

**U.S. Department of Labor
Employment and Training Administration
OFFICE OF FOREIGN LABOR CERTIFICATION**

2015 H-2B Interim Final Rule FAQs

Round 8: Appeal Procedures

1. What decisions are subject to appeal under the 2015 Interim Final Rule?

Under the 2015 Interim Final Rule, an employer may use the general appeal procedures under 20 CFR 655.61 to appeal an adverse decision made by the Certifying Officer under the following regulatory provisions: *Registration of H-2B employers* 20 CFR 655.11, *Notice of Deficiency* 20 CFR 655.31, *Denied certification* 20 CFR 655.53, *Partial certification* 20 CFR 655.54, *Request for determination based on nonavailability of U.S. workers* 20 CFR 655.57, *Extensions* 20 CFR 655.60, *CO-ordered assisted recruitment* 20 CFR 655.71, and *Revocation*. In addition, the employer may request review of a Prevailing Wage Determination using the provisions at 20 CFR 655.13 *Review of PWDs*, and a debarment determination by following the procedures in *Debarments* 20 CFR 655.73.

Important Note: Consistent with 20 CFR 655.11(j) OFLC will announce in the Federal Register a separate transition period for the H-2B registration process. Until such time, OFLC will continue to evaluate an employer's temporary need during the application adjudication process.

2. How do I appeal an adverse decisions made by the Certifying Officer?

Generally, if an employer disagrees with the Certifying Officer's (CO) decision, it may request administrative review (i.e., appeal) before the Board of Alien Labor Certification Appeals (BALCA) of the CO's decision **within 10 business days** from the date of issuance. The request for review must:

- (1) Be submitted in writing to the BALCA, with a copy simultaneously sent to the CO at the addresses provided below;
- (2) Clearly identify the determination the employer is appealing;
- (3) Contain the specific grounds for the appeal;
- (4) Include a copy of the CO's determination (e.g. a Notice of Deficiency, a denial letter); and
- (5) Contain only legal arguments and evidence that was actually submitted to the CO before the determination was issued. **The employer may not submit new evidence.**

The appeal request should be sent at the same time to the following addresses:

| To BALCA | To the Certifying Officer |
|---|---|
| Chief Administrative Law Judge U.S. Department of Labor, 800 K Street NW, Suite 400-N, Washington, DC 20001-8002 | U.S. Department of Labor Employment and Training Administration Office of Foreign Labor Certification Chicago National Processing Center 11 West Quincy Court Chicago, IL 60604-2105 |

Important Note: Please refer to 20 CFR 655.13 for prevailing wage review procedures, and 20 CFR 655.73 for debarment appeals.

3. How soon after I submit an appeal will I receive a decision from the Board of Alien Labor Certification Appeals (BALCA)?

The employer should receive a decision from the Board of Alien Labor Certification Appeals (BALCA) approximately 17 to 21 business days from the date on which an appeal request is received by the BALCA. When the Certifying Officer (CO) receives a copy of the request for appeal from the employer, the CO will begin to assemble the Appeal File and will send it to the Board of Alien Labor Certification within seven (7) business days, with copies to the employer and the Department's legal counsel. The Department's counsel may submit a brief to the BALCA within 7 business days of receiving its copy of the Appeal File. BALCA will notify the employer of its decision within 7 business days after the submission of the CO's brief, or 10 businesses days after it receives the Appeal file, whichever is later, by means assuring same or next-day delivery.