

DEPARTMENT OF LABOR

Employment and Training Administration

Electronic Filing of H-2A and H-2B Labor Certification Applications through the iCERT Visa Portal System

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) is announcing the implementation of electronic filing for the submission of nonimmigrant temporary labor certification applications under the H-2A and H-2B visa programs through the Department of Labor's (Department) iCERT Visa Portal System (iCERT System) at <http://icert.doleta.gov>. This new electronic filing capacity will enhance the accessibility and quality of labor certification services, reduce the data collection and reporting burden on small employers, facilitate more streamlined business processes, and establish greater transparency in the Department's decisions. Employers or their authorized representatives will be able to submit H-2B applications electronically beginning on October 15, 2012, and H-2A applications beginning on December 10, 2012. In order to make this transition as smooth as possible, the Department will hold four webinar training sessions (two for filing in the H-2B program and two for filing in the H-2A program) to orient program users to electronic filing through the iCERT

System. These sessions will be announced on the OFLC's Web site (<http://www.foreignlaborcert.doleta.gov/>) once dates are finalized. Employers or their authorized representatives choosing not to use this new filing option must continue to file their H-2A and H-2B applications with the Department using the traditional paper-based filing method.

DATES: This Notice is effective [INSERT DATE of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: For further information please contact William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, Employment and Training Administration, 200 Constitution Avenue, NW., Room C-4312, Washington, DC 20210; Telephone: (202) 693-3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Immigration and Nationality Act (INA) and Department of Homeland Security U.S. Citizenship and Immigration Services (USCIS) regulations assign specific responsibilities to the U.S. Secretary of Labor for the administration of certain employment-based immigration programs that require a labor certification. 8 U.S.C. 1184(c)(1), 1188(a)(1); 8 CFR 214.2(h)(5), (6). These responsibilities include determining whether there are able, willing, and qualified U.S. workers for a position for which certification is requested, and whether there would be any adverse impact on similarly employed U.S. workers should a labor certification be granted. Accordingly, statutory and regulatory provisions require

employers seeking a labor certification for either permanent or temporary nonimmigrant labor to apply to the Secretary of Labor. The Secretary has delegated the responsibilities for the administration of these programs to the Employment and Training Administration's (ETA) Office of Foreign Labor Certification (OFLC).

The H-2A and H-2B nonimmigrant worker labor certification programs administered by the OFLC enable United States (U.S.) employers to employ foreign workers on a temporary basis only where the Secretary of Labor has certified that there are not sufficient U.S. workers who are able, willing, and qualified to perform the services or labor, and the employment of the foreign workers will not adversely affect the wages and working conditions of U.S. workers similarly employed. 20 CFR part 655, Subpart B (H-2A workers); 20 CFR part 655, Subpart A (H-2B workers). Under current practice, employers or their authorized representatives (attorneys or agents) submit H-2A and H-2B temporary labor certification applications (i.e., the ETA Form 9142 - Application for Temporary Employment Certification, appendices, and supporting documentation) in paper form bearing original signatures directly to the OFLC Chicago National Processing Center (NPC). The Chicago NPC performs a manual review of each application for compliance with the criteria for certification; provides written notification to the employer, normally through means that assure next-day delivery (e.g., U.S. mail or private mail courier and electronic mail when available), of any deficiencies or additional information needed; issues a written determination either granting or denying the temporary labor certification application; and retains a copy of the paper-filed application for record retention purposes.

As a component of the Department's E-Government initiative and in accordance with 20 CFR 655.20(b) and 655.130(c), ETA is publishing this Notice to inform the public,

including the regulated community, of its intention to implement electronic filing of temporary labor certification applications under the H-2A and H-2B visa programs through the iCERT System located at <http://icert.doleta.gov>. Using this system, agricultural associations, employers and/or their authorized representatives will be able to establish Web-based accounts; create associate user accounts and manage security privileges; file the ETA Form 9142 online and upload scanned documentation supporting the application; track the status of all applications filed and processed by the Chicago NPC; and receive e-mail notifications and other official correspondence during key points of the application adjudication process. The implementation of this new electronic filing capacity will enhance the accessibility and quality of labor certification services, reduce the data collection and reporting burden on small employers, facilitate more streamlined business processes, and establish a greater level of transparency in the Department's decision making.¹

iCERT System Availability and Program Components

The OFLC has experienced an increased demand for its labor certification program processing services, especially its electronic application filing; case processing and tracking; and document management services. On April 15, 2009, the OFLC implemented a one-stop Web-based platform, called the iCERT System, that was designed to improve access to program services and establish a more integrated customer account platform for the filing and tracking of applications across the employment-based labor certification programs it administers and supports Office of Management and Budget's guidance to reduce reporting and paperwork burdens on the

