H-2B Program: Important Application Filing Tips

Office of Foreign Labor Certification
Employment and Training Administration, USDOL

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The H-2B visa classification requires a temporary labor certification from the Secretary of Labor advising the Department of Homeland Security's United States Citizenship and Immigration Services (USCIS) as to whether or not qualified U.S. workers are available and whether or not the alien's employment will adversely affect the wages and working conditions of similarly employed U.S. workers, or a notice that such certification cannot be made, prior to filing an H-2B visa petition with USCIS.

In an effort to provide better customer service to our stakeholders filing applications for the upcoming 2007/2008 season, the ETA Office of Foreign Labor Certification (OFLC) is highlighting important application filing tips based on H-2B applications processed by the Atlanta and Chicago National Processing Centers (NPCs) over the past year. The OFLC hopes that these important filing tips will assist our customers in filing more consistent and complete H-2B application(s) with the State Workforce Agencies (SWAs) and NPCs.

H-2B Application Checklist

Every temporary labor certification application filed by a U.S. employer under the H-2B visa classification must include:

- ✓ Two (2) originals of ETA Form 750, Part A, signed and dated by the employer and double-sided. ETA Form, Part B, is not required;
- ✓ Documentation of any efforts to advertise and recruit U.S. workers prior to filing the application;
- ✓ A detailed statement of temporary need on the employer's letterhead with signature; and
- ✓ Supporting evidence and documentation that justifies the chosen standard of temporary need (i.e., one-time occurrence, intermittent, seasonal, or peakload need).

If the employer is represented by an attorney, the attorney must file a Notice of Appearance (Form G-28) with the application package. A copy of the ETA Form 750, Part A, can be obtained from the ETA Office of Foreign Labor Certification (OFLC) website at http://www.foreignlaborcert.doleta.gov

ETA Form 750, Part A

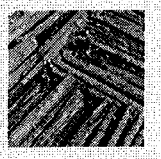
- Ensure the ETA Form 750, Part A, is completed in its entirety;
- Must be legible (hand written applications are often difficult to read);
- Must be originally signed and dated - no fax copies;
- Must be double-sided;
- Include all physical locations for applications involving multiple work-sites;
- Provide a clear description of the job opportunity;
- Job duties must be normal to the occupation (not just the employer) and not written in a manner that inhibits the recruitment of U.S. workers;
- Work hours must be normal to the occupation (not just the employer);

- Wage offer must be at least the prevailing wage for the occupation;
- Must state actual minimum requirements for the job and avoid excessive experience or education requirements;
- Business necessity documentation must be submitted (e.g., support foreign language requirement or combination of duties);
- More than one worker may be requested as long as all workers are performing the same duties, are in the same occupation, receiving the same pay, and working for the same period of time;
- Total number of workers requested **and** period of need in Item 18 must be specified in the advertisement and SWA job order; and
- If employer's agent files, the "Authorization of Agent of Employer" portion of the ETA Form 750 must be signed.

Important Note: Information on the ETA Form 750, Part A, must be consistent with the temporary need statement, job advertisements, SWA job order, and supporting documentation. Remember, the period of need and number of workers being requested must be disclosed in all advertisements.

Temporary Need Statement

- Must be submitted on employer's letterhead with original signature; cannot be signed by the agent or attorney;
- Must clearly describe the nature of the employer's business activity and schedule of operations each year;
- Must explain why the job opportunity and number of workers being requested reflect a temporary need;
- Must explain how the employer's request for the services or labor meets one of the standards of a one-time occurrence, intermittent, seasonal, or peakload need;
- Although not required, information on the local labor market and a narrative summary of previous efforts to recruit U.S. workers would also be helpful; and
- Information must be consistent with what is disclosed on the ETA Form 750, Part A.



Acceptable Documentation to Support Seasonal and Peakload Needs

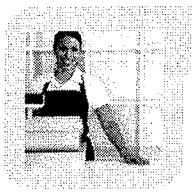
Examples of supporting evidence or documentation for the most common standards of seasonal and peakload need include, but are not limited to, the following:

- Signed work contracts correlating to the period of need on the ETA 750, Part A, Item 18b for the coming season;
- Letters of intent from clients correlating to the period of need on the ETA 750, Part A, Item 18b for the coming season;
- Monthly invoices from previous calendar year(s) correlating to the period of need on the ETA 750, Part A, Item 18b;
- Annualized or multi-year work contracts/agreements supplemented with signed work contracts specifying the actual dates when work will commence and end during each year of service;

Important Note: Documentation identified above submitted from previous calendar year(s) must clearly show work performed **for each month** during the period of need on the ETA Form 750

- Summarized monthly payroll reports for a minimum of one previous calendar year that identifies, for each occupation and separately for full-time permanent and temporary employment, the following:
  - Total number of workers or staff employed
  - Total hours worked
  - Total earnings received

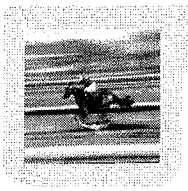
Important Note: Payroll reports must be signed by the employer attesting that the information was compiled from the employer's actual accounting records or system



Insufficient Documentation to Support Temporary Need

Examples of documentation that are not sufficient to justify an employer's need include the following:

- Work contracts with no clear start or termination date;
- Work contracts specifying job duties that are not consistent with those listed on the ETA Form 750;
- Applications supported solely by weather charts, event calendars, hotel occupancy rates, or annual/quarterly tax reports (e.g., IRS Form 941);
- Applications supported solely by staffing charts, graphs, or other documentation, which do not correspond with the requested period of need;
- News articles regarding labor shortages, however severe; and
- Unsigned proposals of services to be provided (i.e., unexecuted work contracts)



Other Important Filing Tips

All documentation must be submitted at the time of filing with the SWA. If the required documentation is not enclosed when it is received by the NPC, the application will be judged on its own merit. Unless otherwise directed by the Certifying Officer, the NPC will not accept documentation submitted directly from the employer, agent, or attorney.

- Modifications to the ETA Form 750 by employers/agents/attorneys will be accepted for processing as long as each modification is initialed and dated on the original form;
- Employers should file at least 60 calendar days, but not more than 120 calendar days, prior to the date of need;
- Provide a copy of the letter contacting the local union regarding the job if such contact is appropriate for the occupation and customary in the industry. Please include the response resulting from this contact;
- Recruitment report must be submitted timely and address every worker who applied. This report must also include the outcome of each contact and may include applicant resumes;
- Recruitment report must be signed by the employer - **not** the attorney/agent;
- Submit the actual tear sheet pages from the newspaper. Do not cut the ads out of the newspaper and paste to a blank page. Do not send photocopies that cannot be clearly read and understood; and
- "Affidavits of Publication" from the publication itself are also acceptable to document advertising in lieu of tear sheets.