



RARE GESTURE OF REASONABLENESS TO H-1B FILERS

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So USCIS has at long last heard and understood about the hardships that the new iCERT system of DOL was causing H-1B workers. Normally, the USCIS does not care what the DOL does and vice versa, and so this gesture comes as a pleasant surprise.

The new iCERT system consistently denies Labor Condition Applications if it cannot verify the employer's Federal Employment Identification Number (FEIN) even if it is valid, and the employer has been routinely using this number for years on its tax forms. If one's H-1B status was about to expire, and iCERT denied the LCA due to an "invalid" FEIN, the employer's H-1B petition also got denied if it could not be filed with a certified LCA. The poor H-1B worker fell out of status.

USCIS issued today a news bulletin, but dated November 5, 2009, <http://tiny.cc/pYEyl>, that it would accept an H-1B petition with an uncertified LCA between November 5, 2009 till March 4, 2010. Such a filing, though, will only be accepted if the LCA was filed at least 7 days before the H-1B petition is filed, and there is evidence of such a filing. After the filing, the USCIS will issue a Request for Evidence asking for submission of the certified LCA within 30 days.

We need further clarification. It makes no sense that the LCA should be pending for 7 days. If an LCA is filed, within 2 days, iCERT denies it erroneously for an allegedly invalid FEIN. One then needs to submit proof of the employer's FEIN such as a document issued by the IRS. After 2-3 days, iCERT indicates that it has verified the FEIN and invites the employer to submit an LCA. Once a new LCA is submitted, it gets certified after another 2-3 days. None of these individual steps take 7 days, but the whole process of filing and receiving an initial denial, submission of proof of the FEIN, and re-submission of the LCA can take longer than 7 days. Hopefully, USCIS should accept an H-1B petition even

after the initial LCA was denied and the employer has submitted proof that it has a valid FEIN.

Also, what happens to the unfortunate filers whose H-1Bs were denied because they could not file with a certified LCA prior to this policy change on November 5?

Clearly, the ability to file H-1Bs without a certified LCAs will also increase the number of H-1Bs. As of last count on October 30, 2009, USCIS had received 53,800 H-1B petitions towards the 65,000 cap.