMPLETING THIS FORM

PRINT legibly in ink or use a typewriter. If you need more space to answer questions in this form, use a separate sheet. Identify each answer with the number of the corresponding question. SIGN AND DATE each sheet in original signature.

To knowingly furnish any false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a felony punishable by $10,000 fine or 5 years in the penitentiary, or both (18 U.S.C. 1001)

PART A. OFFER OF EMPLOYMENT

1. Name of Alien (Family name in capital letter, First, Middle, Maiden)

2. Present Address of Alien (Number, Street, City and Town, State ZIP code or Province, Country)

3. Type of Visa (If in U.S.)

The following information is submitted as an offer of employment.

4. Name of Employer (Full name of Organization)

5. Telephone

6. Address (Number, Street, City and Town, State ZIP code)

7. Address Where Alien Will Work (If different from Item 6)

8. Nature of Employer's Business Activity	9. Name of Job Title	10. Total Hours Per Week		11. Work Schedule (Hourly)	12. Rate of Pay	
		a. Basic	b. Overtime	a.m. p.m.	a. Basic $ per	b. Overtime $ per hour

13. Describe Fully the Job to be Performed (Duties)

14. State in detail the MINIMUM education, training, and experience for a worker to perform satisfactorily the job duties described in Item 13 above.

EDUCATION (Enter number of years)	Grade School	High School	College	College Degree Required (specify)	Major Field of Study
TRAINING	No. Yrs.		No. Mos.	Type of Training	
EXPERIENCE	Job Offered Number Yrs.	Mos.	Related Occupation Number Yrs.	Mos.	Related Occupation (specify)

15. Other Special Requirements

16. Occupational Title of Person Who Will Be Alien's Immediate Supervisor

17. Number of Employees Alien Will Supervise

ENDORSEMENTS (Make no entry in section - for Government use only)

Date Forms Received	
L.O.	S.O.
R.O.	N.O.
Ind. Code	Occ. Code
Occ. Title	

Replaces MA 7-50A, B and C (Apr. 1970 edition) which is obsolete.

ETA 750 (Oct. 1979)

18. COMPLETE ITEMS ONLY IF JOB IS TEMPORARY			19. IF JOB IS UNIONIZED (Complete)	
a. No. of Openings To Be Filled By Aliens Under Job Offer	b. Exact Dates You Expect To Employ Alien		a. Number of Local	b. Name of Local
	From	To		c. City and State

20. STATEMENT FOR LIVE-AT-WORK JOB OFFERS (Complete for Private Household ONLY)

a. Description of Residence		b. No. Persons residing at Place of Employment				c. Will free board and private room not shared with anyone be provided? ("X" one)
("X" one)	Number of Rooms	Adults		Children	Ages	
☐ House			BOYS			☐ YES ☐ NO
☐ Apartment			GIRLS			

21. DESCRIBE EFFORTS TO RECRUIT U.S. WORKERS AND THE RESULTS. (Specify Sources of Recruitment by Name)

22. Applications require various types of documentation. Please read Part II of the instructions to assure that appropriate supporting documentation is included with your application.

23. EMPLOYER CERTIFICATIONS

By virtue of my signature below, I HEREBY CERTIFY the following conditions of employment.

a. I have enough funds available to pay the wage or salary offered the alien.

b. The wage offered equals or exceeds the prevailing wage and I guarantee that, if a labor certification is granted, the wage paid to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work.

c. The wage offered is not based on commissions, bonuses, or other incentives, unless I guarantee a wage paid on a weekly, bi-weekly, or monthly basis.

d. I will be able to place the alien on the payroll on or before the date of the alien's proposed entrance into the United States.

e. The job opportunity does not involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap, or citizenship.

f. The job opportunity is not:

(1) Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute involving a work stoppage.

(2) At issue in a labor dispute involving a work stoppage.

g. The job opportunity's terms, conditions and occupational environment are not contrary to Federal, State or local law.

h. The job opportunity has been and is clearly open to any qualified U.S. worker.

