

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D. C. 20210	CLASSIFICATION H-2B Non-Agricultural Program
	CORRESPONDENCE SYMBOL OFLC
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**ADVISORY: FOREIGN LABOR CERTIFICATION
TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 21-06, Change 1**

**TO: OFLC-NATIONAL PROCESSING CENTER DIRECTORS
STATE WORKFORCE AGENCY ADMINISTRATORS**

**FROM: EMILY STOVER DeROCCO /s/
Assistant Secretary**

**SUBJECT: Procedures for H-2B Temporary Labor Certification in
Non-Agricultural Occupations**

1. **Purpose.** To modify certain procedures under TEGL 21-06 for State Workforce Agencies and ETA National Processing Centers to process H-2B labor certification applications. H-2B visas are for temporary employment in non-agricultural occupations.
2. **References.** Immigration and Nationality Act (INA) sec. 101(a)(15)(H)(ii)(b), 20 Code of Federal Regulations (CFR) Parts 652 and 655; 8 CFR 214.2(h)(6); and Training and Employment Guidance Letter (TEGL) 21-06: Procedures for H-2B Temporary Labor Certification in Non-Agricultural Occupations.
3. **Background.** The H-2B non-immigrant visa program permits employers to hire foreign workers to come temporarily to the United States and perform temporary non-agricultural services or labor on a one-time, seasonal, peakload, or intermittent basis. The H-2B visa classification requires the Secretary of Homeland Security to consult with appropriate agencies before admitting H-2B non-immigrants. Homeland Security regulations require the intending employer first to apply for a temporary labor certification from the Secretary of Labor advising the Department of Homeland Security's United States Citizenship and Immigration Services (USCIS) as to whether qualified U.S. workers are available and whether the alien's employment will adversely affect the wages and working conditions of similarly employed U.S. workers, or a notice that such certification cannot be made, prior to filing an H-2B visa petition with USCIS.

RESCISSIONS None	EXPIRATION DATE Continuing
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On April 4, 2007, the Department issued TEGL 21-06, which updated procedures for State Workforce Agencies (SWAs) and ETA National Processing Centers (NPCs) to use in the processing of temporary labor certification applications under the H-2B program. The Department then held two public briefing sessions in Chicago and Atlanta on May 1 and May 4, 2007, respectively, to inform employers and other stakeholders of the updated processing guidance contained in TEGL 21-06. Employers and other stakeholders who attended those public briefing sessions raised important questions and concerns with regard to the effective implementation of TEGL 21-06 by the SWAs and NPCs. The purpose of this document is to outline certain modifications to TEGL 21-06 as a formal response to issues raised during the public briefing sessions and improve the processing of H-2B applications by the SWAs and NPCs.

4. **Modifications to Procedures for H-2B Applications.** Attachment A contains certain modifications to procedures, originally issued under TEGL 21-06, the SWAs and NPCs must use in making temporary labor certification determinations under the H-2B program. More specifically, sections IV and V of Attachment A contain modifications that remind employers and other stakeholders of the right to request review of a SWA prevailing wage determination by the NPC; provide notification that the NPCs will no longer accept incomplete applications for processing from the SWAs; establish a process for the NPC Certifying Officers to issue a Request for Information (RFI) in certain circumstances; outline the conditions under which the NPC Certifying Officers may grant a partial temporary labor certification to the employer; and advise the employer of the right to file a new application in circumstances where the NPC Certifying Officer issues a notice that a certification is denied. The modifications contained in Attachment A replace and supersede the prior corresponding operating procedures issued under TEGL 21-06.
5. **Effective Date.** This guidance applies to all pending and new temporary labor certification applications received by the SWAs on or after June 1, 2007.
6. **Action Required.** NPC Directors and SWA Administrators are requested to provide Center and SWA staff involved in the processing of H-2B applications with a copy of these procedures.
7. **Inquiries.** Questions from State Workforce Agency staff should be directed to the appropriate NPC Certifying Officer.
8. **Attachment.**

Attachment A: Procedures for H-2B Certification of Temporary Non-Agricultural Occupations (Revised June 2007)