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Report to Congressional Requesters

June 2006

H-1B VISA PROGRAM

Labor Could Improve Its Oversight and Increase Information Sharing with Homeland Security

GAO-06-720

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GAO Accountability · Integrity · Reliability

Highlights

Highlights of GAO-06-720, a report to congressional requesters

Why GAO Did This Study

The H-1B visa program assists U.S. employers in temporarily filling certain occupations with highly-skilled foreign workers. There is considerable interest regarding how Labor, along with Homeland Security and Justice, is enforcing the requirements of the program. This report describes: (1) how Labor carries out its H-1B program responsibilities; and (2) how Labor works with other agencies involved in the H-1B program. We interviewed officials and analyzed data from all three agencies.

What GAO Recommends

The Congress should consider eliminating the restriction on Labor using information from Homeland Security to initiate an investigation and directing Homeland Security and Labor to share information on employers that may not be fulfilling program requirements. GAO also recommends that Labor improve its checks of employers' applications and that Homeland Security's U.S. Citizenship and Immigration Services (USCIS) include Labor's application case number in its new information technology system. Homeland Security agreed with our recommendations. Labor questioned whether more stringent checks were necessary and believes Congress intentionally limited Labor's role and placed program integrity with USCIS. We believe there are cost-effective methods that Labor could use to check the applications more stringently that would enhance the integrity of the H-1B process.

www.gao.gov/cgi-bin/getrpt?GAO-06-720.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Sigurd R. Nilsen at (202) 512-7215 or nilsens@gao.gov.

What GAO Found

While Labor's H-1B authority is limited in scope, the agency could improve its oversight of employers' compliance with program requirements. Labor's review of employers' applications to hire H-1B workers is timely, but lacks quality assurance controls and may overlook some inaccuracies. From January 2002 through September 2005, Labor electronically reviewed more than 960,000 applications and certified almost all of them. About one-third of the applications were for workers in computer systems analysis and programming occupations. By statute, Labor's review of the applications is limited to searching for missing information or obvious inaccuracies and it does this through automated data checks. However, our analysis of Labor's data found certified applications with inaccurate information that could have been identified by more stringent checks. Although the overall percentage was small, we found 3,229 applications that were certified even though the wage rate on the application was lower than the prevailing wage for that occupation. Additionally, approximately 1,000 certified applications contained erroneous employer identification numbers, which raises questions about the validity of the applications. In its enforcement efforts, Labor's Wage and Hour Division (WHD) investigates complaints made against H-1B employers. From fiscal year 2000 through fiscal year 2005, Labor reported an increase in the number of H-1B complaints and violations, and a corresponding increase in the number of employer penalties. In fiscal year 2000 Labor required employers to pay back wages totaling $1.2 million to 226 H-1B workers; by fiscal year 2005, back wage penalties had increased to $5.2 million for 604 workers. Program changes, such as a higher visa cap in some years, could have been a contributing factor. In April 2006, WHD began the process of randomly investigating willful violators of the program's requirements.

Labor, Homeland Security, and Justice all have responsibilities under the H-1B program, but Labor and Homeland Security could better address the challenges they face in sharing information. Homeland Security reviews Labor's certified application but cannot easily verify whether employers submitted petitions for more workers than originally requested on the application because USCIS's database cannot match each petition to Labor's application case number. Also, during the process of reviewing petitions, staff may find evidence that employers are not meeting their H-1B obligations. For example, Homeland Security may find that a worker's income on the W-2 is less than the wage quoted on the original application. Homeland Security may deny the petition if an employer is unable to explain the discrepancy, but it does not have a formal process for reporting the discrepancy to Labor. Additionally, current law precludes the Wage and Hour Division from using this information to initiate an investigation of the employer. Labor also shares enforcement responsibilities with Justice, which pursues charges filed by U.S. workers who allege they were displaced by an H-1B worker. From 2000 through 2005, Justice found discriminatory conduct in 6 out of the 97 investigations closed and assessed $7,200 in penalties.

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Abbreviations

ACWIA	American Competitiveness and Workforce Improvement Act of 1998
ALJ	Administrative Law Judge
DHS	Department of Homeland Security
EIN	Employer Identification Number
ETA	Employment and Training Administration
ESA	Employment Standards Administration
INA	Immigration and Nationality Act
LCA	Labor Condition Application
OSC	Office of Special Counsel
USCIS	U.S. Citizenship and Immigration Services
WHD	Wage and Hour Division
WHISARD	Wage and Hour Investigative Support and Reporting Database

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United States Government Accountability Office
Washington, DC 20548

June 22, 2006

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
House of Representatives

The Honorable John N. Hostettler
Chairman
The Honorable Sheila Jackson Lee
Ranking Minority Member
Subcommittee on Immigration, Border Security and Claims
Committee on the Judiciary
House of Representatives

The Honorable Lamar Smith
House of Representatives

Each year employers in the United States generally request more highly skilled foreign workers than are able to come into the country under law. The H-1B nonimmigrant visa program was established to assist U.S. employers in temporarily filling certain positions with these workers. Currently, the number of foreign workers authorized to enter the United States annually through the H-1B program is 65,000, but in previous years the cap has been as high as 195,000. The Congress is currently considering legislation to overhaul U.S. immigration policy, which could have an impact on the cap in future years.

To ensure that U.S. workers are not adversely affected by the hiring of H-1B workers, all employers must attest to meeting certain labor conditions, such as notifying all employees of the intention to hire H-1B workers and offering their H-1B workers the same benefits as U.S. workers. These conditions are designed to protect both the jobs of domestic workers and the rights and working conditions for foreign temporary workers. The Departments of Labor (Labor), Homeland Security (Homeland Security), and Justice (Justice) each have specifically defined responsibilities during certain stages of the H-1B visa process, which range from reviewing and approving an employer's request to hire an H-1B worker, to investigating complaints from both U.S. and foreign workers regarding employers' non-compliance with H-1B program requirements. The Department of State also has a role in the process,

specifically, to issue the visa. These responsibilities help ensure that employers comply with the requirements of the program.

However, there has been considerable interest regarding how Labor, in conjunction with the other agencies, is ensuring that employers comply with the requirements of the H-1B program. To better understand this process, you asked us to describe: (1) how Labor carries out its H-1B program responsibilities and (2) how Labor works with other agencies involved in the H-1B program.

To understand the H-1B certification, adjudication, and enforcement processes and the responsibilities of each agency involved, we hosted a joint meeting with officials from Labor, Homeland Security's U.S. Citizenship and Immigration Services (USCIS), and Justice. We also reviewed laws and regulations pertaining to the H-1B program. To obtain information on the characteristics of employers who filed Labor Condition Applications (applications) and the positions they sought to fill with H-1B workers, we analyzed Labor's Efile H-1B Disclosure Data from January 2002 through September 2005.

To analyze the number and type of H-1B complaints received by Labor's Wage and Hour Division (WHD) and the outcomes of the associated investigations, we received a data extract from WHD's Wage and Hour Investigative Support and Reporting Database (WHISARD). We also interviewed WHD officials on the complaint and investigation process, the appeal process, educational outreach to improve employer compliance, and the WHD resources used to process and investigate complaints.

To determine the number and type of H-1B petitions submitted by employers and adjudicated by USCIS, we analyzed service center data from the Computer Linked Application Information Management System, Version 3.0 (CLAIMS 3) database from fiscal years 2000 through 2005. We conducted site visits to two USCIS service centers, including the one that processes the most H-1B visa petitions.

To determine the type of violations and the process for investigations of U.S. worker displacement violations we interviewed Justice officials. We reviewed complaint and investigation data from Justice. We reviewed and analyzed summary reports provided by Justice on the number of employers investigated from 2000 through 2005 and the outcomes of those investigations.

To assess the reliability of the data from Labor, Homeland Security, and Justice, we (1) reviewed existing documentation related to the data sources, (2) tested the data for completeness and accuracy, and (3) interviewed knowledgeable agency officials about the data. We determined that the data were sufficiently reliable for the purposes of this report. (See app. I for a more thorough discussion of our scope and methodology.)

We conducted our work between August 2005 and May 2006 in accordance with generally accepted government auditing standards.

Results in Brief

While Labor's H-1B authority is limited in scope, the agency could improve its oversight of employers' compliance with program requirements. Labor's review of employers' applications to hire H-1B workers is timely, but lacks quality assurance controls and may overlook some inaccuracies. From January 2002 through September 2005, Labor's Employment and Training Administration electronically reviewed more than 960,000 applications and certified almost all of them. Approximately one-third of the applications were for workers in computer system analysis and programming occupations, with the next most frequent request, for college and university education workers, at 7 percent. About 30 percent of the positions were located in either California or New York. By statute, Labor's review of the applications is limited to searching for missing information or obvious inaccuracies and it does this through certain data checks. However, in our analysis of Labor's data we found certified applications with inaccurate information that could have been identified by more stringent checks. Although the overall percentage was small, we found 3,229 applications that were certified even though the wage rate on the application was lower than the prevailing wage for that occupation in the specific location. In addition, during this time period, approximately 1,000 certified applications contained employer identification numbers with improper prefix codes, which raises questions about the validity of the applications. In its enforcement efforts, WHD investigates complaints made against H-1B employers. From fiscal year 2000 through fiscal year 2005, Labor reported an increase in the number of H-1B complaints and violations, and a corresponding increase in the number of employer penalties. In fiscal year 2000, Labor required employers to pay back wages totaling $1.2 million to 226 H-1B workers; by fiscal year 2005, back wage penalties had increased to $5.2 million for 604 workers. However, program changes, such as a higher visa cap in some years, could have been a factor in the increase. In April 2006, WHD began the process of randomly

investigating employers who have willfully violated the program's requirements. Labor uses education as its primary method of promoting compliance with the H-1B program. For example, Labor conducts compliance assistance programs and posts guidance on its website. To educate workers about their rights, Labor is coordinating with the Department of State to provide worker information cards with the H-1B visas.

Labor, Homeland Security, and Justice all have responsibilities under the H-1B program, but Labor and Homeland Security could better address the challenges they face in sharing information between the agencies. After Labor certifies an application for a specific number of workers, the employer submits it, along with an H-1B petition for each worker, to USCIS. USCIS reviews this information but lacks the ability to easily verify whether employers submitted petitions for more workers than they originally requested because its system does not match each petition to Labor's application case number. Additionally, during the process of reviewing H-1B petitions, USCIS staff told us they may find evidence that employers are not meeting their obligations. Specifically, USCIS may find that a worker's income on the W-2—which may be used as supporting documentation to extend an H-1B worker's stay in the United States—is less than the wage quoted on the original application. Because an employer is not allowed to pay a lower wage than that which was quoted on the original application, USCIS may deny the petition if an employer is unable to explain the discrepancy. However, USCIS does not have a formal process for reporting the discrepancy to Labor. Additionally, current law precludes the Wage and Hour Division from using this information to initiate an investigation of the employer. Labor also shares enforcement responsibilities with Justice, which pursues charges filed by U.S. workers who allege that they were not hired or were displaced so that an H-1B worker could be hired instead. Justice may assess penalties if it finds that an employer hired an H-1B worker over a better-qualified U.S. worker. From 2000 through 2005, Justice found discriminatory conduct in 6 out of the 97 investigations closed, and assessed a total of $7,200 in penalties in 3 of the 6 cases, all in 2003.

To enhance employer compliance with the H-1B program and protect the rights of U.S. and H-1B workers, Congress should consider: (1) eliminating the restriction on using application and petition information submitted by employers as the basis for initiating an investigation, and (2) directing Homeland Security to provide Labor with information received during the

adjudication process that may indicate an employer is not fulfilling its H-1B responsibilities.

To strengthen oversight of employers' applications to hire H-1B workers, we recommend that Labor improve its procedures for checking completeness and obvious inaccuracies, including developing more stringent, cost effective methods of checking for wage inaccuracies and invalid employer identification numbers.

