



**U.S. Citizenship
and Immigration
Services**

H-2A and H-2B -Signature Requirements For Electronically Filed Temporary Labor Certifications and the H Classification Supplement to Form I-129

Introduction

USCIS, in consultation with DOL, prepared the following frequently asked questions and answers.

Questions & Answers **Temporary Labor Certifications**

Q1. When does the U.S. Department of Labor (DOL) expect me to sign an electronically filed H-2A and H-2B temporary labor certification (TLC) application?

A1. DOL requires you to sign the H-2 TLC application twice. DOL H-2A and H-2B regulations require an employer's original signature at the time of filing the Application for Temporary Employment Certification. Further, DOL requires that the employer also sign the certified TLC when received from DOL prior to submitting the certified TLC to U.S. Citizenship and Immigration Services (USCIS) with your Form I-129 H-2 nonimmigrant temporary worker petition. Specifically, pursuant to the December 2012 H-2 iCERT FAQ (http://www.foreignlaborcert.doleta.gov/pdf/icert_implement_round1.pdf):

Both the H-2A and H-2B regulations require that the ETA Form 9142 filed with the Chicago National Processing Center (NPC) must bear the original signature of the employer and that of the employer's authorized attorney or agent, if the employer is represented by an attorney or agent. When filing an application electronically, the iCERT account holder must upload a scanned copy of the signed and dated program-specific appendix and retain the original in its file. The scanned copy with the employer's signature and, if applicable, that of its attorney or agent on the Appendix B.1 (for the H-2B program) or Appendix A.2 (for the H-2A program), as appropriate, satisfies the original signature requirement.

Additionally, DOL requires original signatures *after* it has certified an application for H-2A or H-2B TLCs, as a result of its issuance of these certifications electronically. As noted in its December 2012 H-2 iCERT FAQ, DOL requires that "[w]here an application is granted temporary labor certification, the employer and, if applicable, its attorney or agent will be required to sign and date Appendix B.1 or A.2 of the certified ETA Form 9142 received from Chicago NPC." In order to comply with this DOL instruction, and for USCIS to accept an H-2 petition filed on the basis of the TLC, the petitioner must submit a certified TLC bearing original signatures with its H-2 petition. Scanned copies of original

signatures at the time of initial filing of the TLC with DOL will not satisfy this new requirement.

Q2. When did DOL implement this change in procedure?

A2. DOL implemented this change in procedure effective October 15, 2012 for H-2B applications and effective December 10, 2012 for H-2A applications. On those dates, DOL implemented electronic filing of H-2 TLC applications through its iCERT Visa Portal. Based on guidance issued by the DOL Office of Foreign Labor Certification (OFLC), applicants are required to provide an original signature (as opposed to an electronic signature) on the TLC *after* OFLC has certified the TLC under the newly implemented electronic filing system. This differs from the previous paper filing process, in which employers were required to submit an original signature on their TLC applications only at the time of filing.

Q3. Why am I required to submit an original signature to USCIS if I already submitted one to the DOL?

A3. Department of Homeland Security (DHS) regulations require that a “valid” TLC be submitted with H-2A petitions, and an “approved” or “favorable” TLC be submitted with H-2B petitions. When a TLC is certified, the employer and, if applicable, its attorney or agent, are required to sign and date Appendix A.2 of the TLC for an H-2A petition and Appendix B.1 of the TLC for an H-2B petition. DOL does not consider a TLC to be either “valid” or “approved/favorable” unless the certified TLC bears the employer’s original (as opposed to electronic) dated signature and, if applicable, an original signature of the employer’s attorney or agent. According to DOL’s Federal Register notice implementing electronic filing, DOL requires the employer and, if applicable, the employer’s agent or attorney, to provide an original signature and date on the DOL certified ETA Form 9142 appendix (Appendix A.2 for H-2A TLCs, and Appendix B.1 for H-2B TLCs), and, only after providing such original signature(s) and date(s), to submit this originally signed and dated certification to USCIS. See DOL Notice, Electronic Filing of H-2A and H-2B Labor Certification Applications Through the iCERT Visa Portal System, 77 FR 59670, 59672 (Sept. 28, 2012).

Q4. Which sections of the TLC should an Individual Employer sign?

A4. If you are identified as an “**Individual Employer**” on page 2 of the TLC, regardless of whether you are represented by an attorney or agent, an authorized representative from your organization must sign Section B (“Employer Declaration”) of either Appendix A.2 of the TLC for an H-2A petition or Appendix B.1 of the TLC for an H-2B petition. In addition, if you are represented by an attorney or agent, the attorney or agent must sign Section A of the corresponding appendix.