24. DECLARATIONS

DECLARATION OF EMPLOYER ➤ Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury the foregoing is true and correct.

SIGNATURE	DATE

NAME (Type or Print)	TITLE

AUTHORIZATION OF AGENT OF EMPLOYER ➤ I HEREBY DESIGNATE the agent below to represent me for the purposes of labor certification and I TAKE FULL RESPONSIBILITY for accuracy of any representations made by my agent.

SIGNATURE OF EMPLOYER	DATE

NAME OF AGENT (Type or Print)	ADDRESS OF AGENT (Number, Street, City, State, ZIP code)

ETA Form 750, Application for Alien Employment Certification, Part B

PART B. STATEMENT OF QUALIFICATIONS OF ALIEN

FOR ADVICE CONCERNING REQUIREMENTS FOR ALIEN EMPLOYMENT CERTIFICATION: If alien is in the U.S., contact nearest office of Immigration and Naturalization Service. If alien is outside U.S., contact nearest U.S. Consulate.

IMPORTANT: READ ATTACHED INSTRUCTIONS BEFORE COMPLETING THIS FORM.

Print legibly in ink or use a typewriter. If you need more space to fully answer any questions on this form, use a separate sheet. Identify each answer with the number of the corresponding question. Sign and date each sheet.

1. Name of Alien (Family name in capital letters)	First name	Middle name	Maiden name

2. Present Address (No., Street, City or Town, State or Province and ZIP code)	Country	3. Type of Visa (If in U.S.)

4. Alien's Birthdate (Month, Day, Year)	5. Birthplace (City or Town, State or Province)	Country	6. Present Nationality or Citizenship (Country)

7. Address in United States Where Alien Will Reside

8. Name and Address of Prospective Employer if Alien has job offer in U.S.	9. Occupation in which Alien is Seeking Work

10. "X" the appropriate box below and furnish the information required for the box marked

a. ☐ Alien will apply for a visa abroad at the American Consulate in →	City in Foreign Country	Foreign Country
b. ☐ Alien is in the United States and will apply for adjustment of status to that of a lawful permanent resident in the office of the Immigration and Naturalization Service at →	City	State

11. Names and Addresses of Schools, Colleges and Universities Attended (Include trade or vocational training facilities)	Field of Study	FROM Month	FROM Year	TO Month	TO Year	Degrees or Certificates Received

SPECIAL QUALIFICATIONS AND SKILLS

12. Additional Qualifications and Skills Alien Possesses and Proficiency in the use of Tools, Machines or Equipment Which Would Help Establish if Alien Meets Requirements for Occupation in Item 9.
13. List Licenses (Professional, Journeyman, etc.)
14. List Documents Attached Which are Submitted as Evidence that Alien Possesses the Education, Training, Experience, and Abilities Represented

Endorsements	DATE REC. DOL
(Make no entry in this section - FOR Government Agency USE ONLY)	O.T. & C.

(Items continued on next page)

15. WORK EXPERIENCE. List all jobs held during the last three (3) years. Also, list any other jobs related to the occupation for which the alien is seeking certification as indicated in item 9.

a. NAME AND ADDRESS OF EMPLOYER

NAME OF JOB	DATE STARTED Month Year	DATE LEFT Month Year	KIND OF BUSINESS

DESCRIBE IN DETAIL THE DUTIES PERFORMED, INCLUDING THE USE OF TOOLS, MACHINES OR EQUIPMENT	NO. OF HOURS PER WEEK

b. NAME AND ADDRESS OF EMPLOYER

NAME OF JOB	DATE STARTED Month Year	DATE LEFT Month Year	KIND OF BUSINESS

DESCRIBE IN DETAIL THE DUTIES PERFORMED, INCLUDING THE USE OF TOOLS, MACHINES OR EQUIPMENT	NO. OF HOURS PER WEEK

c. NAME AND ADDRESS OF EMPLOYER

NAME OF JOB	DATE STARTED Month Year	DATE LEFT Month Year	KIND OF BUSINESS

DESCRIBE IN DETAIL THE DUTIES PERFORMED, INCLUDING THE USE OF TOOLS, MACHINES OR EQUIPMENT	NO. OF HOURS PER WEEK

16. DECLARATIONS

DECLARATION OF ALIEN — Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury the foregoing is true and correct.