To ensure employers are complying with program requirements, we recommend that as USCIS transforms its information technology system, the Labor application case number be included in the new system, so that adjudicators are able to quickly and independently ensure that employers are not requesting more H-1B workers than were originally approved on their application to Labor.

The agencies gave us technical comments and Homeland Security agreed with our recommendations. Labor questioned whether more stringent checks were necessary and believes Congress intentionally limited Labor's role and placed program integrity with USCIS.

We believe there are cost-effective methods that Labor could use to check the applications more stringently that would enhance the integrity of the H-1B process.

Background

The H-1B program was created by the Immigration Act of 1990, which amended the Immigration and Nationality Act (INA).[1] The H-1B visa category was created to enable U.S. employers to hire temporary workers as needed in specialty occupations, or those that require theoretical and practical application of a body of highly specialized knowledge. It also requires a bachelor's or higher degree (or its equivalent) in the specific occupation as a minimum requirement for entry into the occupation in the United States.[2] The Immigration Act of 1990 capped the number of H-1B visas at 65,000 per fiscal year.

[1] The H-1 nonimmigrant category was created under the Immigration and Nationality Act of 1952 to assist U.S. employers needing workers temporarily. Nonimmigrants are foreign nationals who come to the United States on a temporary basis and for a specific purpose, such as to attain education and work.

[2] Fashion models of distinguished merit and ability also qualify for H-1B visas and do not need to meet the definition of specialty occupation.

Since the creation of the H-1B program, the number of H-1B visas permitted each fiscal year has changed several times. Congress passed the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), which increased the limit to 115,000 for fiscal years 1999 and 2000. In 2000, Congress passed the American Competitiveness in the Twenty-First Century Act, which raised the limit to 195,000 for fiscal year 2001 and maintained that level through fiscal years 2002 and 2003. The number of H-1B visas reverted back to 65,000 thereafter.[3] An H-1B visa generally is valid for 3 years of employment and is renewable for an additional 3 years.

Filing an application with Labor's Employment and Training Administration is the employer's first step in hiring an H-1B worker,[4] and Labor is responsible for either certifying or denying the employer's application within 7 days (see app. II for the Labor Condition Application). By law, it may only review applications for omissions and obvious inaccuracies. Labor has no authority to verify the authenticity of the information. Employers must include on the application information such as their name, address, rate of pay and work location for the H-1B worker, and employer identification number. All employers are also required to make four attestations on the application as to:

1. Wages: The employer will pay nonimmigrants at least the local prevailing wage or the employer's actual wage, whichever is higher, and pay for nonproductive time caused by a decision made by the employer; and offer nonimmigrants benefits on the same basis as U.S. workers.

2. Working conditions: The employment of H-1B nonimmigrants will not adversely affect the working conditions of U.S. workers similarly employed.

3. Strike, lockout, or work stoppage: No strike or lockout exists in the occupational classification at the place of employment.

[3] However, under the H-1B Visa Reform Act of 2004, some H-1B workers—such as those being hired by institutions of higher education, nonprofit or government research organizations, or those with a master's or higher degree from a U.S. institution—may be exempt from the annual cap.

[4] Employers can submit applications to Labor up to 6 months prior to the H-1B worker's intended employment date.

4. Notification: The employer has notified employees at the place of employment of the intent to employ H-1B workers.

Certain employers are required to make three additional attestations on their application. These additional attestations apply to H-1B employers who: (1) are H-1B dependent, that is, generally those whose workforce is comprised of 15 percent or more H-1B nonimmigrant employees; or (2) are found by Labor to have committed either a willful failure to meet H-1B program requirements or misrepresented a material fact in an application during the previous 5 years. These employers are required to additionally attest that: (1) they did not displace a U.S. worker within the period of 90 days before and 90 days after filing a petition for an H-1B worker; (2) they took good faith steps prior to filing the H-1B application to recruit U.S. workers and that they offered the job to a U.S. applicant who was equally or better qualified than an H-1B worker; and (3) prior to placing the H-1B worker with another employer, they inquired and have no knowledge as to that employer's action or intent to displace a U.S. worker within the 90 days before and 90 days after the placement of the H-1B worker with that employer.[5]

After Labor certifies an application, the employer must submit to USCIS an H-1B petition for each worker it wishes to hire (see App. III for the H-1B petition and supplement). On March 1, 2003, Homeland Security took over all functions and authorities of Justice's Immigration and Naturalization Service under the Homeland Security Act of 2002 and the Homeland Security Reorganization Plan of November 25, 2002. Employers submit to Homeland Security the application, petition, and supporting documentation along with the appropriate fees. When Congress passed ACWIA in 1998, it imposed a filing fee of $500 on H-1B petitions. In 2000, Congress passed legislation to increase the amount of filing fees to $1,000 then increased the amount again to $1,500 in 2004.[6] Along with a $1,500 filing fee, an employer must also submit a $500 fraud prevention

[5] These additional requirements first applied from January 19, 2001—September 30, 2003. However, the provision requiring these attestations sunsetted, or expired, and was not reinstituted until March 8, 2005. Consequently, from October 1, 2003, to March 7, 2005, H-1B dependent employers and willful violator employers were not required to make the additional attestations, and, in effect, were able to hire H-1B workers even if they displaced U.S. workers and did not make efforts to recruit U.S. workers.

[6] Pub. L. No. 106-311 (Oct. 17, 2000); The H-1B Visa Reform Act of 2004, Pub. L. No. 108-447 (Dec. 8, 2004).

and detection fee to Homeland Security.[7] Information on the petition must indicate the wages that will be paid to the H-1B worker, the location of the position and the worker's qualifications. Through a process known as adjudication, Homeland Security reviews the documents for certain criteria, such as whether the petition is accompanied by a certified application from Labor, whether the employer is eligible to employ an H-1B worker, whether the position is a specialty occupation, and whether the prospective H-1B worker is qualified for the position.

The Wage and Hour Division of Labor's Employment Standards Administration performs investigative and enforcement functions to determine whether an employer has complied with its attestations on the application. An aggrieved individual or entity[8] or certain non-aggrieved parties may file a complaint with Labor that an employer violated a requirement of the H-1B program. To conduct an investigation, the Administrator must have reasonable cause to believe that an employer did not comply with or misrepresented information on its application. Employers who violate any of the attestations on the application may be subject to civil money penalties or administrative remedy, such as paying back wages to H-1B workers or debarment, which disqualifies an employer from participating in the H-1B program for a specified period of time. Employers, the person who filed the complaint, or other interested parties who disagree with the findings of the investigation then have 15 days to appeal by requesting an administrative hearing.

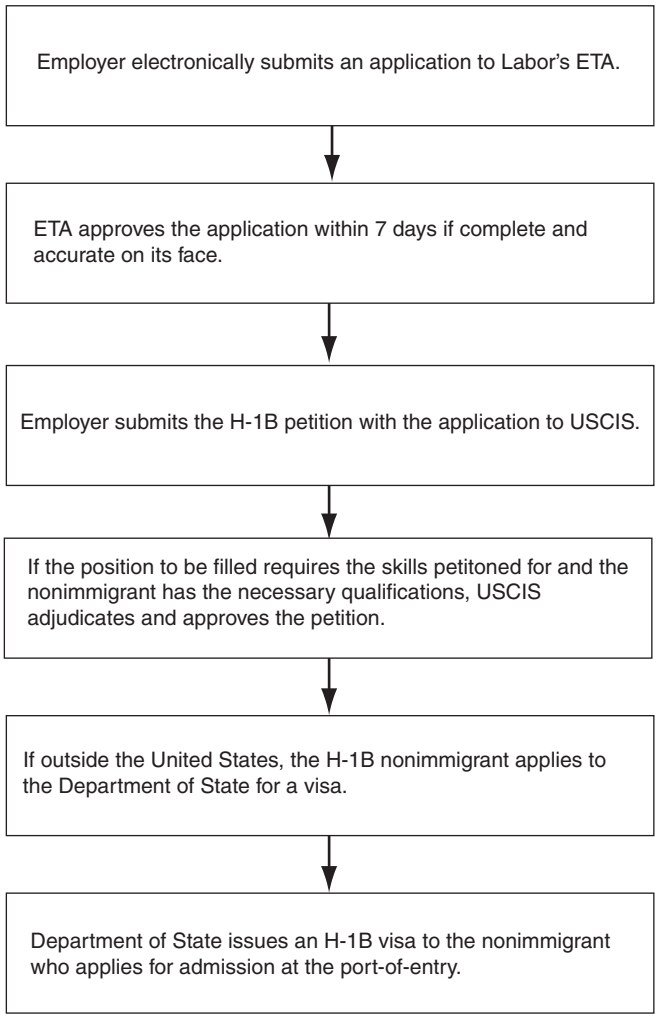
The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) of the Department of Justice also has some enforcement responsibility. Under statutory authority created by the Immigration Reform and Control Act of 1986, OSC pursues charges of citizenship discrimination brought by U.S. workers who allege that an employer preferred to hire an H-1B worker.

[7] The H-1B Visa Reform Act of 2004, Pub. L. No. 108-447 (Dec. 8, 2004).

[8] An aggrieved individual can be an H-1B worker, a U.S. worker, or a bargaining representative for workers; an aggrieved entity can be another federal agency, such as the Department of State, or a competitor who is adversely affected by the employer's alleged non-compliance with the application.

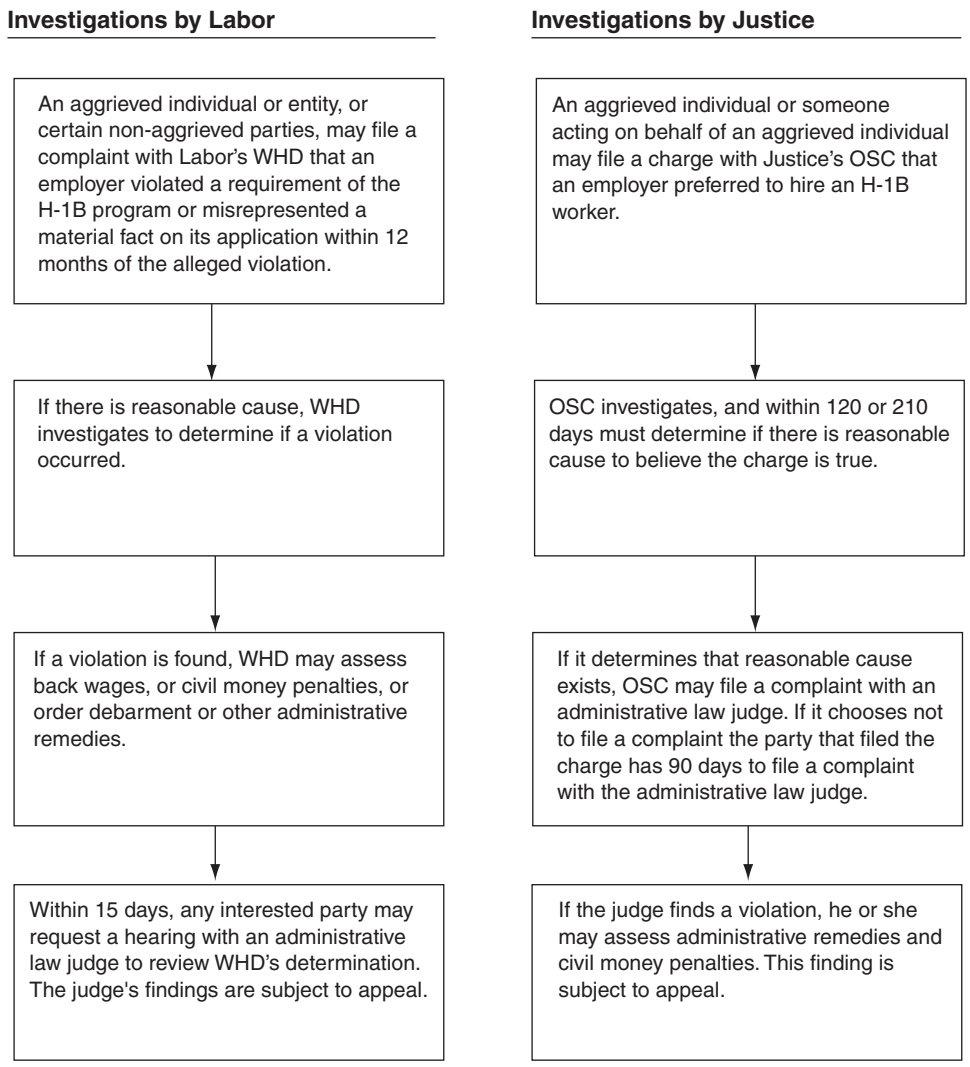
Figure 1 gives an overview of the H-1B visa process. The figure highlights the major steps that an employer takes when hiring an H-1B worker. Figure 2 highlights the process for investigations when a violation has been alleged.

