

## ***Advocacy Recommends Additional Small Business Flexibilities to DHS' Rule on Streamlining H-2B Visa Process***

On September 15, 2008, the Office of Advocacy (Advocacy) filed a comment letter with the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services (DHS) regarding its Notice of Proposed Rulemaking (NPRM) entitled, *Changes to Requirements Affecting H-2B Nonimmigrants and Their Employers*. A complete copy of Advocacy's letter to DHS may be accessed at <http://www.sba.gov/advo/laws/comments/>.

- The H-2B program allows employers to obtain temporary non-agricultural workers from foreign countries during seasonal or peak times and is predominantly used by small businesses in the landscaping, hotel, construction and forestry industries. Three Federal government agencies oversee this program: the U.S. Department of Labor (DOL) issues the H-2B temporary labor certifications; DHS approves the H-2B petitions for employees and the U.S. Department of State issues the H-2B visas to workers at its consulates overseas.
- There is a limit of 66,000 foreign workers who can enter the United States using the H-2B program. Due to the high demand for these workers, any delay in the processing time by an agency could jeopardize the chances for an employer to have the necessary workers it needs for the season. During the summer of 2008, both DOL and DHS released proposed rules to streamline their respective H-2B processes and curb abuses.
- Advocacy and small business representatives are supportive of provisions in DHS' rule that would make the H-2B visa process more efficient; it would allow employers to list unnamed workers in their petitions to provide the flexibility to recruit available workers and would reduce the time that an H-2B worker would have to wait outside of the United States prior to re-filing a visa (from six months to three months).
- DHS' rule proposes changes to stop abuses of the H-2B system, such as requiring employer notifications for employee no-shows, termination or leaving the job site; the reimbursement of job placement fees paid by employees; and restricting the manner that employers can change employment start dates in applications. Advocacy recommends that DHS revise its Initial Regulatory Flexibility Act section to include additional costs from these provisions, and develop alternatives that minimize these costs and provide flexibilities to small business.

For more information, visit Advocacy's Web page at <http://www.sba.gov/advo>, or contact Assistant Chief Counsel Janis Reyes by email at [Janis.Reyes@sba.gov](mailto:Janis.Reyes@sba.gov) or by phone at 202-205-6533.