



October 4, 2011

Executive Summary

USCIS Stakeholder Engagement: H-2A Agricultural Workers

Overview

On June 10, 2011, the Office of Public Engagement hosted a stakeholder engagement to discuss best practices for filing H-2A nonimmigrant visa petitions, particularly in light of USCIS's recent use of the Validation Instrument for Business Enterprises (VIBE). USCIS provided the responses to frequently asked questions related to this category and also provided an optional checklist that H-2A petitioners may use to ensure that they have met all the filing requirements prior to submitting their H-2A petitions.

Principal Themes

VIBE and H-2A Petitions

During the engagement, USCIS mentioned that upon implementation of the Validation Instrument for Business Enterprises (VIBE) –a Web-based tool designed to enhance USCIS's adjudications of certain employment-based immigration petitions, USCIS found some H-2A petitioners were not properly filling-out the I-129 petition. As such, USCIS offered clarification on how H-2A petitioners should fill out Part 1 of the Form I-129.

USCIS reiterated that it recommends listing only information associated with the petitioner in Part 1 of the Form I-129. The petitioner should be the individual or entity that obtained the approved ETA Form 9142. Entering in Part 1 (except in Part 1, item 3a on Page 1) the address, phone number, or other information of an attorney, representative, or preparer who is not the petitioner could result in the issuance of a Request for Evidence (RFE). USCIS also had additional recommendations for sole proprietors seeking H-2A classification (see sole proprietor section below).

Legal Representatives vs. Preparers

During the engagement, stakeholders requested additional clarification regarding who could assist an H-2A petitioner in completing the H-2A petition. USCIS clarified that while an H-2A petitioner may choose to complete and file its own petition, only certain qualified individuals can provide legal advice or represent a petitioner before USCIS. Legal advice may include answering questions on Form I-129, as

well as providing advice on immigration choices and options. Only individuals qualified as legal representatives may provide legal advice and represent petitioners before USCIS.

Legal representatives are attorneys and accredited representatives of an organization recognized by the Board of Immigration Appeals (BIA). Assistance from legal representatives may include providing legal advice as well as representing a petitioner before USCIS. However, these individuals are not considered petitioners and should not list themselves as petitioners in Part 1 of Form I-129 or use their address in Part 1 of Form I-129 except in the “C/O: (In Care Of, if any)” field in Part 1, item 3a on Page 1. Part 1 of the Form I-129 relates to information about the U.S. employer or his or her agent. To be recognized as a legal representative, these individuals must submit their information on a “Notice of Entry of Appearance as Attorney or Accredited Representative” (Form G-28) in connection with Form I-129. If the legal representative assisted in preparing and filing Form I-129, he or she must also sign and provide information required of preparers in Part 8 of Form I-129. Upon receiving a properly completed Form G-28, USCIS will direct all correspondence related to the petition to the legal representative at the address listed on Form G-28.

Preparers, on the other hand are individuals who do not qualify as “legal representatives” but may help a petitioner prepare and fill out Form I-129. Preparers may do this for free or charge no more than a nominal fee for such services. They cannot provide legal advice on immigration law or procedure, or hold themselves out as qualified in legal matters or in immigration and naturalization procedures. These individuals must sign and provide information required of preparers in Part 8 of Form I-129. Please note that USCIS will not communicate with or send correspondence to preparers as they are not authorized to represent petitioners before USCIS.

Preparer vs. Agent-Petitioner

During the engagement, stakeholders requested clarification regarding the difference between a preparer versus an agent-petitioner. Agent petitioners must meet the requirements under 8 CFR 214.2(h)(2)(i)(F) to file Form I-129 as an H-2A petitioner. An agent-petitioner is expected to provide his or her information in Part 1 of Form I-129. Additionally, the agent-petitioner must sign Part 7 of Form I-129.

Those who do not meet the requirements of agent-petitioners, but solely assist a petitioner in filling out Form I-129, are considered “preparers.” Please note that preparers are not considered petitioners and their names and addresses should not be listed in Part 1 of Form I-129 except in limited circumstances when petitioners permit preparers to receive their correspondence. In this case, the preparer’s name and address may be listed in Part 1, item 3a on Page 1. However, in an effort to combat possible immigration services scams, USCIS discourages the practice of entering another person’s address for mailing purposes. Petitioners must still provide their actual address in Part 1, item 3 b through g on Page 1. Preparers must also sign Part 8 of Form I-129. Incomplete petitions may be rejected.

Sole Proprietors Seeking H-2A Employment

A sole proprietorship is a company or organization that is owned and run by one individual and in which there is no legal distinction between the owner and the business. Depending on how the company has been registered, sole proprietorships may file for H-2A employment in several ways as noted below – as long as the entity approved by DOL on ETA Form 9142 matches the entity filing Form I-129 with USCIS.

Sole proprietors may choose to: 1) file with DOL and USCIS as an individual owner; 2) file with DOL and USCIS under the company's trade name or DBA; or 3) allow an agent or an association of U.S. agricultural producers to file for H-2A employment on behalf of the sole proprietor.

Joint Employer Signature Requirements

During the engagement, USCIS mentioned that a complete and properly signed "H Classification Supplement to Form I-129" (Pages 11 and 13-15 of Form I-129) is required. Only the petitioner (named in Part 1 of Form I-129) can sign Part A on Page 15 of the I-129. However, in cases where there are multiple employers, each joint employer must sign Part C on Page 15 of the I-129. If there are more than four joint employers, the additional signatures may be submitted on additional copies of Page 15 of the I-129.

Next Steps

As a result of this engagement, USCIS has created a standardized optional checklist to assist petitioners seeking H-2A workers in completing the H-2A petition. You can access [Form M-797, Optional Checklist for Form I-129 H-2A Filings](#) at www.uscis.gov/files/form/m-797.pdf.

Should you have any further feedback on the issues noted above or in relation to the H-2A program, you may send these to the Office of Public Engagement: public.engagement@dhs.gov.