¹ Sunstein, Cass R. "Memorandum for the Heads of Executive Departments and Agencies: Reducing Reporting and Paperwork Burdens." Office of Information and Regulatory Affairs (June 22, 2012).

public.² Currently, the iCERT System annually supports the receipt and processing of more than 450,000 employer-filed H-1B, H-1B1, and E-3 Labor Condition Applications for Nonimmigrant Workers (ETA Form 9035E) and Applications for Prevailing Wage Determination (ETA Form 9141).

The H-2A and H-2B electronic filing systems are now fully integrated with the iCERT System platform, and will provide employers or their authorized representatives with the following major features:

- Customer Account Management. An agricultural association, employer, or authorized representative will be able to create an iCERT account by providing basic company and point-of-contact information, including a valid e-mail address, to serve as a unique username, and a password. This information will establish a customer profile that can be edited at any time, and will serve as authentication and security control for accessing the iCERT account. However, once the iCERT account is registered, the Federal Employer Identification Number (FEIN) provided during the registration process cannot be modified. Associate accounts can also be created by the iCERT account holder allowing other authorized staff or representatives to prepare and submit applications, or withdraw a pending application before it is assigned to a Chicago NPC analyst. Customers with existing iCERT accounts, such as those who already use the iCERT System to file H-2B prevailing wage requests, will be able to modify their

² The implementation of the OFLC iCERT System platform is consistent with guidance promulgated by the Department's Chief Information Officer and E-Government initiative to maximize Federal investment in Information Technology (IT) using a multi-year, modular approach to IT systems development for the purposes of increasing usability and decreasing life cycle costs. See Kundra, Vivek, Office of Management and Budget, 25 Point Implementation Plan to Reform Federal IT Management (Dec. 9, 2010), available at <http://www.cio.gov/documents/25-point-implementation-plan-to-reform-federal%20it.pdf> and Office of Management and Budget, Contracting Guidance to Support Modular Development (Jun. 14, 2012) available at <http://www.whitehouse.gov/sites/default/files/omb/procurement/guidance/modular-approaches-for-information-technology.pdf>.

existing account profiles to include electronic filing privileges for the H-2A and/or H-2B programs.

- **Application Preparation and Submission.** An approved iCERT account holder will be able to utilize its profile information to quickly pre-populate certain sections of the ETA Form 9142 during application preparation to reduce data entry burden. All information populated on the ETA Form 9142 will be editable. Agricultural associations will have the capability of preparing H-2A applications as either sole employers or agents with one of their members, or as joint employers (i.e., master application) with one or more of their members. The iCERT System also contains a “reuse” case function that allows an authorized user to copy and reuse one or more sections of a previously filed H-2A or H-2B application. Because the vast majority of H-2A and H-2B employers have recurring seasonal workforce needs, the reuse case function will further reduce administrative time and burden for preparing applications.

- **Automated Data Quality Checks.** The iCERT System will strengthen data quality by providing real-time data formatting checks and form validations to notify customers that there may be mandatory, incorrect, or missing entries on the ETA Form 9142 that, when not completed properly, will result in application processing delays. Customers will receive immediate notifications during the application preparation stage and again, in summary form, at the final pre-submission stage of application preparation. At any point during the application preparation stage, the iCERT account holder will be able to preview a copy of the ETA Form 9142 to verify data entries for accuracy and completeness prior to submission. This is a practice the OFLC strongly encourages, especially with new filing systems.

- Document Management Services. At the end of the application preparation stage, the iCERT account holder will be able to upload other documentation (e.g., the Agricultural and Food Processing Clearance Order, ETA 790, recruitment report, and statement of temporary need) supporting the ETA Form 9142, and associate each item with a document type for more efficient storage and retrieval by the Chicago NPC staff. Once the H-2A or H-2B application is submitted for processing, the iCERT account holder will no longer be able to retrieve the documents, but will be able to view the list of documents submitted with the ETA Form 9142. To maximize electronic security, the iCERT System will only accept electronic documents in Microsoft Word, Adobe PDF, or text file formats.

