



U.S. Citizenship and Immigration Services

Update on Suspension of Adjudication of Most H-2B Petitions Following Court Order

As announced by USCIS on April 2, 2013, USCIS has temporarily suspended adjudication of certain Form I-129 H-2B petitions for temporary non-agricultural workers while the government considers appropriate action in response to the Court order entered March 21, 2013 in *Comite de Apoyo a los Trabajadores Agricolas et al v. Solis*, 2:09-cv-00240-LDD (E.D. Pa).

What This Means for H-2B Employers

The Court's order granted a permanent injunction against the operation of the portion of the 2008 wage rule related to certain prevailing wage determinations and gave the Department of Labor (DOL) 30 days to come into compliance with the Court order. Following the Court's order, DOL announced that it can no longer make prevailing wage determinations based on the Occupational Employment Statistics (OES) survey four-tier wage system. DOL will, however, continue to process prevailing wage requests not subject to the court order, including prevailing wage determinations using applicable Collective Bargaining Agreements, acceptable private wage surveys, or Service Contract Act or Davis Bacon Act wages. DOL intends to comply with the Court order within 30 days by promulgating a revised wage rule.

Accordingly, USCIS has temporarily suspended adjudication of H-2B petitions that are accompanied by temporary labor certifications (TLCs) issued by DOL when those TLCs are based on OES four-tier prevailing wage determinations. USCIS has also suspended premium processing for all H-2B petitions until further notice. Petitioners who have already filed H-2B petitions using the premium processing service, and who receive no agency action on their cases within the 15-calendar-day period, will receive refunds.

What This Means for Your H-2B Petition

USCIS will be issuing notices on all pending petitions in order to determine the source of the prevailing wage determination (PWD). USCIS will not consider these notices as an "agency action" for premium processing purposes.

If it is determined that your pending petition is accompanied by a TLC that is based on a PWD utilizing applicable Collective Bargaining Agreements, acceptable private wage surveys, or Service Contract Act or Davis Bacon Act wages, USCIS will resume adjudication of your H-2B petition.

In addition, USCIS will adjudicate H-2B petitions that are filed with TLCs issued by DOL on or after March 22, 2013.

Furthermore, USCIS will continue adjudicating H-2B petitions for non-agricultural temporary workers on Guam if the petitions are accompanied by TLCs issued by the Guam Department of Labor (GDOL).

Finally, USCIS may adjudicate an H-2B petition if it can be resolved on issues unrelated to the OES four-tier prevailing wage determination.

What to Expect Next

Once a revised prevailing wage rule is promulgated, USCIS will resume adjudication of all H-2B petitions.

Last updated:04/03/2013

[Plug-ins](#)