



USCIS Update

Dec. 18, 2008

USCIS FINALIZES STREAMLINING PROCEDURES FOR H-2B TEMPORARY NON-AGRICULTURAL WORKER PROGRAM

WASHINGTON—U.S. Citizenship and Immigration Services (USCIS) announced today that it has submitted to the *Federal Register* a Final Rule that will change the requirements affecting H-2B beneficiaries and their employers. The Final Rule will facilitate the process by which employers hire workers to participate in the H-2B program. These changes are being proposed in further fulfillment of the commitment made by President Bush's Administration in August 2007, after the failure of comprehensive immigration reform in Congress, to address immigration challenges, including review and improvement of temporary worker visa programs using existing authorities. This final rule supplements the extensive reforms of the H-2B program that are included in the Department of Labor's final rule scheduled to be published on Dec. 19, 2008.

The H-2B nonagricultural temporary worker program allows U.S. employers to bring foreign nationals to the United States to fill temporary nonagricultural jobs for which there is a shortage of available U.S. workers. The Department of Homeland Security (DHS) initially proposed these changes to the H-2B program in a Notice of Proposed Rule Making published in the *Federal Register* on Aug. 20, 2008. The Final Rule will encourage and facilitate the lawful employment of foreign workers, provide important protections to both U.S. and foreign workers, and further enhance the integrity of the H-2B Program.

Key areas of reform covered in the Final Rule include:

- Allowing H-2B petitioners to specify only the number of positions sought and not name the individual aliens except where an intended alien beneficiary is already present in the United States; or where an alien is from a country not eligible for participation in the H-2B program;
- Reducing from six months to three months the time an H-2B worker who has spent three years in the United States must reside and be physically present outside the United States before he or she is eligible to re-obtain H-2B status;
- Reducing the period of time spent outside the United States that interrupts accrual towards the 3-year maximum period of stay in H-2B status;
- Prohibiting H-2B employers and recruiters from imposing certain fees on prospective H-2B workers as a condition of securing employment;
- Requiring an approved temporary labor certification in connection with all H-2B petitions;
- Beginning with petitions filed for workers for Fiscal Year 2010, prohibiting H-2B petitioners from requesting an employment start date on the Form I-129, "Petition for a Nonimmigrant Worker," that is different than the date of need stated on the approved temporary labor certification;
- Amending the definition of "temporary services or labor" to allow U.S. employers and eligible foreign workers the maximum flexibility to complete projects that could be for a specific one-time need of up to 3 years without demonstrating extraordinary circumstances;
- Requiring employers to notify USCIS when H-2B workers fail to show up for work, complete the work more than 30 days early, are terminated, or abscond from the worksite;

- Permitting the approval of H-2B petitions only for nationals of certain countries designated as participating countries by the Secretary of Homeland Security, in consultation with the Secretary of State, and appearing on a list to be published annually in the *Federal Register*. The initial list of participating countries designated as important to the operation of the program and to be published simultaneously with this Final Rule, includes Mexico, Jamaica, and 26 others. DHS may allow on a case-by-case basis a worker from a country not on the list to be eligible for the H-2B program if such participation is in the U.S. interest;
- Delegating to the Department of Labor the statutory authority to impose certain administrative remedies and/or penalties where a substantial failure to meet any of the conditions of the H-2B petition or a willful misrepresentations of a material fact in such petition is found; and
- Establishing a land-border exit system pilot program, which requires H-2B workers admitted through a port of entry participating in the pilot program to also depart through a participating port and to present designated biographic and/or biometric information upon departure.

This final rule will become effective 30 days after it is posted in the *Federal Register*.