

## **H-2B Temporary Nonagricultural Visa Program**

OFLC Emergency Processing Initiative for Backlogged H-2B Applications

*Posted February 19, 2016*

The Employment and Training Administration's (ETA) Office of Foreign Labor Certification (OFLC) is presently experiencing significant delays in processing employers' H-2B applications for certification. These delays have been generated by several factors, the most significant of which was a 17-day certification processing pause at the Chicago National Processing Center (NPC) needed for OFLC to implement changes to comply with the revisions to the H-2B prevailing wage and certification standards contained in the Consolidated Appropriations Act, 2016 (2016 appropriations law), Public Law 114-113, 129 Stat. 2242 (Dec. 18, 2015). At the same time OFLC experienced more than a twofold increase in H-2B applications for certifications during a three-week period from December 26, 2015 to January 15, 2016, as compared to the same period last year (1087 application last year compared to 2420 applications this year). Also as noted in its public announcement on January 27, 2016, OFLC has been experiencing technical problems with its electronic filing system, iCERT, which resulted from the implementation of required IT security specifications that slowed the iCERT system. Each of these factors contributed to the processing delays employers are experiencing.

The delays in the certification process that applicants are currently experiencing impair the ability of employers to hire foreign workers when needed, and create instability for small businesses that depend on temporary and seasonal workers. As a result, the Chicago NPC is implementing the following procedures to assist in the alleviation of the applications backlog:

**Please read this entire document carefully before you decide whether to take any action based on this announcement. Failure to adhere to all the requirements set forth will result in a rejection of a request.**

Requests for Emergency Procedures under 20 CFR 655.17: OFLC has concluded that the factors discussed above, which have created the current backlog in applications, constitute good and substantial cause under 20 CFR 655.17 for employers to request emergency procedures of their currently pending applications. The delays in the application process are unforeseen events wholly outside the employers' control, including unforeseen changes in market conditions, which create significant uncertainty for employers and instability in H-2B program operations. As a result, employers with pending H-2B applications will have a limited opportunity to request the emergency procedures under 20 CFR 655.17, so that the Chicago NPC can address the current application processing backlog.

Beginning on Monday February 22, 2016 (at 12:01AM), the Chicago NPC will accept requests from employers to use emergency procedures. The opportunity to request the use of emergency procedures will be available through Friday April 1, 2016 (at 12:00 midnight), unless extended beyond April 1 to deal with the current situation.

Conditions for the Application of Emergency Procedures: Employers eligible to request emergency procedures must meet the following criteria:

- (1) the employer has a *pending* H-2B application with the Chicago NPC, including a valid PWD obtained under 20 CFR 655.10 filed with the H-2B application; and
- (2) the employer's application status meets one of the following conditions:
  - A. the employer has not received from the Chicago NPC an initial notification of acceptance (NOA) or notice of deficiency (NOD) within the 7-business-day timeframe of the application filing date required under 20 CFR 655.31 (for NODs) or 20 CFR 655.33 (for NOAs); **OR**
  - B. the employer has received a NOD beyond the 7-business-day timeframe and has not yet received a NOA.

Employers who meet these criteria who wish to apply for emergency procedures will not need to formally submit a new H-2B application or proposed job order to the Chicago NPC for processing. Rather, in its request for emergency treatment under 20 CFR 655.17 (see sample email request below), the employer must request that its pending application for certification and proposed job order be "incorporated by reference" into the request made under 20 CFR 655.17, and that it is withdrawing its prior application. Assuming the eligibility criteria are met, the Chicago NPC will issue an approval notification upon receipt of the request for emergency handling. *The employer's new pending H-2B application will remain in the original queue based on the date the original application was received, and will be processed in the order the application was received on that date.* The Chicago NPC will process the emergency application in a manner consistent with the handling of other emergency applications, and make a final determination on the application as required by 20 CFR 655.50.

Expedited Recruitment of U.S. Workers: The recruitment of U.S. workers will be authorized through the issuance of a NOA by the Certifying Officer (CO), as required by 20 CFR 655.33, and will be similar to the Chicago NPC's expedited recruitment under 20 CFR 655.4(d)(2), which permitted expedited recruitment of U.S. workers during the transition period established to implement the H-2B IFR in the Spring of 2015. Expedited recruitment will consist of the following:

1. Placing a job order with the State Workforce Agency (SWA) serving the area of intended employment that contains the job assurances and contents set forth in 20 CFR 655.18 for a period of not less than 10 calendar days; and
2. Placing one newspaper advertisement, which may be published on any day of the week, meeting the advertising requirements of 20 CFR 655.41, during the period of time the SWA is actively circulating the job order for intrastate clearance.

Procedure for seeking expedited treatment under 20 CFR 655.17:

**Employers requesting emergency treatment of their pending H-2B application should submit the following email request in accordance with the submission schedule laid out below to the Chicago NPC at [ER.H2B.Chicago@dol.gov](mailto:ER.H2B.Chicago@dol.gov)**

**The subject line of the email should contain the following information:**

- 1. iCERT Case Number**
- 2. Application Filing Date; and**
- 3. The words “H-2B Emergency Request”**

*Dear Certifying Officer,*

*In accordance with guidance published by the Department of Labor’s Office of Foreign Labor Certification (OFLC) on February 19, 2016, I am requesting emergency treatment under 20 CFR 655.17. The Chicago National Processing Center’s current application backlog, which has been generated by unforeseen events wholly outside of my control, including unforeseen market conditions, constitutes good and substantial cause for the emergency treatment of my application. My application is eligible for emergency treatment under 20 CFR 655.17 based on the criteria for eligibility set by OFLC. I request that pursuant to 20 CFR 655.17(b), my previously submitted application and proposed job order be incorporated by reference into this request for emergency treatment, so that it is unnecessary for me to file a separate new application or proposed job order. I am also withdrawing my previous application in light of this request for emergency treatment, which incorporates my prior application and proposed job order and thus replaces my previous application. I understand that my place in the application queue will continue to be determined by my original application date.*

*Through this request, I understand that I may be granted permission to recruit U.S. workers on an expedited basis, which, if my application otherwise meets the criteria for acceptance, will be set forth in the Notice of Acceptance issued by the Certifying Officer. This request for emergency treatment is made with respect to the following H-2B application(s):*

*Case Number:*

*Date Filed:*

*Employer Name:*

*Start Date of Need:*

Employers without internet access may send a written request by facsimile to (312) 886-1688 (ATTN: H-2B Emergency Request) or by U.S. mail to the following address:

U.S. Department of Labor  
Employment and Training Administration  
Office of Foreign Labor Certification  
Chicago National Processing Center  
11 West Quincy Court Chicago, IL 60604-2105  
ATTN: H-2B Request for Emergency Handling

**IMPORTANT NOTICES!**

**Timeframes for submitting requests for expedited procedures under 20 CFR 655.17:** In order to process employer requests for expedited procedures in the most efficient manner, the Chicago NPC will be accepting and processing requests based on the qualifying employer’s original filing date according to the following schedule.

H-2B Application Filing Week with Chicago NPC	Timeframe for Submitting Requests for Expedited Procedures
January 3 – January 16	February 22 – February 28
January 17 – January 30	February 29 – March 6
January 31 – February 13	March 7 – March 13
February 14 – February 27	March 14 – March 20
February 28 – March 12	March 21 – March 27
March 13 – April 1	March 28 – April 1

**Request to Amend Start Date of Need:** This is a reminder that under 20 CFR 655.35, employers are permitted to request minor changes to their dates of need at any time before the CO issues a final determination, and may not make such amendments after certification.