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January 31, 2022

DOL H-2B Processing Delays

The Department of Labor is required by regulation to issue a first action, within seven days, on all H-2B applications. Over the last several years, due to the surge in applications, DOL has been unable to honor this requirement during the second half of the fiscal year.

All pending applications, regardless of when filed, are required by regulation to be processed by DOL within seven days. The first action is important because it is the Notice of Acceptance (NOA) that starts employers' U.S. worker recruitment. All employers that have filed between January 1 and January 16 should be recruiting for U.S. workers now. However, due to DOL's inability to meet the regulatory requirement, a large majority (75%) of employers who filed from January 1 through January 16 are in limbo waiting on the NOA to recruit U.S. workers. DOL could allow these employers to begin recruitment without waiting to receive a NOA. This would allow for a longer domestic recruitment period, and expedite the process, as they would be able to submit their recruitment reports immediately upon receipt of the NOA¹, cutting two weeks off the DOL approval process.

Due to the unprecedented surge in applications and worker positions requested for the FY 22 second half allotment of visas, we are concerned that DOL will be unable to complete first actions for Groups A-G in time for the worker's to arrive by the requested start date of April 1. The table below compares the FY 21 v FY 22 DOL first action processing timeline:

Processing Timeline

	2021	2022
Group A	Jan. 5-19	Jan. 4-26
Group B	Jan. 20-29	Jan. 28-Feb. 8*
Group C	Feb. 1-10	Feb. 9-20*
Group D	Feb. 11-24	Feb. 21-March 3*
Group E	Feb. 24-26	March 4-15*
Group F		March 16-27*
Group G		March 28-31*
		*estimated

¹ For applications that did not have Notice of Deficiency for a material error in their application that required a material change in the content of the job order.

In the second half of FY 21, employers assigned to Group E (the last group assignment in FY 21) did not receive a first action from DOL until late February and a labor certification until mid-March. This year, DOL is running a week behind last year. In 2021, DOL issued a first action on all Group A applications by January 19th. This year, DOL completed first action on Group A applications by January 26th. At this rate, DOL will not finish processing Group G applications (the last group assignment in FY 22) until late March. The impact will be twofold:

First, DHS will have to delay a potential second half supplemental visa release until all Groups are processed. All groups must have equal access to a potential supplemental visa release. This delay will cause irreparable economic harm to the seasonal employer community. Second, the FY 22 first half supplemental visa rule, published on January 28th, requires that all applications be submitted to DHS for the supplemental visas by March 31st. DOL received 74 applications for a first half need between January 4th and January 16th. Due to DOL's first in first out processing rule, these applications will be processed after the second half applications submitted January 1-3. Without improvements in the processing speed, these applicants will not receive a labor certification until April which would prevent them from accessing the first half supplemental visas and result in them being denied a workforce for the upcoming season. Most of these applicants intend to request workers from the Northern Triangle allocation. If DOL does not take immediate action to speed up processing, this will negatively impact the administration's policy initiative of increasing H-2B program participation in the Northern Triangle countries.

We ask that the Department of Labor take immediate action to speed up processing so that all pending applications receive a first action by the end of February. Actions may include instituting emergency procedures to allow employers to begin U.S. worker recruitment prior to receiving their first actions from DOL. In 2016, due to similar processing delays, DOL instituted emergency procedures.