Figure 1: An Overview of the H-1B Visa Process



Sources: GAO analysis based on information obtained from Labor, Homeland Security, and Justice, and 20 C.F.R. § 655.700(b).

Figure 2: H-1B Investigatory Process



Sources: GAO analysis based on information obtained from Labor, Homeland Security, and Justice; and 20 C.F.R. Part 655, Subpart I and 8 U.S.C. § 1324b.

Labor Has Limited H-1B Authority, but the Agency Could Improve Its Oversight of Employers' Compliance with Program Requirements

Labor's H-1B authority is limited in scope, but the agency could improve its oversight of employers' compliance with program requirements. While Labor's review of employers' applications to hire H-1B workers is timely, it lacks quality assurance controls and may overlook some inaccuracies, such as applications containing employer identification numbers with invalid prefix codes. Labor's Wage and Hour Division investigates complaints made against H-1B employers and keeps a database of employers with prior violations. Labor has the authority to conduct random investigations of some of these employers and began doing so in April 2006. Labor uses education as the primary method of promoting compliance with the H-1B program. In addition to conducting compliance assistance programs for employers, it also coordinates with the Department of State to provide H-1B workers with information about their employee rights.

Labor's Review of Employers' Requests Is Fast, but May Overlook Some Inaccuracies

Labor has reduced the time it takes to certify employers' applications by reviewing them electronically and subjecting them to data checks. Labor increased the percentage of applications reviewed within the required seven days from 56 percent in fiscal year 2001 to 100 percent in fiscal year 2005. As of January 2006, all applications must be submitted electronically[9] and Labor's website informs employers that it will certify or deny applications within minutes based on the information entered. Our analysis of Labor's data found that of the 960,563 applications that Labor electronically reviewed from January 2002 through September 2005,[10] 99.5 percent were certified, as shown in table 1. Not all applications continue through the process and result in H-1B visas—employers can withdraw their applications, petitions can be denied, or the visa may not be issued. Therefore, Labor officials told us the number of applications submitted represents employers' interest in the H-1B program rather than the actual number of H-1B visas that are issued.

[9] Special mail application filing procedures are available for employers without Internet access or with physical disabilities.

[10] Our analysis included applications filed electronically from January 14, 2002, through September 30, 2005, except for five applications with a decision date of October 2, 2005.

Table 1: Labor Condition Applications Electronically Reviewed from 2002 through 2005

Fiscal year[a]	Total number of applications	Applications certified[b]	Percentage certified	Applications denied[b]	Percentage denied
2002	123,060	122,305	99.4	755	0.6
2003	221,262	220,234	99.5	1,026	0.5
2004	308,470	306,645	99.4	1,040	0.3
2005	307,771	306,927	99.7	844	0.3

Source: GAO analysis of Department of Labor data.

[a]Represents data from January 2002 through September 2005, with the exception of five applications that were reviewed by Labor on October 2, 2005.

[b]Number of applications certified and denied may not equal the total number of applications because some applications were not recorded as either certified or denied.

In addition to agreeing to certain attestations on the application, employers must provide information about themselves, such as address and employer identification number, as well as information about each position they are seeking to fill, the time period they will need the worker, the prevailing wage and location for the position, the wage the worker will be paid, and the number of workers they want to hire. On the applications submitted electronically from January 2002 through September 2005, approximately 90 percent of employers requested only one worker even though they are allowed to request multiple workers for the same occupation on an application. Approximately one-third of the applications were for workers in computer system analysis and programming occupations, with the next most frequent request, for college and university education workers, at 7 percent. About 30 percent of the positions were located in either California or New York.[11] See appendix IV for more information on H-1B workers.

Labor's review of the application is limited by law to identifying omissions or obvious inaccuracies. Labor will not certify an application if the employer has failed to check all the necessary boxes or not filled in required information such as wage rate, prevailing wage or period of intended employment. Labor's system will also deny an application if it contains obvious inaccuracies. In addition to checks to ensure that data

[11] Does not include additional or subsequent work locations.

fields have the correct number of digits or are numerical when required, Labor has defined obvious inaccuracies as when an employer:

- files an application after being debarred, or disqualified, from participating in the H-1B program;
- submits an application more than 6 months before the beginning date of the period of employment;
- identifies multiple occupations on a single application;
- states a wage rate that is below the Fair Labor Standards Act minimum wage;
- identifies a wage rate that is below the prevailing wage on the application; and
- identifies a wage range where the bottom of the range is lower than the prevailing wage on the application.

Despite these checks, Labor's system does not consistently identify all obvious inaccuracies. For example, although the overall percentage was small, we found 3,229 applications that were certified even though the wage rate on the application was lower than the prevailing wage for that occupation in the specific location. Table 2 shows the wage rates and corresponding prevailing wages from a sample of applications Labor incorrectly certified because the wage rate was not equal to or greater than the prevailing wage.

Table 2: Wage Rates and Prevailing Wages from a Sample of Labor Condition Applications That Were Incorrectly Certified

Sample applications	Application wage rate	Application prevailing wage	Application certification status
Application 1 FY 2002	$60,163 per year	$83,833 per year	Certified
Application 2 FY 2003	$37,784 per year	$52,876 per year	Certified
Application 3 FY 2004	$32,000 per year	$35,000 per year	Certified
Application 4 FY 2005	$55,000 per year	$75,000 per year	Certified

Source: GAO analysis of Department of Labor data.

Additionally, Labor does not identify other errors that may be obvious. Specifically, Labor told us its system reviews an application's employer

identification number[12] to ensure it has the correct number of digits and that the number does not appear on the list of employers who are ineligible to participate in the H-1B program. However, our analysis of Labor's data found that Labor's review may not identify numbers that are erroneous. For example, we found 993 certified applications with invalid employer identification number prefixes. While an invalid employer identification number could indicate a fraudulent application, Labor does not consider it an obvious inaccuracy. Officials told us that in other programs, such as the permanent employment program, Labor matches the application's employer identification number to a database with valid employer identification numbers; however, they do not formally do this with H-1B applications because it is an attestation process, not a verification process.

According to Labor, most of the process of reviewing applications is automated—the primary reason an analyst will review an application is if the employer's prevailing wage source is not recognized by Labor's database. The analyst reviews the source of the prevailing wage provided by the employer just to ensure the source meets Labor's criteria, not to verify that the prevailing wage is correct. The employer may obtain a prevailing wage from a state workforce agency, a collective bargaining agreement, or another source, such as a private employment survey. If the employer uses a private employment survey and the analyst finds the survey meets Labor's criteria—such as having been conducted in the last 2 years and using a statistically valid methodology to collect the data—the survey will be added to Labor's database and used to approve future applications. Officials also told us that analysts review from three to five applications per day. In an effort to promote consistency in prevailing wage determinations, Labor has issued guidance for its state workforce agencies as well as for employers using surveys. Labor officials told us they always advise employers to obtain prevailing wage rates from the state workforce agency, but they also said that because the application is an attestation process, employers are responsible for doing the required analysis to determine the prevailing wage and maintaining the proper documentation to support the prevailing wage provided on the application.

[12] The employer identification number is used by the Internal Revenue Service to identify taxpayers who are required to file business tax returns. The number has nine digits and is issued in the XX-XXXXXXX format.

We and others have previously reported that Labor's review of the labor condition application is limited and provides little assurance that employers are fulfilling their H-1B responsibilities. In 2000, given Labor's limited review of the application, we suggested Congress consider streamlining the H-1B approval process by requiring employers to submit the application directly to the Immigration and Naturalization Service, now the USCIS.[13] Similarly, in 2003, Labor's Inspector General reported that either Labor should have authority to verify the accuracy of the application information or employers should file their applications directly to USCIS.[14] While Labor officials told us they frequently review the application process to determine where improvements can be made, they rely on a system of data checks rather than a formal quality assurance process because of the factual nature of the form and the number of applications received. Additionally, they said if they conducted a more in-depth review of the applications, they could overreach their legal authority and increase the processing time for applications. Officials also said the integrity of the H-1B program is ensured through enforcement and by the fact that there is actual review by staff when the employer submits the paperwork to USCIS.

Labor Investigates Complaints and Has Begun the Process of Randomly Investigating Previous Violators

Labor enforces H-1B program requirements primarily by investigating complaints filed against employers. H-1B workers or certain others with knowledge of an employer's practices who believe an employer has violated program requirements can file a complaint with Labor's Wage and Hour Division, which received 1,026 complaints from fiscal year 2000 through fiscal year 2005. If the complaint meets certain criteria—such as being filed within 12 months of the violation—Labor said it notifies the employer of the investigation and requests information, including payroll records, prevailing wage determinations, and Labor's certified applications. Labor also interviews the employer and workers, checks its violations database to determine if the employer has any previous violations, and assesses the employer's compliance with all H-1B program requirements. As a result, an investigation may result in more than one violation. Once the investigation is complete, Labor told us it meets with

[13] GAO, *H-1B Foreign Workers: Better Controls Needed to Help Employers and Protect Workers*, GAO/HEHS-00-157 (Washington, D.C.: September 2000).

[14] Department of Labor, Office of Inspector General, *Overview and Assessment of Vulnerabilities in the Department of Labor's Alien Labor Certification Programs*, 06-03-007-03-321 (Washington, D.C.: September 2003).

the employer to explain the findings and follows up with a letter to the employer listing violations and penalties, such as payment of back wages due to H-1B workers who were not paid the required wage, civil money penalties, debarment, or other administrative remedies (see table 3).

Table 3: Possible Penalties for Violations of the H-1B Program

Violation/penalties	Back wages	Civil money penalties	Debarment period
Failure to meet certain attestations or misrepresentation of fact in an application	Due to employees not paid the required wage	Not to exceed $1,000 per violation	For at least 1 year
Willful failure to meet attestations or a willful misrepresentation of fact in an application	Due to employees not paid the required wage	Not to exceed $5,000 per violation	For at least 2 years
Willful failure to meet attestations or a willful misrepresentation of fact in an application that resulted in the displacement of a U.S. worker either 90 days before or after hiring an H-1B worker	Due to employees not paid the required wage	Not to exceed $35,000 per violation	For at least 3 years

Source: GAO analysis of 8 U.S.C. § 1182(n)(2)(C).

While the number of H-1B complaints and violations has increased from fiscal year 2000 through fiscal year 2005, the overall numbers remain small and may have been affected by changes to the program. As shown in table 4, our analysis of Labor's data found the number of complaints increased from 117 in fiscal year 2000 to 173 in fiscal year 2005. The number of cases with violations more than doubled over the same period. The most common violation was not paying H-1B workers the required wage. With the increase in violations, the amount of penalties also increased. In fiscal year 2000, 226 H-1B workers were found to be due back wages of $1.2 million, by fiscal year 2005 the number had increased to 604 workers with back wages due of $5.2 million. In addition to the payment of back wages, employers were required to pay civil money penalties of more than $400,000 over the same period.

Table 4: H-1B Complaints, Violations, Back Wages Due, and Fines Assessed

Fiscal year	Number of complaints	Number of cases with violations	Amount of back wages due (millions)	Number of employees due back wages	Civil money penalties assessed	H-1B fiscal year cap
2000	117	93	$1.2	226	$21,000	115,000
2001	192	67	0.6	135	17,750	195,000
2002	238	210	3.8	830	48,350	195,000
2003	148	264	4.0	552	136,890	195,000
2004	158	271	4.2	390	114,125	65,000
2005	173	217	5.2	604	103,350	65,000
Total	**1,026**	**1,122**	**$19.0**	**2,737**	**$441,465**	

Source: GAO analysis of Department of Labor, Wage and Hour Division data, the American Competitiveness and Workforce Improvement Act of 1998, and the American Competitiveness in the Twenty-First Century Act of 2000.

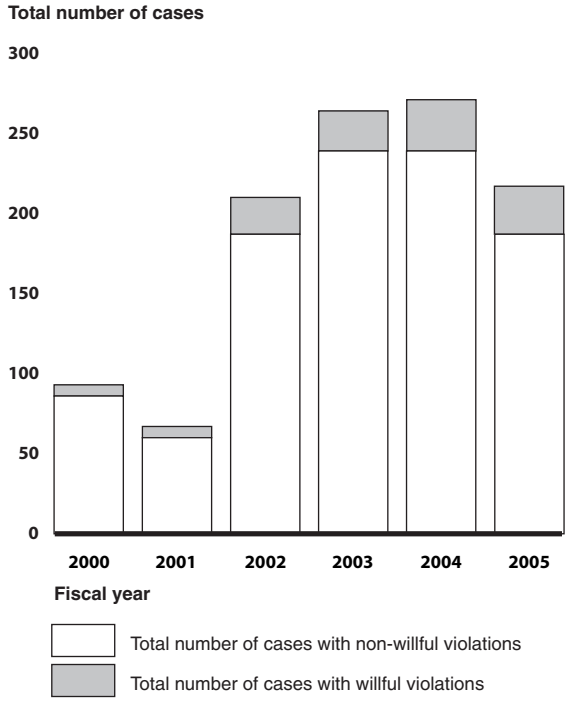
From fiscal year 2002 through fiscal year 2005, Labor requested over 50 debarment periods from Homeland Security for employers that committed certain violations—for example, willfully failing to pay an H-1B worker the required wage—that resulted in their being disqualified from participating in the H-1B program for a specified period of time.[15] Labor officials told us it is difficult to attribute changes in complaints and violations to any specific cause because of multiple legislative changes to the program, such as the temporary increase in the number of H-1B workers allowed to enter the country and the additional attestations for certain employers that expired and then were reinstated.

In addition to investigating complaints, Labor's Wage and Hour Division has recently begun randomly investigating employers who have willfully violated the program's requirements. Labor has had the statutory authority to conduct random investigations of these employers since 1998. Under this authority, Labor can subject employers on a case-by-case basis to random investigations up to 5 years from the date the employer first willfully violated the requirements of the H-1B program or willfully misrepresented a material fact in the labor condition application. Officials told us that the WHD did not schedule random H-1B investigations of willful violators until recently because, by definition, such employers are debarred from employing H-1B workers for a fixed number of years (they

[15] Homeland Security does not have a record of the number of debarment requests received in fiscal years 2000 and 2001. Labor does not have a record of its number of debarment requests for fiscal year 2000.

often go out of business due to the debarment), the number of such employers is very small (the total didn't reach 50 nationwide until late in fiscal year 2005) and trained H-1B investigators have heavy case loads. However, Labor said that it will initiate random investigations nationwide in fiscal year 2006. Labor has an existing database that it plans to use for targeting employers for investigations. The database contains information about employers who have previously violated their obligations under the H-1B program, including the types of violations and the penalties that were assessed. Although cases with willful violations represent a small number of all cases with violations, they have increased from 8 percent in fiscal year 2000 to 14 percent in fiscal year 2005. (See fig. 3) Officials said that they now have 59 cases on which they can follow-up to determine if the employer has committed another violation. Labor said that, in addition to initiating random investigations of willful violators nationwide, it will set up a system to track the data in its database and train its employees in fiscal year 2006. In April 2006, Labor sent a letter to its regional offices directing them each to initiate an investigation of at least one case prior to September 30, 2006.

Figure 3: Willful and Nonwillful Violations from Fiscal Year 2000 through Fiscal Year 2005



Sources: GAO analysis of Department of Labor data.

Labor Relies Primarily on Education to Promote Employer Compliance

Labor uses education as the primary method of promoting employer compliance with the H-1B program. For example, Labor conducts compliance assistance programs, posts guidance on its website, and explains employers' obligations under the law during complaint investigations.

Labor held a total of 6 H-1B compliance assistance programs for H-1B employers from fiscal year 2000 through fiscal year 2005. Typically, compliance assistance programs are conducted by Labor's district offices based upon requests by employers, employer associations, or employee groups. For example, in fiscal year 2002, Labor gave two presentations in Massachusetts, attended by 290 participants, mostly attorneys. In addition, Labor presented at two continuing education events for attorneys in Los Angeles and New Jersey in fiscal year 2004. Labor also holds seminars in response to requests for compliance information from employer associations and discusses compliance with H-1B program requirements

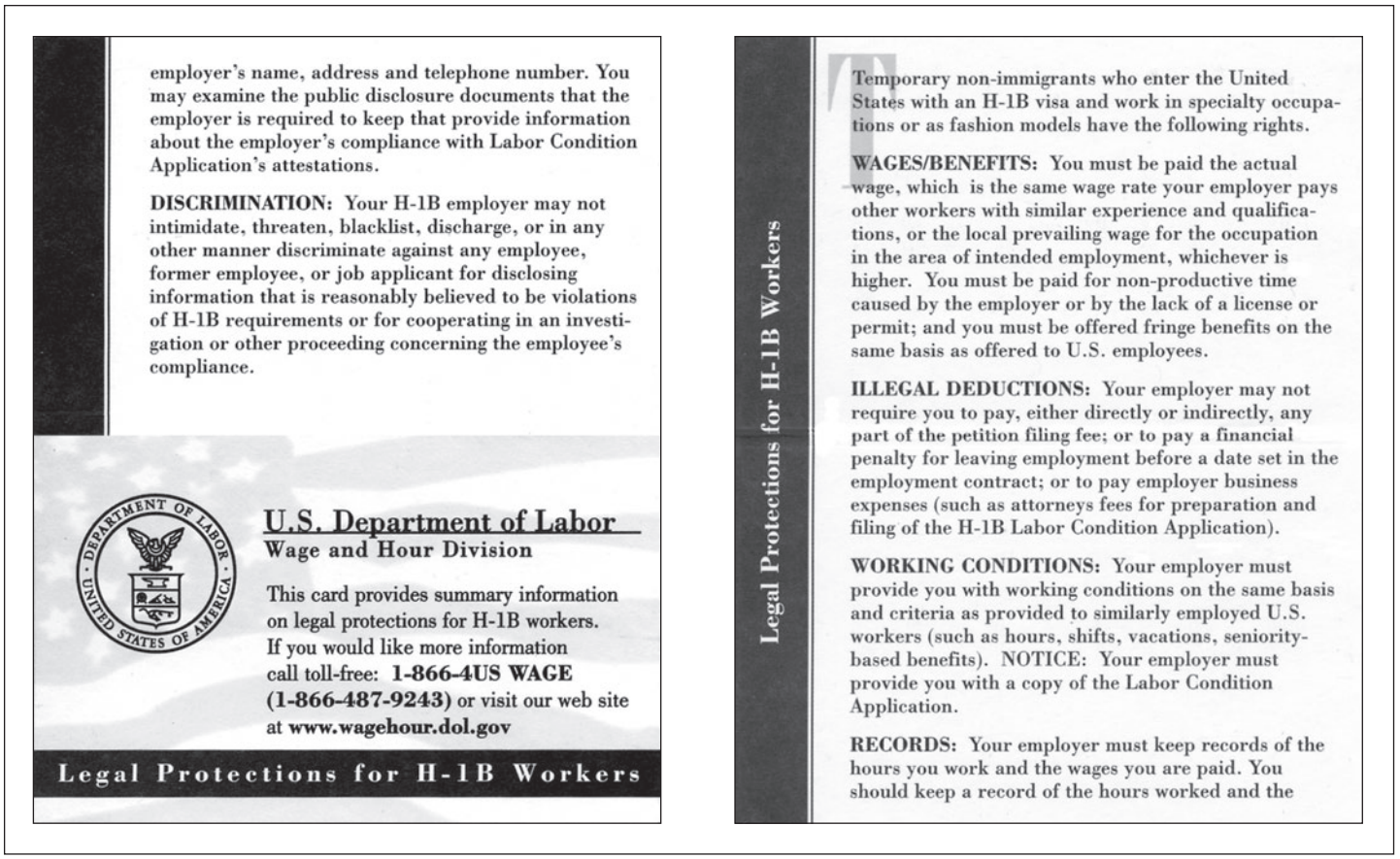
with companies that do not have pending lawsuits related to the H-1B program.

Labor provides information to employers through its website, such as employer guidance and fact sheets that describe employer responsibilities and employee rights under the H-1B program. Some of the fact sheets have not been updated since the program was amended by the H-1B Visa Reform Act in 2004, but officials told us they have developed 26 new fact sheets that will be made available on the agency's website this fiscal year. Labor also publicizes violation cases by issuing press releases on its website, particularly when it debars an employer. Labor officials told us that the purpose of the press releases is to show that there are consequences for not complying with the law.

Labor takes the opportunity to explain employer obligations under the law during its investigations of complaints filed against H-1B employers. At the beginning, an investigator sends the employer the regulations that pertain to the H-1B program and, during the investigation, highlights the law and regulations that are relevant to the case. The investigator also answers any questions the employer may have. At a final conference, Labor tells the employer which parts of the law the employer violated. Additionally, Labor always asks the employer it is investigating how it plans to change to come into compliance with the program.

Labor is working with the Department of State to provide information cards to H-1B workers about their employment rights. Workers receive the information cards with their visas. Labor also distributes the cards to employers so that they are aware of an H-1B worker's rights. The cards include information on employees' rights regarding wages and benefits, illegal deductions, working conditions, records, and discrimination. (See fig. 4.)

Figure 4: H-1B Worker Information Card



employer's name, address and telephone number. You may examine the public disclosure documents that the employer is required to keep that provide information about the employer's compliance with Labor Condition Application's attestations.

DISCRIMINATION: Your H-1B employer may not intimidate, threaten, blacklist, discharge, or in any other manner discriminate against any employee, former employee, or job applicant for disclosing information that is reasonably believed to be violations of H-1B requirements or for cooperating in an investigation or other proceeding concerning the employee's compliance.

U.S. Department of Labor
Wage and Hour Division

This card provides summary information on legal protections for H-1B workers. If you would like more information call toll-free: **1-866-4US WAGE (1-866-487-9243)** or visit our web site at **www.wagehour.dol.gov**

Legal Protections for H-1B Workers

Legal Protections for H-1B Workers

Temporary non-immigrants who enter the United States with an H-1B visa and work in specialty occupations or as fashion models have the following rights.

WAGES/BENEFITS: You must be paid the actual wage, which is the same wage rate your employer pays other workers with similar experience and qualifications, or the local prevailing wage for the occupation in the area of intended employment, whichever is higher. You must be paid for non-productive time caused by the employer or by the lack of a license or permit; and you must be offered fringe benefits on the same basis as offered to U.S. employees.

ILLEGAL DEDUCTIONS: Your employer may not require you to pay, either directly or indirectly, any part of the petition filing fee; or to pay a financial penalty for leaving employment before a date set in the employment contract; or to pay employer business expenses (such as attorneys fees for preparation and filing of the H-1B Labor Condition Application).

WORKING CONDITIONS: Your employer must provide you with working conditions on the same basis and criteria as provided to similarly employed U.S. workers (such as hours, shifts, vacations, seniority-based benefits). NOTICE: Your employer must provide you with a copy of the Labor Condition Application.

RECORDS: Your employer must keep records of the hours you work and the wages you are paid. You should keep a record of the hours worked and the

Source: Department of Labor.

Homeland Security and Justice also provide information to employers in a variety of ways such as publishing newsletters, responding to written inquiries from employers and their counsel, informational bulletins, answering questions for employers who call, and providing information on their websites. Homeland Security publishes informational bulletins for employers seeking to hire foreign workers. The Department also uses its website to advise the public of any changes in the H-1B program regarding filing fees or eligibility resulting from changes in the law. Justice engages in educational activities through public service announcements aimed at employers, workers, and the general public. The agency also trains employers, and works with other federal agencies to coordinate education programs for employers. Justice also has a telephone intervention hotline

for U.S. workers and H-1B employers to call when disputes arise. Justice uses the hotline to quickly address questions and to resolve problems. In addition, Justice answers e-mails, issues guidance, and provides information on its website.

Labor and Homeland Security Face Challenges Sharing Information

Labor, Homeland Security, and Justice all have responsibilities under the H-1B program, but Labor and Homeland Security could better address the challenges they face in sharing information. After Labor certifies an application, Homeland Security's USCIS reviews the information but cannot easily verify how many times the employer has used the application. Also, USCIS staff told us that, during their review, they may find evidence that employers are not meeting their H-1B obligations. However, current law precludes the Wage and Hour Division from using this information to initiate an investigation of the employer. In addition to Homeland Security, Labor also shares enforcement responsibilities with Justice, which pursues charges filed by U.S. workers who allege that they were not hired, or were displaced, so that an H-1B worker could be hired instead. From 2000 through 2005, Justice entered six out-of-court settlements to remedy violations and assessed $7,200 in penalties.

Labor and Homeland Security Coordinate to Process Employers' Requests to Hire H-1B Workers, but Do Not Use Certain Information to Investigate Possible Violations

Homeland Security's USCIS reviews Labor's certified application as part of the adjudication process; however, it lacks the ability to easily verify whether employers have submitted petitions for more workers than originally requested on the application. Labor can certify applications for multiple workers and, therefore, employers can use one application in support of more than one petition. However, USCIS' data system, CLAIMS 3, does not match each petition to its corresponding application because the system does not include a field for the unique number Labor assigns each application. As a result, USCIS cannot easily verify how many times the employer has used a given application or which petitions were supported by which application, potentially allowing employers to use the application for more workers than they were certified to hire. USCIS staff told us that when employers do not provide the names of the other H-1B workers approved using the same certified application, the adjudicator may request it from the employer. USCIS staff also told us that a letter is sent to the employer requesting the information and the employer has approximately 12 weeks to respond. Consequently, a request for information requires staff time and slows down the adjudication process. While USCIS told us it has attempted to add Labor's application case number to its database, it has not been able to because of the system's

memory limitations. USCIS told us it is currently transforming its information technology system; however, it will be several years before the new system is operational.

During the process of reviewing employers' petitions, USCIS may find evidence the employer is not meeting the requirements of the H-1B program, but current law precludes the Wage and Hour Division from using this information to initiate an investigation of the employer.[16] For example, to extend an H-1B worker's stay in the United States, an employer may submit a petition with the worker's W-2 form[17] as supporting documentation. USCIS staff told us they have reviewed petitions where the wage on the W-2 form was less than the wage the employer indicated it would pay on the original Labor application. In these cases, USCIS asks the employer to explain the wage discrepancy. If the employer has a legitimate explanation and documentation—for example the worker was on some type of extended leave—the petition may be approved. However, if the employer is unable to adequately explain the discrepancy, USCIS said it may deny the petition but generally does not report these employers to Labor for investigation. USCIS does not have a formal process for reporting the discrepancy to Labor. According to officials from Labor, it does not consider Homeland Security to be an aggrieved party; therefore, Labor would not initiate an investigation based on information received from, or a complaint filed by, Homeland Security.

Labor and Homeland Security also coordinate when employers have committed violations resulting in debarment. After Labor's Wage and Hour Division determines that an employer has committed a debarrable offense—such as willfully not paying an H-1B worker the required wage—Labor notifies USCIS, which in turn provides dates for the period of time that it will automatically deny petitions from the employer. Labor's Wage and Hour Division then sends a letter informing the employer that it is ineligible to sponsor workers for the H-1B program for that period of time. A copy of the letter is sent to Labor's Employment and Training Administration so that it will not certify any applications from the employer for the same period.

[16]Under the INA, as amended, information submitted by an employer for purposes of securing the employment of an H-1B nonimmigrant is prohibited from being considered a receipt of information for purposes of initiating an investigation based on a credible source under the INA. 8 U.S.C. § 1182(n)(2)(G).

[17]The W-2 form is the Internal Revenue Service's wage and tax statement.

Both Labor and USCIS officials said they are working to improve communication between the two agencies. For example, Labor, Homeland Security, and the State Department convened a multi-agency fraud working group, which met in March 2006, to discuss strategies for dealing with fraud in the H and L visa programs.[18]

Justice Handles U.S. Workers' Cases

Justice pursues charges filed by U.S. workers who allege that an H-1B worker was hired in their place. The Immigration and Nationality Act, as amended, gives U.S. workers the right to file a charge against an employer when they believe an employer preferred to hire an H-1B visa holder. When a charge has been filed, Justice's Office of Special Counsel opens an investigation for 120 or 210 days, as determined by statute. Charges may be resolved through a complaint before an administrative law judge, an out of court settlement, or a dismissal for lack of reasonable cause to believe a violation has occurred. Between 2000 and 2005, no cases were heard in court by an administrative law judge. Most of the 101 investigations started by Justice from 2000 through 2005 were found to be incomplete, withdrawn, untimely, dismissed, or investigated without finding reasonable cause for a violation. If Justice finds that an employer hired an H-1B worker instead of a U.S. worker, Justice may assess penalties, impose debarment, or seek administrative remedies such as back wages. Justice may assess penalties on cases settled out of court if it finds that an employer hired an H-1B worker over a better-qualified U.S. worker. From 2000 through 2005, Justice found discriminatory conduct in 6 out of the 97 investigations closed. Justice assessed a total of $7,200 in penalties in three of the six cases, all in 2003.[19]

[18] The H visa program also includes categories for other types of temporary workers, including agricultural workers (H-2A) and non-agricultural (H-2B) workers. The L visa program allows companies to transfer employees into the United States.

[19] In the three cases where penalties were assessed, employers advertised for only H-1B workers for various IT positions. Upon receiving notice of the charges, the employers immediately agreed not to post discriminatory advertising in the future and to take steps to recruit U.S. workers (as well as permanent and temporary residents, refugees, and asylees). In these cases, minimum penalties were imposed because there were no identifiable victims and by law, penalties are capped at $2,200 per violation or individual. In the three cases where penalties were not assessed, discrimination against U.S. workers appeared to be inadvertent, not intentional.

Conclusion

U.S. employers continue to request high numbers of foreign temporary workers under the H-1B nonimmigrant visa program. Labor, along with Homeland Security and Justice, must address the desires of U.S. employers for skilled foreign workers as well as ensure the program's integrity and protect both domestic and foreign workers. Labor's authority to review the Labor Condition Application is restricted to looking for completeness and obvious inaccuracies, but it could improve its oversight of employers' compliance with program requirements. Additionally, USCIS may find information in the materials submitted by an H-1B employer that indicates the employer is not complying with program requirements. However, current law restricts Labor from using such evidence to initiate an investigation of the employer. USCIS also has an opportunity to improve its oversight of employers' petitions to hire H-1B workers by matching information from its petition database with Labor's application case numbers to detect whether employers are requesting more H-1B workers than they were originally certified to hire. As Congress deliberates changes to U.S. immigration policy, ensuring that employers are in compliance with the program's requirements that protect both domestic and H-1B workers is essential.

Matter for Congressional Consideration

To increase employer compliance with the H-1B program and protect the rights of U.S. and H-1B workers, Congress should consider (1) eliminating the restriction on using application and petition information submitted by employers as the basis for initiating an investigation, and (2) directing Homeland Security to provide Labor with information received during the adjudication process that may indicate an employer is not fulfilling its H-1B responsibilities.

Recommendations for Executive Action

To strengthen oversight of employers' applications to hire H-1B workers, we recommend that Labor improve its procedures for checking completeness and obvious inaccuracies, including developing more stringent, cost-effective methods of checking for wage inaccuracies and invalid employer identification numbers.

To ensure employers are complying with program requirements, we recommend that as USCIS transforms its information technology system, the Labor application case number be included in the new system, so that adjudicators are able to quickly and independently ensure that employers are not requesting more H-1B workers than were originally approved on their application to Labor.

Agency Comments and Our Evaluation

We provided a draft of this report to the Departments of Labor, Homeland Security, and Justice for their review and comments. Each agency provided technical comments, which we incorporated as appropriate. Justice did not have formal comments on our report.

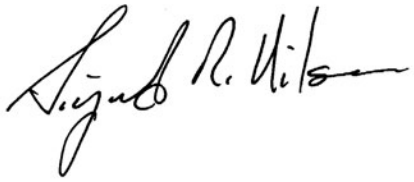
Homeland Security agreed with our recommendations and stated that USCIS intends to include Labor's application case number in its new information technology system.

Labor questioned whether our recommendation for more stringent measures is supported by the magnitude of the error rate that was found, as well as whether the benefits of instituting such measures would equal or exceed the added costs of implementing them. In addition, Labor said that Congress intentionally limited the scope of Labor's application review in order to place the focus for achieving program integrity on USCIS.

We believe that Labor is at risk of certifying H-1B applications that contain more errors than were found in the scope of our review. For example, we checked only for employer identification numbers with invalid prefix codes, and did not look for other combinations of invalid numbers or data. Therefore, we do not know the true magnitude of the error rate in the certification process. We continue to believe there are cost-effective methods that Labor could use to check the applications more stringently that would enhance the integrity of the H-1B process.

We are sending copies of this report to the Secretary of Labor, the Secretary of Homeland Security, the Attorney General, relevant congressional committees, and others who are interested. Copies will also be made available to others upon request. The report will be available on GAO's web site at http://www.gao.gov.

If you or your staff have any questions about this report please contact me on (202) 512-7215 or nilsens@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix VII.



Sigurd R. Nilsen
Director, Education, Workforce
and Income Security Issues

Appendix I: Scope and Methodology

To understand the H-1B certification, adjudication, and enforcement processes and the responsibilities of each agency involved, we hosted a joint meeting with officials from the Departments of Labor, Homeland Security U.S. Citizen and Immigration Services (USCIS), and Justice. We also reviewed laws and regulations related to the H-1B program.

To obtain information on the characteristics of employers who filed Labor Condition Applications (applications) and the positions they sought to fill with H-1B workers, we analyzed the Efile H-1B Disclosure Data from the Employment and Training Administration (ETA) of the Department of Labor. These data included all the applications filed electronically from January 2002 through September 2005.[1] We analyzed the data from a total of 960,563 applications to determine (1) the number that had been certified or denied, (2) the employers who requested the most workers, (3) the most frequently requested occupation codes, (4) the locations of the H-1B positions, (5) the source of the prevailing wage used by employers, and (6) how many applications were certified with invalid employer identification number prefixes when compared with a list of valid prefix codes obtained from the Internal Revenue Service. We also analyzed how prevailing wages compared to actual wage rates. The H-1B Visa Reform Act, which was passed on December 8, 2004, requires employers to pay H-1B workers at least 100 percent of the prevailing wage for each specific occupation and location. Prior to the enactment of this law, Labor's regulations permitted employers to pay actual wages that were only 95 percent of the prevailing wage. Accordingly, to ensure we did not incorrectly identify any applications as erroneously certified during the time between the passage of the H-1B Visa Reform Act and Labor's implementation of the new 100 percent requirement, our analysis only identified those cases where the actual wage rate was less than 95 percent of the prevailing wage.