SIGNATURE OF ALIEN	DATE

AUTHORIZATION OF AGENT OF ALIEN — I hereby designate the agent below to represent me for the purposes of labor certification and I take full responsibility for accuracy of any representations made by my agent.

SIGNATURE OF ALIEN	DATE

NAME OF AGENT (Type or print)	ADDRESS OF AGENT (No., Street, City, State, ZIP code)

Agricultural and Food Processing Clearance Order

U.S. Department of Labor
Employment and Training Administration

READ CAREFULLY: In view of the statutorily established basic function of the employment service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither ETA nor the State agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited upon by the JS constitute a contractual job offer to which the ETA or a State agency is in any way a party.

OMB Approval No. 1205-0134

1. Industry Code | 2. Job Order Number

3. Occupational Title and Code

4. Employer's Name and Address (Number, Street, City, State, Zip Code, and Telephone Number)

5. Anticipated Period of Employment
From: To:

6. Clearance Order Issue Date | Job Order Expiration Date

7. Preferred Crew Leader/Worker's Name and Address | Social Security Number | Telephone Number

Leader's Functions

	Yes	No
Supervises	☐	☐
Transports	☐	☐
Pays	☐	☐
Assumes OASI	☐	☐

8. No. _Type of Workers Requested
Total Number _____
No. Individual _____
No. Family _____

9. Wage Rates, Special Pay Information and Deductions

Crop Activity	Flat Rate (i.e., hr. wk.)	Piece Rate	Unit	Est. Hourly Rate Equiv.	C/L Wage Rate

(See attachment no._____)

10. Anticipated Hrs. of Work Per Week _____

Normal Hours Per Day: Sun ____ Thu ____ Mon ____ Fri ____ Tue ____ Sat ____ Wed ____

11. Job Specifications (If additional space is needed, please use separate sheet of paper or reverse of form)

(See attachment no. _____)

12. Location and Direction to Work Site
(See attach. no. _____)

13. Board Arrangements
(See attach. no. _____)

14. Location and Description of Housing

Number and Capacity of Housing Units

Barracks		Family Units		Single Rooms	
No.	Total Cap.	No.	Total Cap.	No.	Total Cap.

Employer assures the availability of no cost or public housing which meets the full set of applicable standards. (See attach. no. _____)

Authorized Capacity _____

15. Referral Instructions
(See attach. no. _____)

16. Collect Calls Accepted

	Yes	No
By Employer	☐	☐
by Order Holding Office	☐	☐

17. Transportation Arrangements
(See attach. no. _____)

18. Distribution of Clearance Order

19. Address of Order Holding Office (including Telephone Number)

20. **Employer's Certification:** This job order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job.

Signature

Name of Agency Representative (including Telephone Number)

Title

Replaces Form MA 7-90 which is obsolete

ETA 790 (R. Jan 1981)

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0136

Employment Eligibility Verification

Please read instructions carefully before completing this form. The instructions must be available during completion of this form. ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work eligible individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins.

Print Name: Last	First	Middle Initial	Maiden Name
Address *(Street Name and Number)*		Apt. #	Date of Birth *(month/day/year)*
City	State	Zip Code	Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- ☐ A citizen or national of the United States
- ☐ A Lawful Permanent Resident (Alien # A_____)
- ☐ An alien authorized to work until ___/___/___
  (Alien # or Admission #) _____

Employee's Signature | Date *(month/day/year)*

Preparer and/or Translator Certification.

(To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature | Print Name

Address *(Street Name and Number, City, State, Zip Code)* | Date *(month/day/year)*

Section 2. Employer Review and Verification.

