



U.S. Citizenship  
and Immigration  
Services

## Memorandum

TO: January Contreras  
Citizenship and Immigration Services Ombudsman

FROM: Alejandro N. Mayorkas /S/ January 28, 2010  
Director

SUBJECT: Response to Recommendation 43, Temporary Acceptance of Filed Labor Condition Applications for Certain H-1B Filings



I appreciate your office's work regarding the Labor Condition Application (LCA) process and welcome the insights and recommendations you offered on this important topic. Our response is provided below.

### Recommendation

The CIS Ombudsman recommends that USCIS:

- Reinstating USCIS' previous practice of temporarily accepting an H-1B petition (Form I-129) supported by proof of timely filing of an LCA application with DOL, and issue a Request for Evidence (RFE) whereby the H-1B petitioner later provides the certified LCA.
- Establish a temporary policy under which USCIS would excuse late H-1B filings where the petitioner has documented an LCA submission to DOL that was improperly rejected.

### USCIS Response

1. **Reinstating USCIS' previous practice of temporarily accepting an H-1B petition (Form I-129) supported by proof of timely filing of an LCA application with DOL, and issue a Request for Evidence (RFE) whereby the H-1B petitioner later provides the certified LCA.**

On November 5, 2009, USCIS announced that for a 120-day period it would temporarily accept H-1B petitions filed without LCAs that have been certified by DOL. However, USCIS will only accept such H-1B petitions if they are filed at least 7 calendar days after the LCAs were filed with DOL and include evidence of these LCA filings. The only acceptable evidence of filing is a copy of DOL's e-mail giving notice of receipt of the LCA.

Petitioners who seek to take advantage of this temporary flexibility in the normal filing procedures for H-1B petitions must wait until they receive an RFE before they can submit the DOL-certified LCA to USCIS in support of the H-1B petition. The certified LCA must be the same LCA filed with the original petition, unless the petitioner provides an LCA that was certified prior to the submission of the H-1B petition. USCIS will give petitioners a period of 30 calendar days to submit a DOL-certified LCA in response to the RFE. USCIS can only approve H-1B petitions that include certified LCAs.

**2. Establish a temporary policy under which USCIS would excuse late H-1B filings where the petitioner has documented an LCA submission to DOL that was improperly rejected.**

USCIS will continue to excuse late filings, per 8 CFR 214.1(c)(4) or 8 CFR 248.1(b). The late filing will be considered in instances whereby the delay in filing the petition requesting an extension of H-1B stay or change of nonimmigrant status to H-1B was related to LCA issuance delays beyond the control of the petitioner and/or denials by DOL due to FEIN check issues. Applicants who would like USCIS to consider a late filing should submit evidence indicating that the filing was delayed through no fault of the petitioner or beneficiary along with their H-1B petition.