Additionally, we interviewed officials from ETA regarding the application approval process, including the circumstances under which applications are reviewed by an analyst for discrepancies, how prevailing wage sources are determined to be legitimate, and the ETA resources that are used to process and review applications. Additionally, we accessed the application online system to determine when the employer would receive error

[1] Our analysis included applications filed electronically from January 14, 2002, through September 30, 2005, with the exception of five applications that were reviewed by Labor on October 2, 2005.

notices when filling out the application. We conducted a data reliability assessment of the H-1B Disclosure Data by testing for completeness and accuracy, reviewing documentation, and interviewing knowledgeable officials. We found it to be sufficiently reliable for our purposes.

To analyze the number and type of H-1B complaints received by Labor's Wage and Hour Division (WHD) and the outcomes of the associated investigations, we received a data extract from WHD's Wage and Hour Investigative Support and Reporting Database (WHISARD). From fiscal years 2000 through 2005, we analyzed the number of H-1B complaints, violations, and the penalties assessed including the number of employees due back wages, the amount of back wages due, civil money penalties, the most common violation, and the trend in the number of willful violations as a percentage of all violations. We also interviewed WHD officials on the complaint and investigation process, the appeal process, educational outreach to improve employer compliance, and the WHD resources used to process and investigate complaints. We conducted a data reliability assessment of the WHISARD data by testing for completeness and accuracy, reviewing documentation, and interviewing knowledgeable officials. We found it to be sufficiently reliable for our purposes.

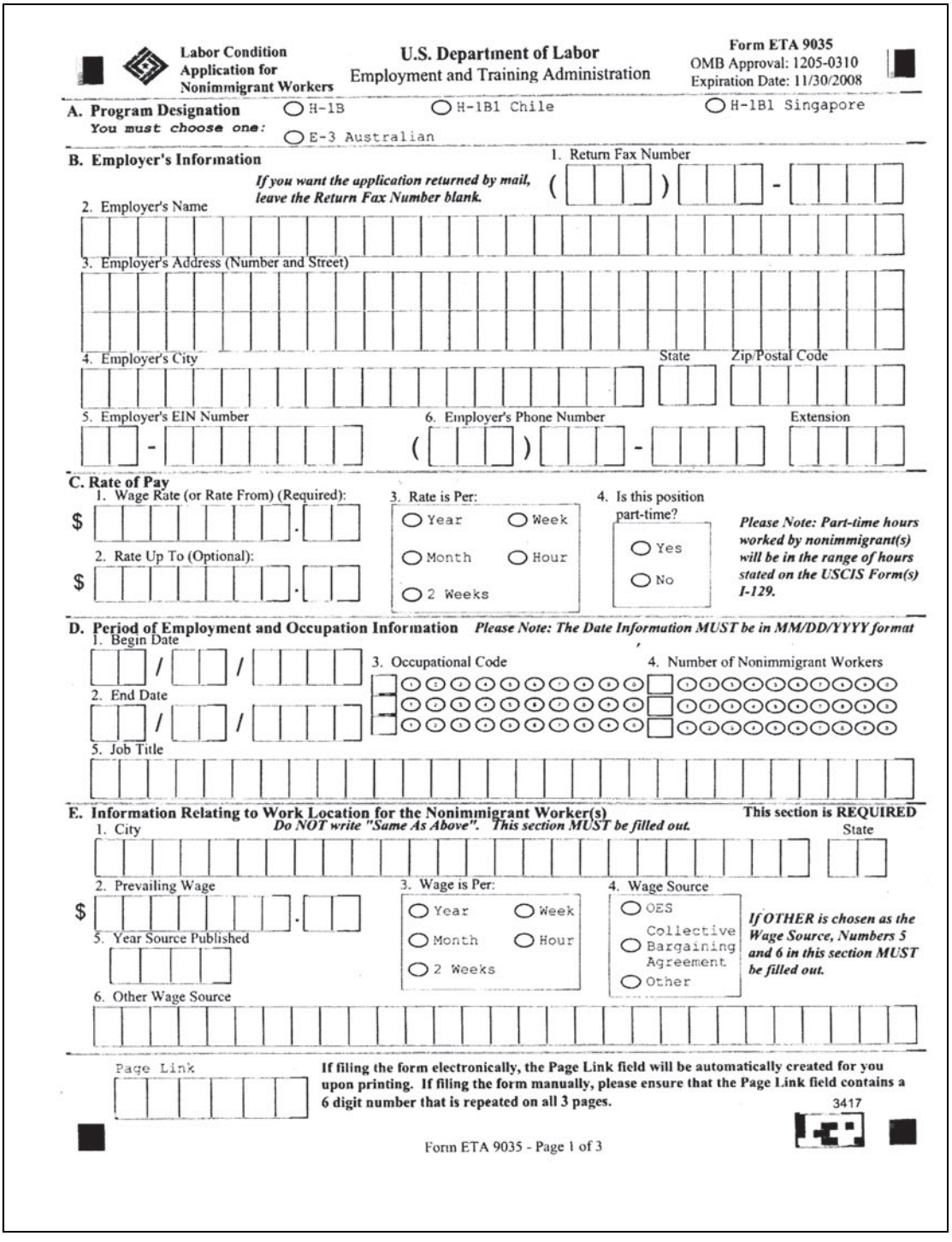
To determine the number of employers who had been debarred, or disqualified from participating in the H-1B program for a specified period of time, we requested that WHD officials provide the number of times per fiscal year from 2000 through 2005 that they sent a letter to USCIS requesting a debarment period. We also requested that USCIS provide the number of request letters it had received from WHD.

To determine the number and type of H-1B petitions submitted by employers and adjudicated by the Department of Homeland Security US Citizenship and Immigration Service, we analyzed service center data from the Computer Linked Application Information Management System, Version 3.0 (CLAIMS 3) database from fiscal years 2000 through 2005. We analyzed (1) the number of petitions approved or denied; (2) the basis for the classification of the worker, such as whether the petition was for a new H-1B employee or for a continuation of a worker's stay; (3) the employer's requested action; (4) the educational level of the H-1B workers; (5) the number of H-1B workers requested on each petition; and (6) the occupation codes requested. Additionally, we conducted a data reliability assessment of selected variables by testing for completeness and accuracy, reviewing documentation, and interviewing knowledgeable officials. We reported on the variables that we found to be reliable enough

for our purposes. To understand the policies and procedures of the program, we interviewed officials at USCIS headquarters. To understand the petition adjudication process, we conducted site visits at the USCIS Service Centers in Saint Albans, Vermont, and Laguna Niguel, California. According to USCIS, from October 2004 through December 2005 these service centers combined processed 63 percent of the H-1B petitions. To obtain context and facilitate our understanding of the electronic CLAIMS 3 data, we requested to review a non-probability sample of 48 petition files representing a variety of H-1B adjudication processes. During our site visits, we reviewed those that were available.

To determine the type of violations and the process for investigations of U.S. worker displacement allegations we interviewed Department of Justice officials. We analyzed a summary report provided by Justice of the number of employers investigated from 2000 through 2005 and the outcomes of those cases. To determine the number and outcomes of investigations, and the types and amounts of penalties assessed on employers, we obtained documentation from Justice.

Appendix II: Department of Labor Labor Condition Application



Labor Condition Application for Nonimmigrant Workers

U.S. Department of Labor
Employment and Training Administration

Form ETA 9035
OMB Approval: 1205-0310
Expiration Date: 11/30/2008

A. Program Designation *You must choose one:* ○ H-1B ○ H-1B1 Chile ○ H-1B1 Singapore ○ E-3 Australian

B. Employer's Information

1. Return Fax Number ( ) -

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

2. Employer's 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

C. 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 USCIS Form(s) I-129.

D. 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 Nonimmigrant Workers

5. Job Title

E. Information Relating to Work Location for the Nonimmigrant Worker(s) This section is REQUIRED

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

1. City State

2. Prevailing Wage $.

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

4. Wage Source ○ OES ○ 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

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.

3417

Form ETA 9035 - Page 1 of 3

Labor Condition Application for Nonimmigrant Workers

U.S. Department of Labor
Employment and Training Administration

Form ETA 9035
OMB Approval: 1205-0310
Expiration Date: 11/30/2008

E. 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
- ○ OES
- ○ 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

F. 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 the nonimmigrant worker(s).

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-1. Additional Employer Labor Condition Statements - H-1B Employers Only

Please Note: In order for an application regarding H-1B nonimmigrants to be processed, you MUST read Section F-1 - 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-1 - 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 Condition Statements 2 A, B, and C. ○ **Yes** ○ **No**

Page Link

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.

3417

Form ETA 9035 - Page 2 of 3

Labor Condition Application for Nonimmigrant Workers

U.S. Department of Labor
Employment and Training Administration

Form ETA 9035
OMB Approval: 1205-0310
Expiration Date: 11/30/2008

G. Public Disclosure Information
You must choose one of the two options listed in this Section.

1. Public disclosure information will be kept at:
   - ○ 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, F, and F-1 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 application, 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 Signed

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 for Immigration-Related Unfair Employment Practices* 950 Pennsylvania Ave, NW * Washington, DC * 20530.

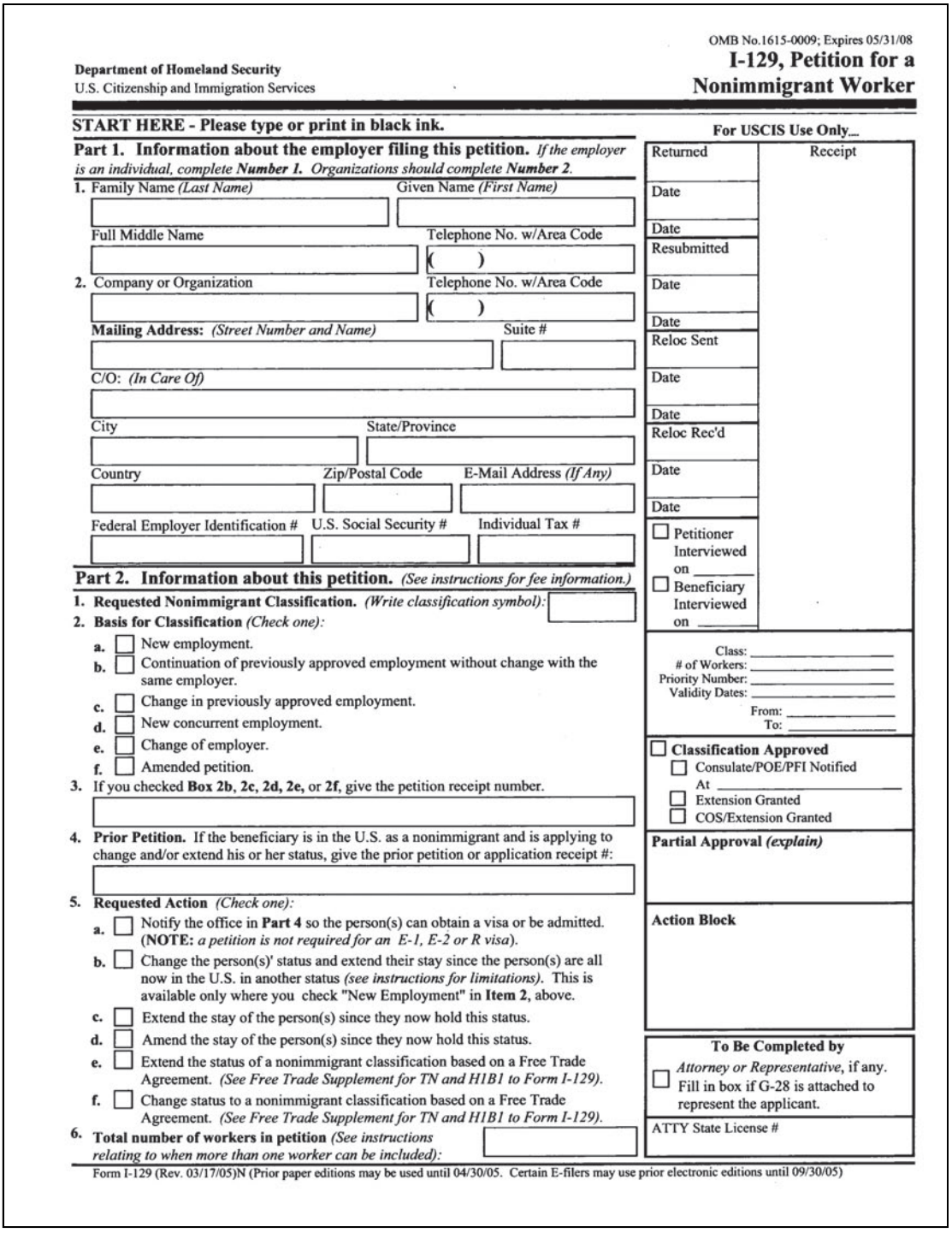
Page Link

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.