- Customer E-Mail Notifications and Correspondence. Once the H-2A or H-2B application is submitted for processing, the iCERT System will immediately display a confirmation message containing a permanent case number, receipt date, and other key information for the iCERT account holder to print and retain as evidence that the Department received the application for processing. Additionally, the iCERT System will send a confirmation message via e-mail to the employer's designated point of contact and, if applicable, to the employer's authorized representative. Because the Chicago NPC will use e-mail as the primary method of communication with customers during the application review process, iCERT account holders must ensure that all e-mail addresses entered on the ETA Form 9142 are valid and that their internet service providers will not block e-mail messages sent from the Department. Where valid e-mail addresses are not provided, the Chicago NPC will communicate with the employer and,

if applicable, the employer's agent or attorney, through mailed correspondence. This manual process may impact processing times.

- Case Status Checks. Customers will be able to check the status of pending applications, as well as those in which a final determination has issued, at any time by accessing their iCERT accounts or using the "iCERT Case Status Check" function on the public iCERT Home Page.

Beginning on October 15, 2012, employers or their authorized representatives who choose to electronically file temporary labor certification applications under the H-2B program may do so through the iCERT System. Employers or their authorized representatives who choose to electronically file temporary labor certification applications under the H-2A program may do so through the iCERT System on or after December 10, 2012. Employers or their authorized representatives electing not to use this new electronic filing capability must file their H-2A and H-2B applications with the Department using the traditional paper-based filing method. Data from paper applications will be entered into the iCERT System's internal case management system by the NPC and processed in a similar manner as those filed electronically.

In preparation for the release of these electronic filing systems, employers or their authorized representatives who do not currently possess an iCERT account are encouraged to visit the system at <http://icert.doleta.gov> and begin the process of establishing an iCERT account with associate or sub-account users, as applicable. Note, however, that the new iCERT account for agricultural associations will not be available until implementation of the H-2A electronic filing system on December 10, 2012.

H-2A and H-2B Process Changes

There are important process changes concerning the documentation that must be submitted with the ETA Form 9142, as well as changes to the receipt of official labor certification determinations from the Department. The regulatory requirements regarding when to file an H-2A or H-2B application (e.g., after pre-filing recruitment steps are completed in the H-2B program) remain unchanged and are not affected by an employer or its authorized representative's decision to file electronically instead of by U.S. mail. In circumstances where duplicate applications are filed, such as where one application is filed electronically and that same application is filed by U.S. mail, the Chicago NPC will accept for processing the first application received and return the non-processed second application to the employer or the employer's authorized representative.

- **Electronic Filing.** The H-2A and H-2B regulations require that the ETA Form 9142 filed with the Chicago NPC must bear the original signature of the employer and the employer's authorized attorney or agent, if the employer is represented by an attorney or agent. 20 CFR 655.20(b), 655.130(d). Under the H-2A program, an association filing a master application as a joint employer may sign on behalf of its employer members. When filing an H-2A or H-2B application electronically, the iCERT account holder must upload a signed and dated copy of either the Appendix A.2 (for the H-2A program) or Appendix B.1 (for the H-2B program) and retain the original in its file. For job contractors filing under the H-2B program as joint employers with their employer-clients, a separate attachment containing the employer-client's business and contact information (i.e., Sections C and D of the ETA Form 9142) and a signed

and dated Appendix B.1 are still required and must be uploaded *prior* to electronically filing the application. An ETA Form 9142, bearing original signatures, will no longer be required by the Chicago NPC at the time of filing, as the appropriate signed appendix will be uploaded directly into the iCERT System. Moreover, where an application is granted temporary labor certification, the employer and, if applicable, its attorney or agent, will be required to sign and date the appropriate appendix on the ETA Form 9142 issued from the Chicago NPC upon receipt. The employer's signature and, if applicable, that of its attorney or agent, on the Appendix A.2 or B.1, as appropriate, will satisfy the original signature requirement.

- **Supporting Documentation.** In addition to the ETA Form 9142 and applicable appendix, the H-2A and H-2B regulations require employers to submit all required supporting documentation at the time of filing. When filing an H-2A or H-2B application electronically, the iCERT account holder must, prior to submission of the application, upload scanned copies of all required supporting documentation that would normally be sent to the Chicago NPC by U.S. mail because the system will not permit document upload once the application has been submitted. For example, employers filing H-2B applications must also upload a copy of the recruitment report signed and dated by the employer. In addition, where the occupation is covered by special procedures, employers filing electronically must upload other required supporting documentation (e.g., FLC Certification of Registration, work itineraries). Under the H-2A program, employers must also upload a copy of the agricultural job order (ETA Form 790) submitted to the State Workforce Agency. If an agricultural employer has an authorized agent, the iCERT account holder must upload a copy of the agent

agreement or other document demonstrating the agent's authority to represent the employer in the H-2A process, as required by H-2A regulations at 20 CFR 655.133. Similarly, agents who are subject to the Migrant and Seasonal Agricultural Worker Protection Act must upload copies of their FLC Certificate of Registration. Employers continuing to file by U.S. mail must also continue to submit all required documentation. To avoid any processing delays, the iCERT account holder is strongly encouraged to preview and check the ETA Form 9142 and all uploaded documents for completeness and accuracy before submitting the application. Any documentation required to be submitted after the application's submission, such as an H-2A recruitment report documenting positive recruitment efforts, must be filed by mail, email or fax, even if the application itself was submitted electronically.