To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s)

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date *(if any)*: ___/___/___		___/___/___		___/___/___
Document #: _____				
Expiration Date *(if any)*: ___/___/___				

CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on *(month/day/year)* ___/___/___ **and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment.)**

Signature of Employer or Authorized Representative | Print Name | Title

Business or Organization Name | Address *(Street Name and Number, City, State, Zip Code)* | Date *(month/day/year)*

Section 3. Updating and Reverification. To be completed and signed by employer.

A. New Name *(if applicable)* | B. Date of rehire *(month/day/year) (if applicable)*

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility.

Document Title:_____ Document #: _____ Expiration Date (if any): ___/___/___

I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative | Date *(month/day/year)*

LISTS OF ACCEPTABLE DOCUMENTS

LIST A		LIST B		LIST C
Documents that Establish Both Identity and Employment Eligibility	**OR**	Documents that Establish Identity	**AND**	Documents that Establish Employment Eligibility
1. U.S. Passport (unexpired or expired)		1. Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address		1. U.S. social security card issued by the Social Security Administration *(other than a card stating it is not valid for employment)*
2. Certificate of U.S. Citizenship *(INS Form N-560 or N-561)*		2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address		2. Certification of Birth Abroad issued by the Department of State *(Form FS-545 or Form DS-1350)*
3. Certificate of Naturalization *(INS Form N-550 or N-570)*		3. School ID card with a photograph		3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal
4. Unexpired foreign passport, with *I-551 stamp or* attached *INS Form I-94* indicating unexpired employment authorization		4. Voter's registration card		4. Native American tribal document
5. Permanent Resident Card or Alien Registration Receipt Card with photograph *(INS Form I-151 or I-551)*		5. U.S. Military card or draft record		5. U.S. Citizen ID Card *(INS Form I-197)*
6. Unexpired Temporary Resident Card *(INS Form I-688)*		6. Military dependent's ID card		6. ID Card for use of Resident Citizen in the United States *(INS Form I-179)*
7. Unexpired Employment Authorization Card *(INS Form I-688A)*		7. U.S. Coast Guard Merchant Mariner Card		7. Unexpired employment authorization document issued by the INS *(other than those listed under List A)*
8. Unexpired Reentry Permit *(INS Form I-327)*		8. Native American tribal document		
9. Unexpired Refugee Travel Document *(INS Form I-571)*		9. Driver's license issued by a Canadian government authority		
10. Unexpired Employment Authorization Document issued by the INS which contains a photograph *(INS Form I-688B)*		**For persons under age 18 who are unable to present a document listed above:**		
		10. School record or report card		
		11. Clinic, doctor or hospital record		
		12. Day-care or nursery school record		

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)

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

OMB No. 1615-0015; Exp. 8-31-04

I-140, Immigrant Petition for Alien Worker

START HERE - Please Type or Print.

FOR BCIS USE ONLY

Returned	Receipt
Date	
Date	
Resubmitted	
Date	
Date	
Reloc Sent	
Date	
Date	
Reloc Rec'd	
Date	
Date	

Part 1. Information about the person or organization filing this petition.
If an individual is filing, use the top name line. Organizations should use the second line.

Family Name (Last Name) | Given Name (First Name) | Full Middle Name

Company or Organization Name

Address: (Street Number and Name) | Suite #

Attn:

City | State/Province

Country | Zip/Postal Code

IRS Tax # | Social Security # *(if any)* | E-Mail Address *(if any)*

Part 2. Petition type.

This petition is being filed for: *(Check one)*

a. ☐ An alien of extraordinary ability.
b. ☐ An outstanding professor or researcher.
c. ☐ A multinational executive or manager.
d. ☐ A member of the professions holding an advanced degree or an alien of exceptional ability (who is **NOT** seeking a National Interest Waiver).
e. ☐ A skilled worker (requiring at least two years of specialized training or experience) or professional.
f. ☐ Item F- no longer available.
g. ☐ Any other worker (requiring less than two years of training or experience).
h. ☐ An alien applying for a National Interest Waiver (who **IS** a member of the professions holding an advanced degree or an alien of exceptional ability).