3417

Form ETA 9035 - Page 3 of 3

Appendix III: Department of Homeland Security USCIS Petition for a Nonimmigrant Worker and H-Classification Supplement



OMB No.1615-0009; Expires 05/31/08

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

I-129, Petition for a Nonimmigrant Worker

START HERE - Please type or print in black ink.

For USCIS Use Only...

Returned | Receipt
Date
Date
Resubmitted
Date
Date
Reloc Sent
Date
Date
Reloc Rec'd
Date
Date
☐ Petitioner Interviewed on _____
☐ Beneficiary Interviewed on _____

Part 1. Information about the employer filing this petition. *If the employer is an individual, complete* ***Number 1.*** *Organizations should complete* ***Number 2.***

1. Family Name *(Last Name)* | Given Name *(First Name)*
Full Middle Name | Telephone No. w/Area Code
2. Company or Organization | Telephone No. w/Area Code
Mailing Address: *(Street Number and Name)* | Suite #
C/O: *(In Care Of)*
City | State/Province
Country | Zip/Postal Code | E-Mail Address *(If Any)*
Federal Employer Identification # | U.S. Social Security # | Individual Tax #

Part 2. Information about this petition. *(See instructions for fee information.)*

1. **Requested Nonimmigrant Classification.** *(Write classification symbol):*
2. **Basis for Classification** *(Check one):*
   a. ☐ New employment.
   b. ☐ Continuation of previously approved employment without change with the same employer.
   c. ☐ Change in previously approved employment.
   d. ☐ New concurrent employment.
   e. ☐ Change of employer.
   f. ☐ Amended petition.
3. If you checked **Box 2b, 2c, 2d, 2e,** or **2f,** give the petition receipt number.
4. **Prior Petition.** If the beneficiary is in the U.S. as a nonimmigrant and is applying to change and/or extend his or her status, give the prior petition or application receipt #:
5. **Requested Action** *(Check one):*
   a. ☐ Notify the office in **Part 4** so the person(s) can obtain a visa or be admitted. (**NOTE:** *a petition is not required for an E-1, E-2 or R visa*).
   b. ☐ Change the person(s)' status and extend their stay since the person(s) are all now in the U.S. in another status *(see instructions for limitations)*. This is available only where you check "New Employment" in **Item 2,** above.
   c. ☐ Extend the stay of the person(s) since they now hold this status.
   d. ☐ Amend the stay of the person(s) since they now hold this status.
   e. ☐ Extend the status of a nonimmigrant classification based on a Free Trade Agreement. *(See Free Trade Supplement for TN and H1B1 to Form I-129).*
   f. ☐ Change status to a nonimmigrant classification based on a Free Trade Agreement. *(See Free Trade Supplement for TN and H1B1 to Form I-129).*
6. **Total number of workers in petition** *(See instructions relating to when more than one worker can be included):*

Class: _____
# of Workers: _____
Priority Number: _____
Validity Dates: _____
From: _____
To: _____

☐ **Classification Approved**
☐ Consulate/POE/PFI Notified At _____
☐ Extension Granted
☐ COS/Extension Granted

Partial Approval ***(explain)***

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-129 (Rev. 03/17/05)N (Prior paper editions may be used until 04/30/05. Certain E-filers may use prior electronic editions until 09/30/05)

Part 3. Information about the person(s) you are filing for. *Complete the blocks below. Use the continuation sheet to name each person included in this petition.*

1. If an Entertainment Group, Give the Group Name

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

All Other Names Used *(include maiden name and names from all previous marriages)*

Date of Birth *(mm/dd/yyyy)* | U.S. Social Security # *(if any)* | A # *(if any)*

Country of Birth | Province of Birth | Country of Citizenship

2. If in the United States, Complete the Following:

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

Date Status Expires *(mm/dd/yyyy)* | Passport Number | Date Passport Issued *(mm/dd/yyyy)* | Date Passport Expires *(mm/dd/yyyy)*

Current U.S. Address

Part 4. Processing Information.

1. If the person named in **Part 3** is outside the United States or a requested extension of stay or change of status cannot be granted, give the U.S. consulate or inspection facility you want notified if this petition is approved.

Type of Office *(Check one)*: ☐ Consulate ☐ Pre-flight inspection ☐ Port of Entry

Office Address *(City)* | U.S. State or Foreign Country

Person's Foreign Address

2. Does each person in this petition have a valid passport?

☐ Not required to have passport ☐ No - explain on separate paper ☐ Yes

3. Are you filing any other petitions with this one? ☐ No ☐ Yes - How many?

4. Are applications for replacement/initial I-94s being filed with this petition? ☐ No ☐ Yes - How many?

5. Are applications by dependents being filed with this petition? ☐ No ☐ Yes - How many?

6. Is any person in this petition in removal proceedings? ☐ No ☐ Yes - explain on separate paper

Form I-129 (Rev. 03/17/05)N (Prior paper editions may be used until 04/30/05. Certain E-filers may use prior electronic editions until 09/30/05) Page 2

Part 4. Processing Information. *(Continued)*

7. Have you ever filed an immigrant petition for any person in this petition? ☐ No ☐ Yes - explain on separate paper

8. If you indicated you were filing a new petition in **Part 2**, within the past seven years has any person in this petition:

   a. Ever been given the classification you are now requesting? ☐ No ☐ Yes - explain on separate paper

   b. Ever been denied the classification you are now requesting? ☐ No ☐ Yes - explain on separate paper

9. Have you ever previously filed a petition for this person? ☐ No ☐ Yes - explain on separate paper

10. If you are filing for an entertainment group, has any person in this petition not been with the group for at least one year? ☐ No ☐ Yes - explain on separate paper

Part 5. Basic information about the proposed employment and employer. *Attach the supplement relating to the classification you are requesting.*

1. Job Title

2. Nontechnical Job Description

3. LCA Case Number

4. NAICS Code

5. Address where the person(s) will work if different from address in **Part 1**. *(Street number and name, city/town, state, zip code)*

6. Is this a full-time position?

   ☐ No - Hours per week: ☐ Yes - Wages per week or per year:

7. Other Compensation *(Explain)*

8. Dates of intended employment *(mm/dd/yyyy)*: From: To:

9. Type of Petitioner - *Check one*:

   ☐ U.S. citizen or permanent resident ☐ Organization ☐ Other - explain on separate paper

10. Type of Business

11. Year Established

12. Current Number of Employees

13. Gross Annual Income

14. Net Annual Income

Form I-129 (Rev. 03/17/05)N (Prior paper editions may be used until 04/30/05. Certain E-filers may use prior electronic editions until 09/30/05) Page 3

Part 6. Signature. *Read the information on penalties in the instructions before completing this section.*

I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it is all true and correct. If filing this on behalf of an organization, I certify that I am empowered to do so by that organization. If this petition is to extend a prior petition, I certify that the proposed employment is under the same terms and conditions as stated in the prior approved petition. I authorize the release of any information from my records, or from the petitioning organization's records that the U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit being sought.

Signature | **Daytime Phone Number** *(Area/Country Code)* ( )

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

NOTE: If you do not completely fill out this form and the required supplement, or fail to submit required documents listed in the instructions, the person(s) filed for may not be found eligible for the requested benefit and this petition may be denied.

Part 7. Signature of person preparing form, if other than above.

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 any knowledge.

Signature | **Daytime Phone Number** *(Area/Country Code)* ( )

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

Firm Name and Address

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

OMB No. 1615-0009

H Classification Supplement to Form I-129

1. Name of person or organization filing petition:

2. Name of person or total number of workers or trainees you are filing for:

3. List the alien's and any dependent family member's prior periods of stay in H classification in the United States for the last six years. Be sure to list only those periods in which the alien and/or family members were actually in the United States in an H classification. **NOTE:** Submit photocopies of Forms I-94, I-797 and/or other USCIS issued documents noting these periods of stay in the H classification. If more space is needed, attach an additional sheet(s). (If applying for H-2A/H-2B classification skip this item.)

Subject's Name	Period of Stay *(mm/dd/yyyy)*		Subject's Name	Period of Stay *(mm/dd/yyyy)*	
	From:	To:		From:	To:
	From:	To:		From:	To:

4. Classification sought *(Check one)*:

- ☐ H-1B1 Specialty occupation
- ☐ H-1B1 Trade agreement with Chile or Singapore
- ☐ H-1B2 Exceptional services relating to a cooperative research and development project administered by the U.S. Department of Defense (DOD)
- ☐ H-1B3 Fashion model of national or international acclaim
- ☐ H-1C Registered nurse
- ☐ H-2A Agricultural worker
- ☐ H-2B Non-agricultural worker
- ☐ H-3 Trainee
- ☐ H-3 Special education exchange visitor program

Section 1. Complete this section if filing for H-1B classification.

1. Describe the proposed duties

2. Alien's present occupation and summary of prior work experience

Statement for H-1B specialty occupations only:

By filing this petition, I agree to the terms of the labor condition application for the duration of the alien's authorized period of stay for H-1B employment.

Petitioner's Signature | **Print or Type Name** | **Date** *(mm/dd/yyyy)*

Statement for H-1B specialty occupations and U.S. Department of Defense projects:

As an authorized official of the employer, I certify that the employer will be liable for the reasonable costs of return transportation of the alien abroad if the alien is dismissed from employment by the employer before the end of the period of authorized stay.

Signature of Authorized Official of Employer | **Print or Type Name** | **Date** *(mm/dd/yyyy)*

Statement for H-1B U.S. Department of Defense projects only:

I certify that the alien will be working on a cooperative research and development project or a co-production project under a reciprocal government-to-government agreement administered by the U.S. Department of Defense.

DOD Project Manager's Signature | **Print or Type Name** | **Date** *(mm/dd/yyyy)*

Form I-129 Supplement H (Rev. 03/17/05)N (Prior paper editions may be used until 04/30/05. Certain E-filers may use prior electronic editions until 09/30/05)

Page 7

Section 2. Complete this section if filing for H-2A or H-2B classification.

1. Employment is: *(Check one)*

a. ☐ Seasonal
b. ☐ Peakload
c. ☐ Intermittent
d. ☐ One-time occurence

2. Temporary need is: *(Check one)*

a. ☐ Unpredictable
b. ☐ Periodic
c. ☐ Recurrent annually

3. Explain your temporary need for the alien's services *(attach a separate sheet(s) paper if additional space is needed).*

Section 3. Complete this section if filing for H-2A classification.

The petitioner and each employer consent to allow government access to the site where the labor is being performed for the purpose of determining compliance with H-2A requirements. The petitioner further agrees to notify USCIS in the manner and within the time frame specified if an H-2A worker absconds, or if the authorized employment ends more than five days before the relating certification document expires, and pay liquidated damages of ten dollars ($10.00) for each instance where it cannot demonstrate compliance with this notification requirement. The petitioner agrees also to pay liquidated damages of two hundred dollars ($200.00) for each instance where it cannot be demonstrated that the H-2A worker either departed the United States or obtained authorized status during the period of admission or within five days of early termination, whichever comes first.

