USCIS Issues Additional Information Regarding the Employ American Workers Act (EAWA) to Employers Filing H-1B Petitions

WASHINGTON—U.S. Citizenship and Immigration Services (USCIS) today provides additional guidance regarding the Employ American Workers Act (EAWA) to employers seeking to file H-1B petitions.

The EAWA was enacted to ensure that companies that receive funding under the Troubled Asset Relief Program (TARP) or section 13 of the Federal Reserve Act do not displace U.S. workers. Under this legislation, any company that has received covered funding and seeks to hire new H-1B workers is considered an "H-1B dependent employer." An H-1B dependent employer must make additional statements to the U.S. Department of Labor (DOL) regarding the recruitment and non-displacement of U.S. workers when filing a Labor Condition Application (LCA). Please refer to the DOL's Web site for guidance regarding the LCA filing requirements.

Subsequent to the enactment of EAWA, USCIS revised its Form I-129, Petition for Nonimmigrant Worker, to include a question asking whether the employer received covered funding (Question A.1.d). See the first page of the H-1B Data Collection and Filing Fee Exemption Supplement. Question A.1.d. is meant to identify petitioners who received funding under TARP or section 13 of the Federal Reserve Act when the petition is filed.

USCIS understands that some businesses who received covered funding may have subsequently repaid their obligations and may not know how to respond to Question A.1.d. (For information on whether covered funding obligations have been repaid, recipients of TARP funding should seek guidance from the Department of Treasury, or the Federal Reserve, respectively.) If you have repaid your obligations, then answer "No" to Question A.1.d. If you wish to provide further information with the petition to assist USCIS in determining that your status for purposes of EAWA is correct, you may do so.

USCIS reminds you that a valid LCA must be on file with DOL when the H-1B petition (with a copy of the LCA) is filed with USCIS. Processing delays or a denial of the H-1B petition may result if the LCA does not correspond with Question A.1.d of the H-1B petition, unless any inconsistency is explained to the satisfaction of USCIS. For example, if the LCA includes the additional statements, but Question A.1.d is answered "no," you can explain that you had received covered funding at the time of filing the LCA but repaid the obligation before filing the Form I-129. However, please note that if you indicate on the petition that you are subject to the EAWA, but the LCA does not contain the proper declarations relating to H-1B dependent employers, USCIS will deny the H-1B petition.

USCIS additionally reminds employers that EAWA applies only to new hires and not to H-1B petitions seeking to change the status of a beneficiary working for the petitioning employer in another work-authorized category. It also does not apply to H-1B petitions seeking an extension of H-1B status for a current employee to continue working for the same employer.

Last updated:02/04/2010

More Information

- Employ American Workers Act (EAWA) and H-1B Petitions

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AILA InfoNet Doc. No. 10020964. (Posted 02/9/10)