Q5. Which sections of the TLC should an H-2A Labor Contractor or Job Contractor sign?

A5. If you are identified as an “**H-2A Labor Contractor**” or “**Job Contractor**” on page 2 of the TLC, regardless of whether you are represented by an attorney or agent, an authorized representative from your organization must sign Section B (“Employer Declaration”) of either Appendix A.2 of the TLC for an H-2A petition or Appendix B.1 of the TLC for an H-2B petition. If you are filing an H-2B petition, the client of the job contractor must also sign a separate Appendix B.1. In addition, if you are represented by an attorney or agent, the attorney or agent must sign Section A of the corresponding appendix.

Q6. Which sections of the TLC should an Association filing as a Sole Employer sign?

A6. If you are identified as an “**Association – Sole Employer**” in Item 17 on page 2 of the ETA Form 9142 TLC for an H-2A petition, regardless of whether you are represented by an attorney or agent, an authorized representative from your association must sign Section B (“Employer Declaration”) of the Appendix A.2 of the TLC. In addition, if you are represented by an attorney or agent, the attorney or agent must sign Section A of the corresponding appendix.

Q7. Which sections of the TLC should an Association filing as a Joint Employer sign?

A7. If you are identified as an “**Association – Joint Employer**” in item 17 on page 2 of the TLC for an H-2A petition, regardless of whether you are represented by an attorney or agent, an authorized representative from your association must sign Section B (“Employer Declaration”) of Appendix A.2 of the TLC. In addition, if you are represented by an attorney or agent, the attorney or agent must sign Section A of the corresponding appendix.

Q8. Which sections of a TLC should an Association filing as an Agent sign?

A8. If you are identified as an “**Association – Filing as an Agent**” in item 17 on page 2 of the TLC for an H-2A petition, regardless of whether you also are represented by an attorney or agent, an authorized representative from your association must sign Section A (“Attorney or Agent Declaration”) Appendix A.2 as the agent. Each association member who will be employing an H-2A worker covered by the TLC, in turn, must sign Section B (“Employer Declaration”) of Appendix A.2. as the employer. In addition, if you are represented by an attorney or agent, the attorney or agent must also sign Section A of the same appendix page.

Q9. Are there any other signature requirements for completing the TLC?

A9. Yes. If you are an H-2B Job Contractor that will be sharing workers with one or more client business, an Appendix B.1, signed by an authorized representative from each business in Section B (“Employer Declaration”), will need to be submitted to USCIS along with Form I-129. An H-2B Job Contractor must submit a signed Appendix B.1 for each client with whom it is sharing employees as well as for itself.

Q10. What will USCIS do if a DOL required signature is missing on the certified TLC?

A10. If a certified TLC is filed without an original signature, the H-2 petition may be rejected as incomplete because, as noted, DOL does not consider a certified TLC to be valid or approved/favorable unless it contains the appropriate new original signatures.

Signing the H Supplement**Q1. Why am I required to obtain a signature on the *H Classification Supplement to Form I-129*?**

A1. 8 C.F.R 103.2(a)(7) states that a benefit request (including Form I-129 H-2A and H-2B petitions) will be rejected if it is not properly signed. This includes the *H Classification Supplement to Form I-129*. Furthermore, the instructions to the Form I-129 for both the H-2A and H-2B classifications

indicate that “[T]he petitioner or employer (if different than the petitioner), and each joint employer must complete and sign relevant sections of the H Classification Supplement...” Since the TLC is considered part of the I-129 petition, it must be properly signed as well.

Q2. Can an agent sign on behalf of employer?

A2. In some cases, an employer uses an agent who meets the requirements of an agent-petitioner to file Form I-129 on its behalf. In such an event, the employer (who is not the petitioner in Part 1) must sign the *H Classification Supplement* in Section 3, Part B. The agent-petitioner must still sign Part A.

In cases where there are multiple employers, each joint employer must sign Part C in Section 3 of the *H Classification Supplement*. If there are more than four (4) joint employers, the additional original signatures may be submitted on extra copies of the *H Classification Supplement* of Form I-129.

Q3. What will happen if USCIS determines that my petition does not have all the required original signatures after accepting it for filing?

A3. If the petition is accepted and USCIS later determines that the petition was improperly signed, USCIS will issue a Request for Evidence (RFE) requesting the proper signatures. If the proper signatures are not received in response to the RFE, USCIS may deny the petition for not being properly signed in accordance with 8 C.F.R. 103.2(a)(2).

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[Plug-ins](#)