U.S. Citizenship and Immigration Services

Reminder: Certain Fees May Not Be Collected From H-2A and H-2B Workers

As the traditional harvest season approaches, USCIS reminds petitioners that certain fees may not be collected from H-2A and H-2B workers, according to 8 C.F.R. § 214.2(h)(5)(xi)(A) and § 214.2(h)(6)(i)(B). We realize that delays in adjudicating these petitions may affect employers' ability to place workers in time-sensitive jobs. To avoid delays, USCIS urges petitioners to submit sufficient information regarding their recruitment efforts and the nature of fees collected from H-2A and H-2B workers. We also recommend petitioners refer to U.S. Department of Labor (DOL) guidelines on employers' obligation to avoid passing costs to H-2A workers.

To facilitate the processing of Form I-129, Petition for a Nonimmigrant Worker, it is important that petitioners properly complete the form and answer questions 7, 8 and 9 of Section 3 of the H Classification Supplement to Form I-129. These questions ask about petitioners' recruitment efforts and whether a prospective or current worker has paid job placement fees or similar compensation as a condition of employment.

Fees that workers may not pay include, but are not limited to, government-mandated fees that are prohibited under DOL rules, petition fees, attorney fees, recruitment costs and any fees that are conditions of employment.

USCIS determines whether fees are prohibited based on the totality of the circumstances. Therefore, we suggest, but do not require, that petitioners also consider including a statement or other documentation to support their answers to the questions in the H Classification Supplement.

USCIS considers the following, among other factors, in determining whether H-2A or H-2B workers have paid prohibited fees:

- Whether you collected, or intend to collect, directly or indirectly, any fee or compensation from any beneficiary of the H-2A or H-2B petition as a condition of employment
- Whether you entered, or intend to enter, into an agreement to collect, directly or indirectly, any fee or other compensation from any beneficiary of the H-2A or H-2B petition as a condition of employment
- Whether, to the best of your knowledge, the recruiter, facilitator or similar employment service that you used collected, or intends to collect, directly or indirectly, any fee or other compensation from any beneficiary of the H-2A or H-2B petition, as a condition of employment; and

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- Whether, to the best of your knowledge, the recruiter, facilitator or similar employment service that you used entered, or intends to enter, into any agreement to collect, directly or indirectly, any fee or other compensation from any beneficiary of the H-2A or H-2B petition as a condition of employment.

Petitioners may demonstrate knowledge of the practices of their recruiter, facilitator or similar employment service by indicating that they made reasonable inquiries about the fee collections from the H-2A or H-2B workers.

If USCIS determines that the petitioner or employer knows or **had reason to know** that H-2A or H-2B workers paid any fees or other compensation as a condition of employment, the petition may be denied or revoked.

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Plug-ins

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