Classification:
- ☐ 203(b)(1)(A) Alien of Extraordinary
- ☐ 203(b)(1)(B) Outstanding Professor or Researcher
- ☐ 203(b)(1)(C) Multi-national executive or manager
- ☐ 203(b)(2) Member of professions w/adv. degree or exceptional ability
- ☐ 203(b)(3)(A)(i) Skilled Worker
- ☐ 203(b)(3)(A)(ii) Professional
- ☐ 203(b)(3)(A)(iii) Other worker

Part 3. Information about the person you are filing for.

Family Name (Last Name) | Given Name (First Name) | Full Middle Name

Address: (Street Number and Name) | Apt. #

C/O: (In Care Of)

City | State/Province

Country | Zip/Postal Code | E-Mail Address *(if any)*

Daytime Phone # *(with area/country code)* | Date of Birth *(mm/dd/yyyy)*

City/Town/Village of Birth | State/Province of Birth | Country of Birth

Country of Nationality/Citizenship | A # *(if any)* | Social Security # *(if any)*

IF IN THE U.S.

Date of Arrival *(mm/dd/yyyy)* | I-94 # *(Arrival/Departure Document)*

Current Nonimmigrant Status | Date Status Expires *(mm/dd/yyyy)*

Certification:
- ☐ National Interest Waiver (NIW)
- ☐ Schedule A, Group I
- ☐ Schedule A, Group II

Priority Date	Consulate

Remarks

Action Block

To Be Completed By
Attorney or Representative, if any.
☐ Fill in box if G-28 is attached to represent the applicant.

ATTY State License #

Form I-140 (Rev. 05/120/03)N (Prior versions may be used until 09/30/03)

Part 4. Processing Information.

1. Please complete the following for the person named in Part 3: *(Check one)*

☐ Alien will apply for a visa abroad at the American Embassy or Consulate at:
City | Foreign Country

☐ Alien is in the United States and will apply for adjustment of status to that of lawful permanent resident.
Alien's country of current residence or, if now in the U.S., last permanent residence abroad

2. If you provided a U.S. address in Part 3, print the person's foreign address:

3. If the person's native alphabet is other than Roman letters, write the person's foreign name and address in the native alphabet:

4. Are you filing any other petitions or applications with this one? ☐ No ☐ Yes-attach an explanation

5. Is the person you are filing for in removal proceedings? ☐ No ☐ Yes-attach an explanation

6. Has any immigrant visa petition ever been filed by or on behalf of this person? ☐ No ☐ Yes-attach an explanation

If you answered yes to any of these questions, please provide the case number, office location, date of decision and disposition of the decision on a separate sheet(s) of paper.

Part 5. Additional information about the petitioner.

1. Type of petitioner *(Check one)*.

☐ Employer ☐ Self ☐ Other (Explain, e.g., Permanent Resident, U.S. Citzen or any other person filing on behalf of the alien.)

2. If a company, give the following:

Type of Business | Date Established *(mm/dd/yyyy)* | Current Number of Employees

Gross Annual Income | Net Annual Income | NAICS Code

3. If an individual, give the following:

Occupation | Annual Income

Part 6. Basic information about the proposed employment.

1. Job Title

2. SOC Code

3. Nontechnical Description of Job

4. Address where the person will work if different from address in Part 1.

5. Is this a full-time position? ☐ Yes ☐ No

6. If the answer to Number 5 is "No," how many hours per week for the position?

7. Is this a permanent position? ☐ Yes ☐ No

8. Is this a new position? ☐ Yes ☐ No

9. Wages per week $

Part 7. Information on spouse and all children of the person for whom you are filing.

List husband/wife and all children related to the individual for whom the petition is being filed. Provide an attachment of additional family members, if needed.

Name *(First/Middle/Last)*	Relationship	Date of Birth *(mm/dd/yyy)*	Country of Birth

Part 8. Signature.

