



November 28, 2017

U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010
Attention: Karl D. Bloom

Via Email: uscis.foia@uscis.dhs.gov and Karl.D.Bloom@uscis.dhs.gov

**Re: Amendment to Freedom of Information Act Request
Control Number: COW2017001165**

Dear Mr. Bloom:

Pursuant to your email correspondence of November 21, 2017, we are amending the FOIA request that was assigned **Control Number COW2017001165** so that it now includes a request for a fee waiver. With this amendment, we are withdrawing the subsequently filed FOIA request assigned control number COW2017001435. As you correctly observed, the difference between the two requests is that the latter includes a request for a fee waiver. Apart from the fee waiver request, the FOIA request below is identical to that which was originally filed on September 21, 2017. Thank you for your assistance with this request.

Amended FOIA Request COW2017001165

The American Immigration Lawyers Association (AILA) submits this letter as a request for information under the Freedom of Information Act (FOIA), 5 USC §552, et. seq.

RECORDS SOUGHT

AILA requests all records¹ which were prepared, received, transmitted, collected and/or maintained by U.S. Citizenship and Immigration Services (USCIS) and which relate or refer in any way to the following:

- Records that describe, explain, or interpret how the wage level (Level 1, Level 2, Level 3, or Level 4), as identified in the Foreign Labor Certification Data Center Online Wage Library

¹ The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, training manuals, technical specifications, training materials or studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

(www.flcdatcenter.com) and annotated on the Labor Condition Application, may impact the adjudication of petitions for H-1B classification.

- Records that describe, explain, or interpret how the use of a private wage survey, including an “N/A” annotation on the Labor Condition Application in lieu of an assigned wage level, may impact the adjudication of petitions for H-1B classification.
- Records that describe, explain, or interpret how the wage/salary offered to the beneficiary by the employer may impact the adjudication of petitions for H-1B classification, including but not limited to, the relevance of any and all Department of Labor guidance on prevailing wage determinations.
- Records that describe, explain, or interpret the rescission of the INS Memorandum, “**Guidance Memo on H-1B Computer Related Positions**,” NSC 70/44.4 (Dec. 12, 2000), and the implementation of the USCIS Policy Memorandum, “**Rescission of the December 22, 2000 ‘Guidance memo on H-1B computer related positions**,” PM-602-0142 (Mar. 31, 2017).

I. REQUEST FOR WAIVER OF FEES

We ask that the agency waive all fees associated with this FOIA request. Such a waiver is warranted because disclosure of the information is “. . . likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6 C.F.R. § 5.11(k) (records shall be furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in the commercial interest of the requester). In addition, AILA will widely disseminate the requested information. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

Founded in 1946, AILA is a nonpartisan, not-for-profit association of more than 15,000 attorneys and law professors who practice and teach immigration law. AILA provides its members and the public with information and analysis on immigration law and policy issues, primarily through a public website that is updated daily with the latest immigration news and information. AILA publishes newsletters and other print and electronic publications, and is contacted frequently by national print and news media.

A. *Disclosure of the Information Is in the Public Interest*

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities related to the adjudication of H-1B petitions. These records will shed significant light on an emerging issue in the adjudication of employment-based immigration benefits. On March 31, 2017, USCIS issued a memorandum rescinding its December 22, 2000 guidance on the eligibility of certain computer-related occupations for H-1B status.² In the weeks that followed the

² USCIS Memorandum, “Rescission of the December 22, 2000 ‘Guidance memo on H1B computer related

release of this memorandum, petitioning employers and AILA members representing these employers reported a spike in “Requests for Evidence” (RFEs) questioning the use of a Level I (and in some cases, Level II) wage on an LCA. According to data obtained by Thomson Reuters, between January 1 and August 31, 2017, USCIS issued 85,000 RFEs on H-1B petitions; “a 45 percent increase over the same period last year.”³ The government’s policies towards H-1B petitioners are of immense public concern at present and the disclosure of the requested records will help inform public debate about these issues. Release of this information will significantly advance the general public’s understanding of DHS’s H-1B policies.

AILA has the capacity, intent and demonstrated ability to disseminate the requested information to a broad cross-section of the public. Through a combination of the legal expertise of AILA attorney member volunteers and committees, and the editorial skills of AILA’s national office staff, AILA regularly publishes reports, “practice pointers,” and other written work product that provides filing tips and outlines legal strategies on substantive immigration law issues that are geared toward immigration lawyers. AILA also publishes “fact sheets” and other public advisories on immigration issues that are of interest to the public. Regarding the instant FOIA request, AILA intends to not only publish the released records to its website, but also to utilize the records as the basis for a report, “white paper,” “practice pointer,” and/or “fact sheet” describing their content and significance, and how they relate to the preparation and filing of petitions for H-1B classification and PERM applications. All documents will be published to the public portal of AILA’s website.

B. Disclosure of the Information Is Not Primarily in the Commercial Interest of AILA

As a not-for-profit association, AILA seeks the requested information to disseminate it to the public and to AILA’s 15,000 plus members. AILA does not seek this information for commercial gain.⁴

Thank you for your prompt attention to this request. If you have any questions, please do not hesitate to contact me by telephone or email.

Sincerely,



Betsy Lawrence
Director of Government Relations
American Immigration Lawyers Association

Positions” (Mar. 31, 2017), available at: <https://www.uscis.gov/sites/default/files/files/nativedocuments/PM-6002-0142-H-1BComputerRelatedPositionsRecission.pdf>.

³ “Trump Administration Red Tape Tangles up Visas for Skilled Foreigners, Data Shows,” Thomson Reuters (Sept. 20, 2017), available at: <http://www.reuters.com/article/us-usa-immigration-employment-insight/trump-administration-red-tape-tangles-up-visas-for-skilled-foreigners-data-shows-idUSKCN1BV0G8>.

⁴ The term “commercial use request” refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester. *See* 52 Fed. Reg. 10012, 11017–18 (Mar. 27, 1987).