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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

8 CFR Part 214

CIS No. 2448-08

DHS Docket No. USCIS-2008-0024

RIN 1615-AA82

Petitions for Aliens to Perform Nonagricultural Temporary Services or Labor

(H-2B): Withdrawal of Proposed Rule

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

ACTION: Withdrawal of proposed rule.

SUMMARY: U.S. Citizenship and Immigration Services (USCIS) is withdrawing the proposed rule, Petitions for Aliens to Perform Nonagricultural Temporary Services or Labor (H-2B), published on January 27, 2005, in the **Federal Register**. The rule proposed significant changes to USCIS' regulations that were designed to increase the effectiveness of the H-2B nonimmigrant visa classification while providing protections for U.S. workers. The H-2B nonimmigrant visa classification applies to foreign workers to perform nonagricultural temporary labor or services. The proposed rule would have established a one-step petition process for U.S. employers seeking H-2B temporary workers, thereby eliminating the need for U.S. employers to apply for a labor certification from the Department of Labor (DOL); required electronic filing of the Petition for a Nonimmigrant Worker, Form I-129, within 60 days in advance of the requested employment start date; eliminated the use of agents as H-2B petitioners; and established

new management mechanisms allowing USCIS to maintain the integrity of the program.

In light of the public's comments, USCIS is no longer moving forward with the proposed rule as designed and will publish a new proposed rule for public comments.

DATES: The proposed rule is withdrawn as of [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Hiroko Witherow, Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Ave, NW, Washington, D.C. 20529, telephone (202) 272-8410.

SUPPLEMENTARY INFORMATION:

I. Purpose of the Proposed Rule.

The H-2 temporary worker program has existed without substantial modification since 1952. The Immigration Reform and Control Act of 1986 divided H-2 workers into two categories: temporary workers to perform agricultural labor or services (H-2A) and all other temporary workers (H-2B). In 1990, Congress attached a limitation on the number of H-2B workers, but otherwise, the program has not significantly changed to accommodate employers' needs or to offer worker protections. After consulting with DOL and the Department of State, and reviewing the definitions and procedures used to regulate the H-2B nonagricultural temporary worker program, USCIS determined that the H-2B process should be modified to reduce unnecessary burdens that hinder petitioning employers' ability to effectively use this visa category. The proposed rule was published on January 27, 2005, with its intent being to increase efficiency in the program by removing existing regulatory barriers. 70 FR 3984.

II. Changes Contained in the Proposed Rule.

The most significant proposed change was a migration to a one-stop attestation-based process whereby most U.S. employers seeking H-2B temporary workers would only be required to file one application, the Form I-129, Petition for a Nonimmigrant Worker, with USCIS. The proposal would have reduced the paper-based application process by requiring that most Form I-129 petitions be submitted to USCIS electronically through e-filing. The proposal would also have required e-filed petitions to be filed not more than 60 days in advance of the employment need. The proposed rule also would have precluded agents from filing H-2B petitions on behalf of the actual H-2B employer. Finally, the proposed rule included additional changes to ensure the integrity of the program through enforcement mechanisms.

III. Comments Received on the Proposed Rule.

USCIS received 125 comments on the proposed rule during the 60-day comment period. The majority of the commenters were opposed to many changes proposed in the rule. The comments are summarized as follows:

- There were a significant number of negative comments regarding the proposal to create a one-stop attestation-based process. Some commenters stated that the existing labor certification process should remain with DOL because DOL, not USCIS, is directly charged with the protection of U.S. workers. Some also expressed concern that this change would lead to widespread fraud and misrepresentation.

A considerable number of commenters were in opposition to the proposed change requiring that petitioners e-file a petition within 60 days in advance of the employment

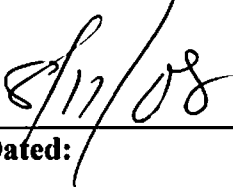
need. Some raised concern that many employers are not necessarily well-versed in the access and use of the internet.

- A significant number of comments were opposed to the proposal to eliminate agents. Many commenters stressed that agents perform a vital function in the H-2B filing process on behalf of the employers who are not conversant with the applicable laws and regulations related to the H-2B program.
- The majority of the comments stressed that the proposed changes would result in decreased protections for U.S. workers and the likely proliferation of fraud within the program.

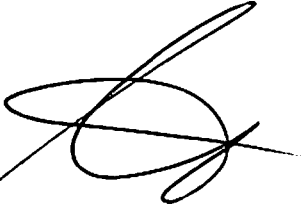
Based upon a review of the rulemaking record as a whole, DHS has decided to withdraw the January 27, 2005, proposed rule and terminate the associated proposed rulemaking action. DHS, therefore, will not publish specific responses to each comment.

IV. Withdrawal of the Proposed Rule.

For the reasons described in this document, DHS is withdrawing the proposed rule published on January 27, 2005 (FR Doc. 05-1240, 70 FR 3983).



Dated:



Michael Chertoff,
Secretary.