



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

April 24, 2018

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

**Re: Freedom of Information Act Request**

Dear Sir or Madam:

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 seeks any and all records<sup>1</sup> which were prepared, received, transmitted, collected and/or maintained by U.S. Citizenship and Immigration Services (USCIS)<sup>2</sup> and which relate or refer in any way to:

- USCIS standard operating procedures, memoranda, correspondence, guidance, checklists, and training materials, created, circulated or discussed on or after January 1, 2015, regarding the processes, procedures, and legal standards relating to the adjudication of H-1B (Form I-129) nonimmigrant petitions, *including but not limited to*:
  - Records that describe, explain, or interpret the term “specialty occupation” under INA § 214(i), including, but not limited to, records that describe, explain, or interpret the language “body of highly specialized knowledge,” and/or “specific specialty (or its equivalent)” under INA § 214(i)(1).
  - Records that describe, explain, or interpret how adjudicators use information contained in Department of Labor resources, including, but not limited to, the

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<sup>1</sup> 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.

<sup>2</sup> The term “USCIS” as used herein means USCIS headquarters offices, including any divisions, subdivisions or sections therein; USCIS Program Offices, including any divisions, subdivisions or sections therein; and USCIS Service Center Operations, including any divisions, subdivisions or sections therein.

**AILA National Office**

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Bureau of Labor Statistics' Occupational Outlook Handbook, in determining whether a position is a "specialty occupation"

Please construe this as an ongoing FOIA request, so that until a proper and adequate search is conducted, any records that come within the possession of the agency prior to the final response to this FOIA request should be considered within the scope of the request.

AILA asks that any records that exist in electronic form be provided in their native electronic format on a compact disc, digital videodisk, or equivalent electronic medium. AILA asks that any documents stored in Portable Document Format ("PDFs") be provided as individual files in a searchable PDF format. In addition, AILA asks that reasonable metadata be transmitted along with files, including but not limited to maintaining parent-child relationships between emails and their attachments, author information, as well as date and time stamp information. If any of the requested records or information are not kept in a succinct format, we request the opportunity to view the documents in your offices.

If, under applicable law, any of the information requested is considered exempt, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld, and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided.

## **2. REQUEST FOR WAIVER OF FEES**

AILA asks 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 furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution). In addition, AILA has the ability to widely disseminate the requested information. *See Judicial Watch 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).

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

Disclosure of the requested information will contribute significantly to the public understanding of USCIS's adjudicative process regarding H1-B occupational classifications. Such information is of great public interest given the tens of thousands of H1-B requests submitted by U.S. companies each year for positions involving specialty occupations. Heightened scrutiny of the H-1B program by USCIS has triggered heightened public and media

interest.<sup>3</sup> Understanding changes to USCIS' adjudication of H1-B visa petitions involving specialty occupations is critically important to AILA's membership, the employers who apply for H1-B visas, and the general public. For example, 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."<sup>4</sup> Release of information on USCIS guidance on the processing of H1-B visa petitions will significantly advance the general public's understanding of H1-B policies and practices, as well as that of AILA members and their clients.

As discussed below, AILA has the capacity, intent, and demonstrated ability to disseminate the requested information to a broad cross-section of the public.

Founded in 1946, the American Immigration Lawyers Association (AILA) is an association of over 15,000 attorneys and law professors who practice and teach immigration law. 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 particular interest to the general public. With regard to 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. 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 the Requester*

As a not-for-profit association, AILA seeks the requested information for the purpose of disseminating it to AILA's 15,000 plus members and to the general public and not for the purpose of commercial gain.<sup>5</sup>

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<sup>3</sup> See, e.g., Devang Patel, *Challenging Times for H-1B Visa Holders and Their Employers*. LAW.COM (Mar 13, 2018), <https://www.law.com/thelegalintelligencer/2018/03/13/challenging-times-for-h-1b-visa-holders-and-their-employers/?sreturn=20180324130144>; Polly Mosendz & Lance Lambert, *How the H-1B Program Is Holding Up Under Trump*, BLOOMBERG (Aug 1, 2017), available at <https://www.bloomberg.com/news/articles/2017-08-01/how-the-h-1b-program-is-holding-up-under-trump>.

<sup>4</sup> "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>.

<sup>5</sup> 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).

Please provide the application records to:

A handwritten signature in black ink, appearing to read "Betsy Lawrence", with a long, sweeping horizontal stroke extending to the right.

Betsy Lawrence  
Director of Government Relations  
American Immigration Lawyers Association