The petitioner must execute **Part A**. If the petitioner is the employer's agent, the employer must execute **Part B**. If there are joint employers, they must each execute **Part C**.

Part A. Petitioner:

By filing this petition, I agree to the conditions of H-2A employment and agree to the notice requirements and limited liabilities defined in 8 CFR 214.2(h)(3)(vi).

Petitioner's Signature	**Print or Type Name**	**Date** *(mm/dd/yyyy)*

Part B. Employer who is not the petitioner:

I certify that I have authorized the party filing this petition to act as my agent in this regard. I assume full responsibility for all representations made by this agent on my behalf and agree to the conditions of H-2A eligibility.

Employer's Signature	**Print or Type Name**	**Date** *(mm/dd/yyyy)*

Form I-129 Supplement H (Rev. 03/17/05)N (Prior paper editions may be used until 04/30/05. Certain E-filers may use prior electronic editions until 09/30/05)

Page 8

Part C. Joint Employers:

I agree to the conditions of H-2A eligibility.

Joint Employer's Signature(s)	Print or Type Name	Date *(mm/dd/yyyy)*
Joint Employer's Signature(s)	**Print or Type Name**	**Date** *(mm/dd/yyyy)*
Joint Employer's Signature(s)	**Print or Type Name**	**Date** *(mm/dd/yyyy)*
Joint Employer's Signature(s)	**Print or Type Name**	**Date** *(mm/dd/yyyy)*

Section 4. Complete this section if filing for H-3 classification.

1. If you answer "yes" to any of the following questions, attach a full explanation.

a. Is the training you intend to provide, or similar training, available in the alien's country?	☐ No	☐ Yes
b. Will the training benefit the alien in pursuing a career abroad?	☐ No	☐ Yes
c. Does the training involve productive employment incidental to training?	☐ No	☐ Yes
d. Does the alien already have skills related to the training?	☐ No	☐ Yes
e. Is this training an effort to overcome a labor shortage?	☐ No	☐ Yes
f. Do you intend to employ the alien abroad at the end of this training?	☐ No	☐ Yes

2. If you do not intend to employ this person abroad at the end of this training, explain why you wish to incur the cost of providing this training and your expected return from this training.

Form I-129 Supplement H (Rev. 03/17/05)N (Prior paper editions may be used until 04/30/05. Certain E-filers may use prior electronic editions until 09/30/05)

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Appendix IV: Data Tables

The following tables provide additional information on analyses conducted on the application data from the Department of Labor's Efile H-1B Disclosure Database and the petition data from USCIS's Computer Linked Application Information Management System, Version 3.0.[1]

A. Analyses on the application data obtained from the Department of Labor's Efile H-1B Disclosure Data:

Table 5: Companies Electronically Filing Applications for the Most H-1B Workers from January 2002 to September 2005

Company	Number of workers requested
1	187,337
2	39,569
3	29,353
4	20,062
5	20,039
6	19,791
7	18,523
8	18,446
9	17,200
10	16,717

Source: GAO analysis of Department of Labor data.

Table 6: Prevailing Wage Sources Used by Employers on Labor Condition Applications

Fiscal year[a]	State workforce agency	Collective bargaining agreement	Other
2002	24%	2%	74%
2003	21%	2%	77%
2004	18%	1%	80%
2005	16%	2%	82%

Source: GAO analysis of Department of Labor data.

[a]January 2002 through September 2005.

[b]Other sources of prevailing wages used by employers include the Department of Labor's Occupational Employment Statistics Survey and private employment surveys.

[1] Values may not total to 100 percent due to rounding.

B. Analyses on the H-1B petition data obtained from USCIS's Computer Linked Application Information Management System Version 3.0 (CLAIMS 3):

Table 7: Number of H-1B Petitions Approved and Denied

Fiscal year	Total petitions	Petitions approved[a]	Percentage approved	Petitions denied[a]	Percentage denied
2000	293,857	284,845	97	9,012	3
2001	329,972	316,894	96	13,078	4
2002	209,746	199,410	95	10,336	5
2003	225,768	216,225	96	9,543	4
2004	307,466	294,544	96	12,922	4
2005	258,142	253,450	98	4,692	2
Total	**1,624,951**	**1,565,368**	**96**	**59,583**	**4**

Source: GAO analysis of Department of Homeland Security data.

[a]Petitions were included in the fiscal year based on the date they were received by USCIS.

Table 8: Basis for Workers' H-1B Classification

Fiscal year	New employment	Continued employment with same employer	Change in employment	New concurrent employment[a]	Change of employer[b]	Amended petition[b]
2000	71%	15%	13%	0.8%	N/A	N/A
2001	73%	15%	12%	0.7%	N/A	N/A
2002	66%	21%	12%	0.9%	N/A	N/A
2003	60%	29%	11%	0.8%	N/A	N/A
2004	64%	27%	8%	0.7%	N/A	N/A
2005	55%	31%	6%	0.6%	6%	0.6%

Source: GAO analysis of Department of Homeland Security data.

Note: N/A=not applicable.

[a]Concurrent employment is when an H-1B worker is employed by multiple employers with overlapping approved dates of employment.

[b]The change of employer and amended petition categories were not on the Form I-129 H-1B petition until March 2005.

Table 9: Employers' Requested Action on Petitions for H-1B Workers

Fiscal year	Notify the office[a]	Change and extend status	Extend the worker's stay	Amend the worker's stay
2000	32%	24%	44%	0.4%
2001	33%	27%	41%	0.1%
2002	18%	34%	48%	0.2%
2003	20%	29%	52%	0.1%
2004	26%	27%	47%	0%
2005	21%	23%	54%	1.6%

Source: GAO analysis of Department of Homeland Security data.

[a]Employers check 'notify the office' to indicate whether the petition approval should be sent to a consulate, a port of entry, or preflight inspection.

Table 10: Workers' Education Level on H-1B Petitions

Fiscal year[a]	Less than a Bachelor's degree	Bachelor's degree	Master's degree	Professional degree	Doctorate degree
2003	2%	50%	30%	6%	12%
2004	1%	50%	34%	5%	10%
2005	1%	44%	37%	5%	12%

Source: GAO analysis of Department of Homeland Security data.

[a]We did not report on fiscal year 2000 through fiscal year 2002 because of missing data.

Table 11: Top Five Occupation Codes Requested on H-1B Petitions, FY 2000 through FY 2005

	Occupational code title	Occupation code	Number of times requested on petitions
1	Occupations in Systems Analysis and Programming	030	674,805
2	Occupations in College and University Education	090	94,685
3	Accountants, Auditors, and Related Occupations	160	68,256
4	Electrical/Electronics Engineering Occupations	003	65,974
5	Other Computer Related Occupations	039	58,429

Source: GAO analysis of Department of Homeland Security data.

Appendix V: Comments from the Department of Labor

U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210

JUN 19 2006

Mr. Sigurd R. Nilsen
Director
Education, Workforce and Income Security Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Nilsen:

Thank you for the opportunity to comment on the draft Government Accountability Office (GAO) report titled, "H-1B Visa Program: Labor Could Improve Its Oversight and Increase Information Sharing with Homeland Security," GAO-06-720. We have appreciated the opportunity to contribute information to the report as well as the opportunity to discuss our experiences in continuously improving the management of the H-1B program within the confines of the authority granted to us by law.

In this regard, our comments focus primarily on the GAO recommendation for executive action that suggests that Labor should improve its procedures for checking completeness and obvious inaccuracies (in H-1B Labor Condition Applications, or LCAs), including developing more stringent, cost effective methods of checking for wage inaccuracies and invalid employer identification numbers. This recommendation is based on findings that illustrate that over a period of approximately three years, from January 2002 through September 2005, Labor has processed 960,000 LCAs, of which 3,229 were certified even though they displayed incorrect prevailing wage information, and 1,000 were considered "suspect" because of questionable employer identification numbers (EIN).

The period covered by the GAO's review of LCAs was one of increasing demand by U.S. employers for H-1B workers. During this period of increasing activity, Labor introduced technology-based solutions to handling an increased workload to assure adherence to the statutory requirement to certify or deny an LCA within seven (7) days. Notwithstanding this increased workload, as the GAO points out the error rate for the LCAs they reviewed was low.

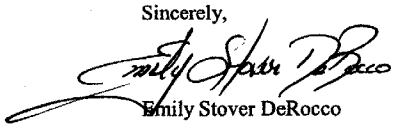
We would underscore the fact that the error rate was *extremely* low compared to the universe of applications processed, i.e., about three-tenths of one percent for LCAs where wage information errors were found and one-tenth of one percent where suspect EINs were identified. This error rate, by most standards, does not signal a significant program weakness. While Labor will continue to work toward achieving a zero error rate, we note that there is some question as to whether GAO's recommendation for more stringent measures to achieve a lower (or zero) incidence of error is supported by the magnitude of

the error rate that was found. It is unclear whether the added benefits of instituting more stringent measures would equal or exceed the added costs of implementing them.

This cost-benefit question is a key for Labor given our view that Congress intentionally limited the scope of our Departmental review of LCAs because they wanted to place the focus for achieving program integrity on the U.S. Citizenship and Immigration Services' more in-depth review of the petitions filed for each non-immigrant worker. The LCA, and its limited review by Labor, was intended to establish an attestation of compliance with the program's wage and labor standards that would support a subsequent USCIS enforcement effort. Labor believes that the current procedure followed for reviewing LCAs is serving that purpose at a reasonable cost and in a manner that does not invite abuse of the program. Any initiative to strengthen the integrity framework for the H-1B program should be approached strategically by focusing on comprehensive improvements in the administration of the program, without undue emphasis on only one aspect of the program.

We appreciate the insights that the report has provided on the Department of Labor's role in the H-1B program. If you would like additional information, please don't hesitate to call me at (202) 693-2700.

Sincerely,



Emily Stover DeRocco

Appendix VI: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

June 19, 2006

Mr. Sigurd R. Nilsen
Director
Education, Workforce and Income Security Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Nilsen:

RE: Draft Report GAO-06-720, H-1B Visa Program: Labor Could Improve Its Oversight and Increase Information Sharing with Homeland Security (GAO Job Code 130515)

The Department of Homeland Security (DHS) appreciates the opportunity to review and comment on the draft report. To ensure employers are complying with program requirements, the Government Accountability Office (GAO) recommends that as DHS' U.S. Citizenship and Immigration Services (USCIS) transforms its information technology system(s), the Department of Labor (Labor) application case number be included. This will allow adjudicators to quickly and independently ensure that employers are not requesting more H-1B workers than were originally approved on their application to Labor. We agree with the recommendation. The USCIS intends, as it develops a technology solution to support a transformed business process, to capture the Labor Condition Application case number. This data coupled with an account-based view of employers' immigration filings will facilitate the detection and deterrence of abuse or accounting errors by employers with respect to the number of applicants supported by a single Labor Condition Application.

We have some comments on your suggestion to Congress that it consider legislation requiring that DHS provide Labor with information regarding employers' failures to comply with certain H-1B requirements and that Labor use that information as a basis to begin an investigation. We agree that the matter merits Congressional consideration. Although USCIS does not currently have a standard process for referring information on whether an employer is fulfilling its responsibilities, USCIS does refer information to Labor on an informal basis. However, as the report indicates, Labor's legal ability to use that information is uncertain. USCIS has explored and continues to explore procedures for referring wage and hour violations to Labor.

www.dhs.gov

We are providing technical comments to your office under separate cover.

Sincerely,

Steven J. Pecinovsky
Director
Departmental GAO/OIG Liaison Office

MMcP

Appendix VII: GAO Contact and Staff Acknowledgments

GAO Contact

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