

TEMPORARY NONIMMIGRANT VISA PROGRAMS

Announcement of iCERT System Enhancement to Streamline the H-2A and H-2B Processes for Employers: Electronic Submission of Supporting Documentation Post-Filing

Effective Date: Friday, August 26, 2016

An employer or, if applicable, its authorized attorney or agent, seeking temporary labor certification under the H-2A or H-2B visa program must submit the application (Form ETA-9142A or 9142B, with Appendix A or B) and all required supporting documentation to the OFLC either electronically or by U.S. mail. Prior to submission of the application electronically, the iCERT System allows the employer to upload supporting documentation, in an acceptable electronic format. This is in lieu of sending physical documentation to the Chicago NPC by U.S. mail, saving employers time and money. However, the iCERT System was not initially designed to permit documents to be uploaded after the application was submitted for processing. Any supporting documentation required after the application was filed and requested by the CO (e.g., in response to a NOD or NOA) had to be filed by U.S. mail, electronic mail or facsimile, even if the application itself was submitted electronically.

This process required OFLC to invest in dedicated contract staff to log, track and, where necessary, scan and upload each responsive document into the pending application assigned to the OFLC analyst for review. During certain seasons of the year when the H-2A and H-2B workloads are high, there can be delays associated with the time it takes for each responsive document submitted by an employer or, if applicable, its authorized attorney or agent, to manually upload documents into the pending application.

To minimize delays associated with connecting employer documentation to a pending H-2A or H-2B application and to provide more flexibility in submitting responsive documents, the OFLC is implementing a new enhancement to the iCERT System on Friday, August 26, 2016. This enhancement will permit the submission of electronic documentation at the time of filing and while the H-2A or H-2B application is pending review. After the CO issues a final determination on the H-2A or H-2B application, the document upload feature will be disabled.

This new feature will enable the iCERT account holder to view all its pending H-2A or H-2B applications and select the application for which it wishes to upload documents electronically. Once a pending application is selected, the iCERT account holder will associate one or more electronic documents with a response type (e.g., Response to NOD, Response to NOA) for more efficient storage and retrieval by the OFLC analyst assigned to the application. To maximize electronic security, the iCERT System will only accept electronic documents in Microsoft Word (.doc or .docx), Adobe Acrobat Portable Document Format (.pdf), or text (.txt) file formats.

Once all documents are uploaded electronically, the iCERT account holder will confirm submission. Then all documents will be saved electronically, with the pending application. Although the iCERT account holder will not be able to delete the documents, the iCERT account holder can view the list of documents submitted with the pending application. As necessary, the iCERT account holder may upload additional documents (e.g., in the event the CO issues a second NOD or a NOA action on the pending application).

Once all documents are submitted electronically, the iCERT System will send a confirmation-of-receipt message via e-mail to the employer's designated point of contact and, if applicable, to the employer's authorized representative, indicating that the electronic documents were successfully received by the OFLC analyst assigned to review the application. Because the Chicago NPC uses e-mail as the primary method of communication during the application review process, iCERT account holders must ensure that all e-mail addresses entered on the Form ETA-9142A or 9142B are valid. It is the employer's responsibility to ensure that its internet service providers do not block e-mail messages sent from the Department. Users must also ensure that Department e-mail communications are not filtered out to a spam folder. Finally, the iCERT System will send a separate notification e-mail to the OFLC analyst assigned to the pending application when new documents are submitted by the iCERT account holder for review.

The Department expects that this new feature will eliminate the need for the employer or, if applicable, its authorized agent or attorney to submit responsive documents via U.S. mail, e-mail or facsimile, and result in a more expedient review of applications by connecting the responsive documents directly to the OFLC analysts assigned to the application. In circumstances where duplicate documentation is submitted, such as where one set of documents is submitted electronically using this new enhancement and that same set of documents is submitted by U.S. mail, e-mail or facsimile, the Chicago NPC will accept for processing the set of documents submitted electronically by the iCERT account holder. The Chicago NPC will return the duplicate set of documents to the employer or, if applicable, the authorized attorney or agent.

Employers or, if applicable, their authorized attorneys or agents, are strongly encouraged to use electronic filing. Those who do not have an iCERT System account and choose to file H-2A and H-2B applications using the traditional paper-based method will not be able to take advantage of this new iCERT enhancement, even after their application is added to iCERT by Chicago NPC staff. These employers, attorneys or agents must continue to submit supporting documentation required after the application was filed and requested by the CO using the current procedures by U.S. mail, electronic mail or facsimile.