Read the information on penalties in the instructions before completing this section. If someone helped you prepare this petition, he or she must complete Part 9.

I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct. I authorize the release of any information from my records that the Bureau of Citizenship Immigration Services needs to determine eligibility for the benefit I am seeking.

Petitioner's Signature | **Daytime Phone Number** *(Area/Country Code)* | **E-mail Address**

Print Name | **Date** *(mm/dd/yyyy)*

Please Note: *If you do not completely fill out this form or fail to submit required documents listed in the instructions, you may not be found eligible for the requested benefit and this petition may be denied.*

Part 9. Signature of person preparing form, if other than above.

(Sign below)

I declare that I prepared this petition at the request of the above person and it is based on all information of which I have knowledge.

Attorney or Representative: In the event of a Request for Evidence (RFE) may the BCIS contact you by Fax or E-mail? ☐ Yes ☐ No

Signature | **Print Name** | **Date** *(mm/dd/yyyy)*

Firm Name and Address

Daytime Phone Number *(Area/Country Code)* | **Fax Number** *(Area/Country Code)* | **E-mail Address**

U.S. Department of Justice
Immigration and Naturalization Service

Notice of Entry of Appearance as Attorney or Representative

Appearances - An appearance shall be filed on this form by the attorney or representative appearing in each case. Thereafter, substitution may be permitted upon the written withdrawal of the attorney or representative of record or upon notification of the new attorney or representative. When an appearance is made by a person acting in a representative capacity, his personal appearance or signature shall constitute a representation that under the provisions of this chapter he is authorized and qualified to represent. Further proof of authority to act in a representative capacity may be required. **Availability of Records** - During the time a case is pending, and except as otherwise provided in 8 CFR 103.2(b), a party to a proceeding or his attorney or representative shall be permitted to examine the record of proceeding in a Service office. He may, in conformity with 8 CFR 103.10, obtain copies of Service records or information therefrom and copies of documents or transcripts of evidence furnished by him. Upon request, he/she may, in addition, be loaned a copy of the testimony and exhibits contained in the record of proceeding upon giving his/her receipt for such copies and pledging that it will be surrendered upon final disposition of the case or upon demand. If extra copies of exhibits do not exist, they shall not be furnished free on loan; however, they shall be made available for copying or purchase of copies as provided in 8 CFR 103.10.

In re:	Date:
	File No.

I hereby enter my appearance as attorney for (or representative of), and at the request of the following named person(s):

Name:	☐ Petitioner ☐ Beneficiary	☐ Applicant		
Address: (Apt. No.) (Number & Street)	(City)	(State)	(Zip Code)	
Name:	☐ Petitioner ☐ Beneficiary	☐ Applicant		
Address: (Apt. No.) (Number & Street)	(City)	(State)	(Zip Code)	

Check Applicable Item(s) below:

☐ 1. I am an attorney and a member in good standing of the bar of the Supreme Court of the United States or of the highest court of the following State, territory, insular possession, or District of Columbia

_____ _____ and am not under a court or administrative agency
Name of Court
order suspending, enjoining, restraining, disbarring, or otherwise restricting me in practicing law.

☐ 2. I am an accredited representative of the following named religious, charitable, social service, or similar organization established in the United States and which is so recognized by the Board:

☐ 3. I am associated with _____
the attorney of record previously filed a notice of appearance in this case and my appearance is at his request. (*If you check this item, also check item 1 or 2 whichever is appropriate.)*

☐ 4. Others (Explain Fully.)

