Office of Communications

U.S. Citizenship and Immigration Services

USCIS Update

March 20, 2009

USCIS Announces New Requirements for Hiring H-1B Foreign Workers

Changes Apply to Companies that Receive TARP Funding

WASHINGTON – U.S. Citizenship and Immigration Services (USCIS) today announced additional requirements for employers, who receive funds through the Troubled Asset Relief Program or under section 13 of the Federal Reserve Act (covered funding), before they may hire a foreign national to work in the H-1B specialty occupation category.

The new "Employ American Workers Act," (EAWA), signed into law by President Obama as part of the American Recovery and Reinvestment Act on Feb. 17, 2009, was enacted to ensure that companies receiving covered funding do not displace U.S. workers. Under this legislation any company that has received covered funding and seeks to hire new H-1B workers is considered an "H-1B dependent employer." All H-1B dependent employers must make additional attestations to the U.S. Department of Labor (DOL) when filing the Labor Condition Application.

EAWA applies to any Labor Condition Application (LCA) and/or H-1B petition filed on or after Feb. 17, 2009, involving any employment by a new employer, including concurrent employment and regardless of whether the beneficiary is already in H-1B status. The EAWA also applies to new hires based on a petition approved before Feb. 17, 2009, if the H-1B employee had not actually commenced employment before that date.

EAWA does not apply to H-1B petitions seeking to change the status of a beneficiary already working for the employer in another work-authorized category. It also does not apply to H-1B petitions seeking an extension of stay for a current employee with the same employer.

USCIS is revising Form I-129, Petition for Nonimmigrant Worker, to include a question asking whether the petitioner has received covered funding. USCIS will post this revised form on the USCIS Web site in time for the next cap subject H-1B filing period that begins on April l, 2009. While USCIS encourages petitioners, whenever possible, to use the most up-to-date form, USCIS will not require use of the revised form in time for the start of the filing period for fiscal year 2010.

However, USCIS urges H-1B petitions who have already prepared packages for mailing using the previous Form I-129 (January 2009 version) to complete only the page in the revised version of the Form I-129 (March 2009) which has the new question on EAWA attestation requirements and to file this single page with the prepared package. The single page referenced is the first page on the H-1B Data Collection and Filing Fee Exemption Supplement.

USCIS reminds petitioners that a valid LCA must be on file with DOL at the time the H-1B petition is filed with USCIS. This means that if the petitioner indicates on its petition that it is subject to the EAWA, but the Labor Condition Application does not contain the proper attestations relating to H-1B dependent employers, USCIS will deny the H-1B petition.

For more information, please see the accompanying Questions and Answers document about the Employ American Workers Act and its effect on H-1B petitions.

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