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USCIS Announces ‘Important’ H-2B Supplemental Cap Petition Filing Updates Before Publication of Temporary Final Rule

Legal Update

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This article was prepared with the assistance of ABIL, the Alliance of Business Immigration Lawyers, of which Loan Huynh, Fredrikson Immigration Department Chair, is a member.

On December 8, 2022, U.S. Citizenship and Immigration Services (USCIS) announced “important” filing updates for petitioners who will be requesting additional H-2B workers for fiscal year 2023 under the upcoming temporary final rule. USCIS said it was announcing these updates to assist petitioners who wish to begin preparing their petitions before publication of a rule in the Federal Register.

Highlights of the announcement include:

Centralized Filing Location

Petitioners requesting additional H-2B workers under the upcoming rule must file their petitions at the California Service Center. Petitions filed under the supplemental allocations in this rule at any location other than the California Service Center will be rejected and the filing fees will be returned. This change does not affect the filing locations for petitions filed under the permanent H-2B regulations, whether they are cap-subject or cap-exempt.

Temporary Suspension of Premium Processing

Immediately upon publication of the upcoming rule, USCIS is temporarily suspending premium processing for H-2B supplemental cap petitions until January 3, 2023. Until premium processing resumes for H-2B supplemental cap petitions, USCIS said it will reject any Form I-907 concurrently filed with a Form I-129 filed under the supplemental allocations in the upcoming rule. USCIS has warned employers not to “file a request to upgrade to premium processing until you have received a receipt notice and can submit your request with the receipt number for your H-2B petition. If you request an upgrade to premium processing and have not provided this information, we will reject your Form I-907 and return the filing fee.”

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Premium processing remains available for all other H-2B petitions.