SIGNATURE	COMPLETE ADDRESS
NAME (Type or Print)	TELEPHONE NUMBER

PURSUANT TO THE PRIVACY ACT OF 1974, I HEREBY CONSENT TO THE DISCLOSURE TO THE FOLLOWING NAMED ATTORNEY OR REPRESENTATIVE OF ANY RECORD PERTAINING TO ME WHICH APPEARS IN ANY IMMIGRATION AND NATURALIZATION SERVICE SYSTEM OF RECORDS:

_____
(Name of Attorney or Representative)

THE ABOVE CONSENT TO DISCLOSURE IS IN CONNECTION WITH THE FOLLOWING MATTER:

Name of Person Consenting	Signature of Person Consenting	Date

(NOTE: Execution of this box is required under the Privacy Act of 1974 where the person being represented is a citizen of the United States or an alien lawfully admitted for permanent residence.)

This form may not be used to request records under the Freedom of Information Act or the Privacy Act. The manner of requesting such records is contained in 8CFR 103.10 and 103.20 Et.SEQ.

Form G-28 (09/26/00)Y

Labor Condition Application for H-1B Nonimmigrants

U.S. Department of Labor
Employment and Training Administration

Form ETA 9035
OMB Approval: 1205-0310
Expiration Date: 31 Aug 2003

A. Employer's Information

! **If you want the application returned by mail, leave the Return Fax Number blank.**

1. Return Fax Number ( ) -

2. Employer's Full Legal Name

3. Employer's Address (Number and Street)

4. Employer's City | State | Zip/Postal Code

5. Employer's EIN Number - | 6. Employer's Phone Number ( ) - | Extension

B. Rate of Pay

1. Wage Rate (or Rate From) (Required): $.

2. Rate Up To (Optional): $.

3. Rate is Per:
- ○ Year
- ○ Week
- ○ Month
- ○ Hour
- ○ 2 Weeks

4. Is this position part-time?
- ○ Yes
- ○ No

! **Please Note: Part-time hours worked by nonimmigrant(s) will be in the range of hours stated on the INS Form(s) I-129.**

C. Period Of Employment and Occupation Information

! **Please Note: The Date Information MUST be in MM/DD/YYYY format**

1. Begin Date / /

2. End Date / /

3. Occupational Code

4. Number of H-1B Nonimmigrants

5. Job Title

D. Information relating to Work Location for the H-1B Nonimmigrants

! **This section is REQUIRED**

1. City | State

! **Do NOT write "Same As Above". This section MUST be filled out.**

2. Prevailing Wage $.

3. Wage is Per:
- ○ Year
- ○ Week
- ○ Month
- ○ Hour
- ○ 2 Weeks

4. Wage Source
- ○ SESA
- ○ Collective Bargaining Agreement
- ○ Other

If OTHER is chosen as the Wage Source, Numbers 5 and 6 in this section MUST be filled out.

5. Year Source Published

6. Other Wage Source

Page Link: 5 4 7 9 8 9

! **If filing the form electronically, the Page Link field will be automatically created for you upon printing. If filing the form manually, please ensure that the Page Link field contains a 6 digit number that is repeated on all 3 pages.**

26277

D. Subsection A Information For Additional or Subsequent Work Location

! This Section should be completed only if filing for more than 1 work location.

1. City

State

2. Prevailing Wage $.

3. Wage is Per:
○ Year ○ Week ○ Month ○ Hour ○ 2 Weeks

4. Wage Source
○ SESA ○ Collective Bargaining Agreement ○ Other

If OTHER is chosen as the Wage Source, Numbers 5 and 6 in this section MUST be filled out.

5. Year Source Published

6. Other Wage Source

E. Employer Labor Condition Statements

! **Please Note: In order for your application to be processed, you MUST read section E of the Labor Condition Application cover pages under the heading "Employer Labor Condition Statements" and agree to all 4 labor condition statements summarized below:**

(1) Wages: Pay nonimmigrants at least the local prevailing wage or the employer's actual wage, whichever is higher, and pay for non-productive time. Offer nonimmigrants benefits on the same basis as U.S. workers.

(2) Working Conditions: Provide working conditions for nonimmigrants which will not adversely affect the working conditions of workers similarly employed.

(3) Strike, Lockout, or Work Stoppage: No strike or lockout in the occupational classification at the place of employment.

