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DEPARTMENT OF LABOR

Employment and Training Administration

Assignment and Processing of Labor Certification Applications for the Temporary Employment of Aliens in Non-Agricultural Employment in the United States

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor's Office of Foreign Labor Certification (OFLC) is making this announcement to inform employers and other interested stakeholders how H-2B *Applications for Temporary Employment Certification*, Form ETA-9142B, filed by employers on or after July 3, 2018, will be assigned to staff.

FOR FURTHER INFORMATION CONTACT: William W. Thompson, II, Administrator, Office of Foreign Labor Certification, Employment & Training Administration, U.S. Department of Labor, Room 12-200, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone number: 202-513-7350 (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 1-877-889-5627.

SUPPLEMENTARY INFORMATION:

I. Background

OFLC continues to experience significant increases in the number of H-2B applications requesting temporary labor certification, and those submissions are generally

received on the earliest day employers, seeking to obtain visas for their workers under the semi-annual allotments, are permitted by regulation to file (i.e., 75 to 90 days before the start date of work). For example, in the past several second-half semi-annual filing cycles, the overwhelming majority of H-2B applications were received on January 1, which is the earliest date on which an H-2B application may be filed for a period of need beginning on April 1. Because of the intense competition for H-2B visas in recent years, the semi-annual visa allocation, and the regulatory timeframes for filing a request for temporary labor certification, stakeholders have also raised questions regarding the earliest time of day on which an application can be submitted to OFLC. In order to process the significant surge of applications that OFLC expects to receive in a short period of time during the semi-annual visa allotment periods in a more equitable manner and to clarify the time at which an application is received, OFLC will be implementing the following procedures.

II. Process Announcement

For H-2B applications filed on or after July 3, 2018, OFLC will sequentially assign H-2B applications to analysts based on the calendar date and time on which the applications are received (i.e., receipt date and time). Receipt time will be measured to the millisecond, e.g., 12:00:00.000 a.m. OFLC's technology servers are located in the Eastern Time Zone; therefore, the time an application is received and assigned to analysts is based on Eastern Time (ET). Applications submitted from other time zones may be filed as early as 12:00:00.000 a.m. ET, as discussed below.

Once assigned, the analysts will initiate review of each H-2B application in the order of receipt date and time, and in accordance with 20 C.F.R. 655.30. Based on the analyst's review, the Certifying Officer (CO) will authorize issuance of either a Notice of Acceptance (NOA) under 20 C.F.R. 655.33 or a Notice of Deficiency (NOD) under 20 C.F.R. 655.31. Following issuance of NOAs and/or NODs, the applications will be processed as each successive stage in the process is completed. Employers receiving NOAs may proceed to meet the additional regulatory requirements, including recruitment of U.S. workers and submission of recruitment reports. Employers receiving NODs must correct any deficiencies and then receive a NOA before proceeding to meet the additional regulatory requirements. As a result, for each application, analysts' review of NOD responses and recruitment reports, and issuance of final decisions (certifications and denials) will follow in the order in which each sequential step required by the regulations is concluded, irrespective of the receipt time of the application.

As required, OFLC will grant temporary labor certification only after the employer's H-2B application has met all the requirements for approving labor certification under 20 CFR 655.50 and the subpart. In accordance with regulatory requirements, OFLC will send all certified H-2B applications to the applicant by means normally assuring next day delivery. OFLC will issue rejections, withdrawals, and denials of labor certification applications as each determination is made by the CO.

III. Instructive Examples Related to Time Zones

Applicants wishing to file their H-2B applications at the earliest possible time may begin filing at 12:00:00.000 a.m. ET on the appropriate calendar day. As noted above,

application receipt time is based upon ET. Receipt time is not based on the time zone covering the geographic location in which the applicant is filing, nor is it based on the time zone covering the geographic location in which the job is located. For example, applicants seeking to file an H-2B application from a location outside the Eastern Time Zone at the earliest possible filing time for the first-half semi-annual filing cycle of FY 2019 should file at 12:00:00.000 a.m. ET on July 3, 2018; not 12:00:00.000 a.m. in any other time zone in which that person is located on July 3, 2018.

As noted above, receipt time will be measured to the millisecond. The following examples help illustrate how the receipt date and time will be recorded on H-2B applications filed with OFLC:

- An H-2B application filed and received on July 3, 2018 at 12:00:00.000 a.m. ET will be stamped with a receipt date and time of July 3, 2018 at 12:00:00.000 a.m. ET;
- An H-2B application filed and received on July 3, 2018 at 12:00:00.000 a.m. Pacific Time (PT) will be stamped with a receipt date and time of July 3, 2018 at 3:00:00.000 a.m. ET;
- An H-2B application filed and received on July 2, 2018 at 9:00:00.000 p.m. PT will be stamped with a receipt date and time of July 3, 2018 at 12:00:00.000 a.m. ET;
- An H-2B application filed and received on January 1, 2019 at 12:00:00.000 a.m. Central Time (CT) will be stamped with a receipt date and time of January 1, 2019 at 1:00:00.000 a.m. ET; and

- An H-2B application filed and received on December 31, 2018 at 11:00:00.000 p.m. CT will be stamped with a receipt date and time of January 1, 2019 at 12:00:00.000 a.m. ET.

Dated: June 27, 2018.

Nancy Rooney,

Deputy Assistant Secretary for Employment and Training, Labor.

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