valid TLC that is required to accompany an H–2A petition.9 As discussed above, this change in USCIS procedure aligns with DOL’s change in its procedures, as DOL has transitioned to a new electronic filing and application processing environment through which, generally, DOL no longer provides the employer and, if applicable, the employer’s authorized attorney or agent with an original paper TLC. This change in process is also appropriate since, in most circumstances, USCIS will no longer need to reference a paper copy of a certified Form ETA–9142A (including the Form ETA–790/790A and all appendices) because USCIS and DOL have in place an information sharing process that allows USCIS to validate substantive elements of the valid TLC based on case information supplied by DOL directly to USCIS.10

USCIS notes that there may be limited circumstances when an employer (or its authorized attorney or agent, if applicable) has a paper-based final determination from DOL because, among other reasons, the employer is unable to receive the final determination electronically.11 In these limited circumstances, USCIS may accept and consider the paper-based certification documents as an original approved TLC. Additionally, USCIS notes that the submission of a printed copy of the electronic Form ETA–9142A, Final Determination does not preclude USCIS from issuing a request for evidence or a notice of intent to deny in certain warranted circumstances, including but not limited to, when the electronic systems are unavailable for validation, or the final determination document is substantively inconsistent with the information provided by DOL regarding that labor certification determination. In those instances, USCIS will request that an employer (or its authorized attorney or agent, if applicable) submit, in response to a request for evidence or a notice of intent to deny, supporting documentation, including but not limited to a copy(ies) of the complete certified Form ETA–9142A, Form ETA–790/790A, and its appendices. DOL has agreed that such evidence will be made available to employers (or authorized attorneys) in certain circumstances, for example, in the event of a FLAG system outage or scheduled maintenance.

Joseph Edlow,
Deputy Director for Policy, U.S. Citizenship and Immigration Services.
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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2655–20; DHS Docket No. USCIS–2019–0025]

Notice of DHS’s Requirement of the Temporary Labor Certification Final Determination Under the H–2B Temporary Worker Program


ACTION: Notice.

SUMMARY: The Department of Homeland Security, U.S. Citizenship and Immigration Services, is announcing, through this notice, that a printed copy of the electronic final determination form granting temporary labor certification under the H–2B program through the U.S. Department of Labor’s new Foreign Labor Application Gateway system must be submitted with an H–2B petition as evidence of an original approved temporary labor certification.

DATES: This notice is applicable March 6, 2020.


SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act (INA), as amended, establishes the H–2B nonimmigrant classification for a nonagricultural temporary worker “having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform . . . temporary [non-agricultural] service or labor if unemployed persons capable of performing such service or labor cannot be found in this country.” INA section 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b). Employers must petition the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS), for classification of prospective temporary workers as H–2B nonimmigrants. INA section 214(c)(1), 8 U.S.C. 1184(c)(1). DHS must approve this petition before the beneficiary can be considered eligible for an H–2B visa. Id. Finally, the INA requires that “[t]he question of importing any alien as [an H–2B] nonimmigrant . . . in any specific case or specific cases shall be determined by [DHS],” after consultation with appropriate agencies of the Government. INA section 214(c)(1), 8 U.S.C. 1184(c)(1). DHS regulations provide that an H–2B petition for temporary employment in the United States other than on Guam must be accompanied by an approved temporary labor certification (TLC) from the U.S. Department of Labor (DOL) issued pursuant to regulations established at 20 CFR part 655.2 8 CFR 214.2(b)(6)(ii)(A), (C)–(E), (b)(6)(iv)(A); see also INA section 103(a)(6), 8 U.S.C. 1103(a)(6), INA section 214(c)(1), 8 U.S.C. 1184(c)(1). The TLC serves as DHS’s consultation with DOL regarding: (i) Whether a qualified U.S. worker is available to fill the petitioning H–2B employer’s job opportunity, and (ii) whether a foreign worker’s employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. See INA section 214(c)(1), 8 U.S.C. 1184(c)(1); 8 CFR 214.2(b)(6)(iv)(A).


2 In situations involving employment on Guam, the petitioning employer shall apply for a temporary labor certification with the Governor of Guam. See 8 CFR 214.2(b)(6)(iii).

9 See 8 CFR 103.2(b)(7)(ii).

10 DHS USCIS and DOL entered into a Memorandum of Agreement regarding employment-based petition, labor certification, and labor condition application data sharing in support of their respective missions, effective January 12, 2017. See https://www.uscis.gov/sites/default/files/files/nativetables/Employment-Based_Petition_Labor_Certification_and_Labor_Condition_Application_Data.pdf. To view the Privacy Impact Assessment (PIA) for the Validation Instrument for Business Enterprises (VIBE), see https://www.dhs.gov/publication/dhs-uscis-pia-044-validation-instrument-business-enterprises. Note, though USCIS and DOL have in place an information sharing process, petitioners must provide a printed copy of the one-page determination with the submission of the H–2A petition.

11 See 83 FR 53911, 53912 (October 25, 2018) (“In circumstances where the employer or, if applicable, its authorized attorney or agent, is unable to receive the temporary labor certification documents electronically, ETA will send the certification documents printed on standard paper in a manner that ensures overnight delivery.”).
In circumstances where the employer or, if applicable, its authorized attorney or agent, is not able to receive the approved TLC documents electronically, DOL will send the ETA–9142B and Final Determination letter on paper and in a manner that ensures next day delivery.

DHS regulations refer to an approved TLC by various terms including “Department of Labor determination” at 8 CFR 214.2(h)(2)(i)(E) and “labor certification determination” at 8 CFR 214.2(b)(6)(iii)(E). Under the current instructions for Form I–129, H–2B petitioners must submit an approved TLC from DOL with the H–2B petition.7 Since DOL, generally, will now only provide the approved TLC to an employer electronically, USCIS announced on its website on July 26, 2019, that employers whose application for a TLC was processed in FLAG must include a printed copy of the electronic one-page ETA–9142B, Final Determination: H–2B Temporary Labor Certification Approval, with their Form I–129, and that USCIS will consider this printed copy as an original, approved TLC.8 USCIS is formally announcing, through this notice, that a printed copy of the ETA–9142B final determination, completed and electronically signed by DOL, must be submitted with an H–2B petition, and that this printed copy of the one-page determination satisfies the requirement that petitioners provide evidence of an approved TLC.

As discussed above, this change in USCIS procedure aligns with DOL’s change in its procedures, as DOL has transitioned to a new electronic filing and application processing environment through which, generally, DOL no longer provides the employer and, if applicable, the employer’s authorized attorney or agent with a paper copy of a certified Form ETA–9142B. This change in process is also appropriate since in most circumstances, USCIS will no longer need to reference a paper copy of a certified Form ETA–9142B (and its appendices) because USCIS and DOL have in place an information sharing process that allows USCIS to validate substantive elements of the approved TLC based on case information supplied by DOL directly to USCIS.9 USCIS notes that there may be limited circumstances when an employer (or its authorized agent, if applicable) has a paper-based final determination from DOL because, among other reasons, the employer is unable to receive the final determination electronically.10 In these limited circumstances, USCIS may accept and consider the paper-based certification documents as an original approved TLC. Additionally, USCIS notes that the submission of a printed copy of the electronic ETA–9142B final determination does not preclude USCIS from issuing a request for evidence or a notice of intent to deny in certain warranted circumstances, including but not limited to, when the electronic systems are unavailable for validation, or the final determination document is substantively inconsistent with the information provided by DOL regarding that labor certification determination. In those instances, USCIS will request that an employer (or its authorized agent, if applicable) submit documentation, including but not limited to a copy or copies of the complete certified Form ETA–9142B and its appendices. DOL has agreed that such evidence will be made available to employers (or authorized agents) in certain circumstances, for example, in the event of FLAG system outage or scheduled maintenance.11

Joseph Edlow,
Deputy Director for Policy, U.S. Citizenship and Immigration Services.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2020–N028;
FXES11130100000–201–FF01E00000]

Endangered Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation and survival of endangered species under the Endangered Species Act of 1973, as amended. We invite the public and local, State, Tribal, and