(4) Notice: Notice to union or to workers at the place of employment. A copy of this form to H-1B workers.

I have read and agree to Employer Labor Condition Statements 1, 2, 3, and 4 as set forth in Section E of the Labor Condition Application Cover Pages. ○ Yes ○ No

F. Additional Employer Labor Condition Statments

! **Please Note: In order for your application to be processed, you MUST read Section F - Subsections 1 and 2 of the Labor Condition Application cover pages under the heading "Additional Employer Labor Condition Statements" and choose one of the 3 alternatives (A, B, or C) listed below in Subsection 1. If you mark Alternative B, you MUST read Section F - Subsection 2 of the cover pages under the heading "Additional Employer Labor Condition Statements" and indicate your agreement to all 3 additional statements summarized below in Subsection 2.**

1. Subsection 1
Choose ONE of the following 3 alternatives:

A ○ **Employer is not H-1B dependent and is not a willful violator.**

B ○ **Employer is H-1B dependent and/or a willful violator.**

C ○ **Employer is H-1B dependent and/or a willful violator BUT will use this application ONLY to support H-1B petitions for exempt nonimmigrants.**

2. Subsection 2
If Alternative B in Subsection 1 is marked, the following Additional Labor Condition Statements are applicable:

A. Displacement: Non-displacement of the U.S. workers in employer's work force;

B. Secondary Displacement: Non-displacement of U.S. workers in another employer's work force; and

C. Recruitment and Hiring: Recruitment of U.S. workers and hiring of U.S. worker applicant(s) who are equally or better qualified than the H-1B nonimmigrant(s).

I have read and agree to Additional Labor Conditional Statements 2 A, B, and C. ○ Yes ○ No

Page Link: 5 4 7 9 8 9

! **If filing the form electronically, the Page Link field will be automatically created for you upon printing. If filing the form manually, please ensure that the Page Link field contains a 6 digit number that is repeated on all 3 pages.**

26277

G. Public Disclosure Information

Public disclosure information will be kept at:

! You must choose one of the two options listed in this Section.

○ Employer's principal place of business

○ Place of employment

H. Declaration of Employer

! **By signing this form, I, on behalf of the employer, attest that the information and labor condition statements provided are true and accurate; that I have read the sections E and F of the cover pages (Form ETA 9035CP), and that I agree to comply with the Labor Condition Statements as set forth in the cover pages and with the Department of Labor regulations (20 CFR part 655, Subparts H and I). I agree to make this applicaton, supporting documentation, and other records, available to officials of the Department of Labor upon request during any investigation under the Immigration and Nationality Act.**

1. First Name of Hiring or Other Designated Official , MI

2. Last Name of Hiring or Other Designated Official

3. Hiring or Other Designated Official Title

4. Signature - Do NOT let signature extend beyond the box

5. Date ___ / ___ / ____

Making fraudulent representations on this Form can lead to civil or criminal action under 18 U.S.C. 1001, 18 U.S.C. 1546, or other provisions of law.

I. Contact Information

1. Contact First Name , MI

2. Contact Last Name

3. Contact Phone Number ( ) - Extension

J. U.S. Government Agency Use Only

By virtue of my signature below, I hereby acknowledge this application certified for

Date Starting _____ and Date Ending _____

_____ _____ _____

Signature and Title of Authorized DOL Official | ETA Case Number | Date

The Department of Labor is not the guarantor of the accuracy, truthfulness, or adequacy of a certified labor condition application.

K. Complaints

Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division, U.S. Department of Labor. Complaints alleging failure to offer employment to an equally or better qualified U.S. worker, or an employer's misrepresentation regarding such offer(s) of employment, may be filed with: U.S Department of Justice * Office of the Special Counsel * 10th St. and Constitution Ave, NW * Washington, DC * 20530.

Page Link 5 4 7 9 8 9

! **If filing the form electronically, the Page Link field will be automatically created for you upon printing. If filing the form manually, please ensure that the Page Link field contains a 6 digit number that is repeated on all 3 pages.**

26277