- Surety Bonds for H-2A Labor Contractors (H-2ALCs). The H-2A regulations at 20 CFR 655.132(b)(3) require an H-2ALC to submit with its application the original surety bond serving as proof of its ability to discharge financial obligations under the H-2A program. Although the iCERT account holder may upload a scanned copy of the surety bond at the time of filing the H-2A application electronically, the Chicago NPC must receive the original surety bond associated with the H-2A application before granting certification. The regulatory requirement that the H-2ALC submit the original surety bond by U.S. mail remains unchanged, and the Chicago NPC will provide written notice reminding employers of this regulatory requirement upon acceptance of the ETA Form 9142 under 20 CFR 655.143.

- Approved Temporary Labor Certifications – Where the Chicago NPC Certifying Officer (CO) makes a determination to grant a temporary labor certification, the H-2A

and H-2B regulations specify that the CO will send the certified ETA Form 9142 and a Final Determination letter to the employer or, if appropriate, to the employer's agent or attorney. For all H-2B applications filed on or after October 15, 2012, and for all H-2A applications filed on or after December 10, 2012, where the Chicago NPC CO has made a determination to grant a temporary labor certification, the employer will receive an original certified ETA Form 9142 and the appropriate Appendix issued on newly designed special security paper. A certified ETA Form 9142 is valid when it contains a completed Section K bearing the electronic signature of the OFLC Administrator, and a completed "For Department of Labor Use Only" footer on each page identifying the iCERT case number, determination status, and the validity period. Upon receipt of the original certified ETA Form 9142, the employer and, if applicable, the employer's agent or attorney, must promptly sign and date the appendix containing the requisite program assurances and obligations. Employers must submit original certifications received from the Department directly to the USCIS. However, employers whose applications are filed prior to the implementation of electronic filing (before October 15, 2012 for H-2B applications and before December 10, 2012 for H-2A applications) and whose applications are granted temporary labor certification will receive certifications in the currently established manner, even in those cases in which the grant of certification post-dates the implementation of electronic filing.

Training Webinars for Program Users

To assist agricultural associations, employers, authorized agents or attorneys, and the interested public in understanding how to use the iCERT System and file H-2A and H-2B applications electronically, the Department will hold four webinar training sessions

in the coming months. In advance of the Department's implementation of the iCERT H-2B electronic filing module on October 15, 2012, the first two webinar sessions are tentatively scheduled for the week of October 1, 2012 to provide a technical demonstration on how to create or modify an iCERT account and file H-2B applications electronically. Similarly, in advance of the Department's implementation of the iCERT H-2A electronic filing module on December 10, 2012, the final two webinar sessions are tentatively scheduled for the week of November 26, 2012 to provide a technical demonstration on how employers, including agricultural associations, can create or modify their accounts and file H-2A applications electronically. Once the exact dates and times for the webinars are available, the Department will post public announcements, including details on how to register for each webinar, on the OFLC Web site at <http://www.foreignlaborcert.doleta.gov>. Additional implementation resources (e.g., iCERT user manuals) designed to assist customers in establishing or modifying their iCERT accounts and how to file H-2A and H-2B applications electronically will be posted in advance of the webinars. We encourage the public to frequently check the OFLC Web site for updates and to sign up for e-mail updates.

Help Desk Resources

For technical problems or other issues related to the creation and maintenance of iCERT System accounts and electronic filing of H-2A and H-2B applications, users should please contact the iCERT System Help Desk by sending an e-mail to oflc.portal@dol.gov. Additionally, the Chicago NPC maintains a dedicated Help Desk Unit to handle program-related inquiries from employers or their representatives

participating in the H-2A and/or H-2B programs. To contact the Chicago NPC Help Desk, please send an e-mail to TLC.Chicago@dol.gov.

DATED: Signed at Washington, D.C., on this 24th day of September, 2012.

Jane Oates,

Assistant Secretary for Employment and Training

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