



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

September 8, 2015

Brian Pasternak
National Director of Temporary Programs
Office of Foreign Labor Certification, Room C-4312
Employment & Training Administration
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Submitted via e-mail: ETA.OFLC.Forms@dol.gov

RE: Comment Request for Information Collections in the H-2B Temporary Non-Agricultural Employment-Based Visa Program (OMB Control Number 1205-0509), Extension

Dear Mr. Pasternak:

The American Immigration Lawyers Association (AILA) submits the following comments in response to the Department of Labor's "Comment Request for Information Collections in the H-2B Temporary Non-Agricultural Employment-Based Visa Program (OMB Control Number 1205-0509), Extension," published in the Federal Register on July 10, 2015.¹ This notice of information collections solicits comments on the H-2B temporary non-agricultural employment-based visa program, which includes Form ETA-9142B, Appendix B, Form ETA-9155, and the Seafood Industry Attestation.

AILA is a voluntary bar association of more than 14,000 attorneys and law professors practicing, researching and teaching in the field of immigration and nationality law. The organization has been in existence since 1946. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on the H-2B Visa Program forms and believe that our members' collective expertise provides experience that makes us particularly well-qualified to offer views on this matter. We appreciate the Department of Labor's (DOL) desire to enhance the quality, utility, and clarity of the information collected, while minimizing the burden on stakeholders and

¹ 80 Fed. Reg. 39801 (July 10, 2015).

maintaining a streamlined and efficient application process. It is in this same spirit that we offer the following comments.

FORM ETA-9142B – GENERAL INSTRUCTIONS

Section A

We recommend that the instructions to the Form ETA-9142B clearly state that an Employer/Job Contractor/Agent must file the ETA-9142B no less than 75 calendar days and no more than 90 calendar days before the employer's date of need, except where the employer submits ETA-9142B in support of an emergency filing under 20 CFR §655.17.

Section C. 14

On the Form ETA 9142B, Section C. 14 refers to the number of non-family, full-time equivalent employees, but the instructions are identical to Section C. 17 and request that the employer indicate the type of application being filed for temporary employment certification. DOL should revise the instructions for Section C. 14 to indicate that this question is requesting the employer's number of non-family, full-time equivalent employees.

Section C. 17

We recommend that the instructions include a note that a Job Contractor must have a separate Form ETA 9142B for each of its employer-clients.

Section F.a.5 & F.a.6

The numbering under Section F. a. Job Description is not consistent with the form. The instructions numbered F.a.5 should instead be numbered F.a.4a, and the instructions numbered F.a.6 should instead be numbered F.a.5 to align with the form.

Section H

Pursuant to the instructions, employers no longer need to complete Section H, as recruitment is required only after the H-2B application has been filed with DOL. We recommend amending the Section H instructions to request only the name of the State Workforce Agency (H.1) and the State Workforce Agency job order identification number (H. 2).

FORM ETA-9142B

Section A: Employment-Based Nonimmigrant Visa Information

As the ETA-9142B form is only for H-2B temporary employment certification, we recommend that this question either be deleted or pre-filled with "H-2B."

Section B. 9: Statement of Temporary Need

Under the interim final rule, the application process has been divided into the registration phase, which addresses the employer's temporary need, and the application phase, which addresses the labor market test. Based on the assumption that the Form ETA-9155, H-2B Registration, will be

implemented in the near future and that the registration phase will be completed in a majority of filings before submitting the ETA-9142B, we recommend that Section B. 9 be amended to clarify that it should only be completed if the employer has not received a certified Form ETA-9155. For example, the following language could be inserted: “Complete only if Employer has NOT obtained a Form ETA-9155 H-2B Registration approval.”

Section C. 17: Type of Employer Application

The ETA-9142B form is only for H-2B temporary employment certification, so we recommend that all references to H-2A be deleted. In addition, the Interim Final Rule only provides for Joint Employers and Job Contractor, so the choices related to “Association” may cause confusion. We recommend that the types of employer applications mirror those on the proposed Form ETA-9155 under Section C, number 17.

Section D: Employer Point of Contact Information

As the ETA-9142B form is only for H-2B temporary employment certification, please replace all references to H-2A with H-2B.

Section E: Attorney or Agent Information

Because the ETA-9142B form is only for H-2B temporary employment certification, DOL should replace all references to H-2A with H-2B.

Section F: Job Offer Information

The hourly work schedule (F. 3) only allows for one start and end time. We recommend providing space to allow employers to describe variations in the hourly work schedule when there are multiple shifts per day.

Section H: Recruitment Information

Pursuant to the instructions, employers no longer need to complete Section H, as recruitment is required only after the H-2B application has been filed with DOL. We recommend amending Section H to only request H. 1, Name of State Workforce Agency, and H. 2, SWA job order identification number, if available.

Section I: Declaration of Employer and Attorney/Agent

Because the ETA-9142B form is only for H-2B temporary employment certification, we recommend that I.1, which references H-2A workers, be deleted.

FORM ETA-9155

Section A: Emergency Filing

We recommend that the instructions to the Form ETA-9155 clearly state that an Employer/Job Contractor/Agent must submit an ETA-9155 *H-2B Registration* no less than 120 calendar days and no more than 150 calendar days before the employer's date of need pursuant to 20 CFR

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§655.11, except where the employer submits the *H-2B Registration* in support of an emergency filing under 20 CFR §655.17.

Your consideration of these comments and suggestions is greatly appreciated.

Respectfully Submitted,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION