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[Notices]

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DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

[CIS NO. 2313-04]

Information Regarding the H-2B Numerical Limitation for Fiscal
Year 2004

AGENCY: Bureau of Citizenship and Immigration Services, Department of
Homeland Security.

ACTION: Notice.

SUMMARY: This notice advises the public that the Department of
Homeland
Security (DHS), Bureau of Citizenship and Immigration Services (CIS)
will no longer accept H-2B petitions for temporary nonimmigrant
workers
for the remainder of Fiscal Year (FY) 2004 now that it is clear that
the demand for H-2B workers will exceed the statutory numerical limit
(the cap) for H-2B petitions for FY 2004. This notice is published so
that the public will understand the procedures for processing of H-2B
petitions now that CIS has received enough H-2B petitions to reach the
cap. These procedures are intended to minimize confusion and burden to
employers who use the H-2B program.

DATES: This notice is effective March 16, 2004.

FOR FURTHER INFORMATION CONTACT: Kevin J. Cummings, Business and Trade

Services Branch/Program and Regulation Development, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 I Street, NW., ULLB 3rd Floor, Washington, DC 20536, telephone (202) 305-3175.

SUPPLEMENTARY INFORMATION:

Who Is an H-2B Nonimmigrant?

Section 101(a)(15)(h)(ii)(b) of the Immigration and Nationality Act (Act) describes an H-2B alien as an alien coming temporarily to the United States to perform temporary nonagricultural labor or services. This definition is reflected at 8 CFR 214.2(h)(1)(ii)(D) and (h)(6)(i).

What Is the Cap or Numerical Limitation on the H-2B Nonimmigrant Classification?

Section 214(g)(1)(B) of the Act provides that the total number of aliens who may be issued H-2B visas or otherwise granted H-2B status during any fiscal year may not exceed 66,000.

What Is the Effect of This Notice?

This notice advises the public that as of March 10, 2004, CIS will no longer accept H-2B petitions for temporary nonimmigrant workers for the remainder of FY 2004. However, CIS will adjudicate petitions received on or before March 9, 2004 in the order in which they are received.

Does This Notice Apply to All H-2B Petitions Filed During FY 2004?

No. The procedures described in this notice relate only to H-2B petitions filed for beneficiaries subject to the numerical limitations and who will be engaged in temporary work to commence on or before September 30, 2004.

Amendments to previously approved petitions and petitions for extension of stay are not affected by this procedure. Likewise, petitions for aliens who already hold H-2B status, i.e. petitions filed on behalf of an H-2B alien by a new or additional employer are also not affected by this procedure. This procedure also does not relate to

petitions filed before October 1, 2004, for employment to commence on or after October 1, 2004.

What Is the CIS Procedure for Processing H-2B Petitions During the Remainder of FY 2004?

This notice informs the public that CIS has received a sufficient number of

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H-2B petitions to reach the cap of 66,000 for FY 2004. As of March 10, 2004, the CIS will not accept for adjudication any H-2B petition containing a request for a work start date prior to October 1, 2004. CIS will return any petitions requesting an employment start date prior to October 1, 2004 (along with the filing fee and, if applicable, the premium processing fee) to the petitioner according to 8 CFR 214.2(h)(8)(ii)(E). In accordance with existing regulations, such petitioners may refile those petitions with a new starting date of October 1, 2004, or later.

CIS will adjudicate all H-2B petitions received on or before March 9, 2004. CIS will adjudicate these cases in the order in which they are received. CIS is not suspending premium processing and normal rules applicable to cases subject to premium processing will still apply.

Does This Process Apply to H-2B Petitions Filed for Employment To Commence on or After October 1, 2004?

No. Those petitions are not affected by the procedures described in this notice and will be adjudicated in the normal fashion. Petitioners are reminded that petitions for H-2B classification may not be filed without an approved temporary labor certification issued by the Department of Labor. H-2B petitions filed for employment to commence on or after October 1, 2004, will be counted, if otherwise chargeable against the annual H-2B cap, against the FY 2005 numerical cap.

Dated: March 8, 2004.

Eduardo Aguirre,
Director, Bureau of Citizenship and Immigration Services.

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