DHS to improve integrity of H-2B visa program for foreign workers

By Pacific News Center - March 6, 2020

Editor's note: The Department of Homeland Security this morning issued the following release today about the H-2B visa program. Gregg Massey, who is the administrator of the Guam Department of Labor Alien Labor Processing Division, said this change does not apply to Guam employers seeking H-2B visas for skilled foreign workers.
See his full statement below.

DHS H-2B release:

The Department of Homeland Security has announced that it will take necessary and abuse measures to protect the integrity of the H-2B visa program and also make 35,000 supplemental H-2B temporary nonagricultural worker visas for the second fiscal year (FY) 2020. The allocation also comes with new conditions to protect Asian workers, provide relief to seasonal employers who truly need it, and reduce fraud in the program.

New to the program this year is an allocation that will also complement DHS border initiatives. The program will offer an opportunity for nationals of key Central American nations to work lawfully in the United States. Of the released H-2B visas, 10,000 are specifically designated for nationals of Guatemala, El Salvador, and Honduras, in support of these countries efforts to work with the U.S. to stem the flow of illegal migration in and encourage lawful migration to the United States.

While the Department is taking this action, long term reforms need to be made to this program going forward. In the interim, the Department is taking significant steps to promote integrity in the program, combat fraud and abuse, and ensure the supplemental allocation aligns with the national interest.

Reform measures include:

Requiring matching start dates on an H-2B petition and the employer’s start date; collaborating with the Department of Labor on increased employer site visits; and, generally limiting the supplemental visas to returning workers, who are known to immigrate law in good faith.

This year’s supplemental allocation was determined after extensive consultation with stakeholders—including members of Congress and the Department of Labor—and to strike a careful balance that benefits American businesses and American workers.

The supplemental visas will be made available in two batches to prevent a small number of employers from using all the visas: 20,000 for start dates beginning April 1, and 15,000 for start dates beginning May 15. Adding a second batch will address specific congressional concerns about late-season filers.
DHS is committed to ensuring that our immigration system is implemented lawfully. American workers are protected. If members of the public have information that a participating employer may be abusing this program, DHS invites them to submit it to https://www.uscis.gov/report-fraud/uscis-tip-form and include information identifying the H-2B petitioning employer and relevant information that leads them to believe that the petitioning employer is abusing the H-2B program. Individuals are also encouraged to report allegations of employer fraud and abuse to the Department of Labor’s (DOL) Wage and Hour Division by contacting 1-866-487-9243 or visit www.dol.gov/whd to locate the nearest office for assistance.

Further details regarding this year’s H-2B allocation will be contained in a Temporary Rule that DHS aims to complete and publish as soon as possible.

(Information from a news release)

Response from Greg Massey, DOL Alien Labor Processing Division Administrator

The news release relative to DHS improving integrity on H-2B program is primarily intended for employers outside of Guam. Guam has unique regulations and manages most of the program with USCIS guidance and regulations. The 35,000 supplemental visas, mentioned in the release, is part of the national worker visa cap which has been in place for many years. Guam and the CNMI are exempt from the national visa cap until 2029. However, these additional visas are vital to sectors of the mainland U.S. economy and the willingness of DHS and Congress to continue these visa numbers is encouraging to Guam’s plight.

The reform measures mentioned in the article should not affect Guam employers as long as the implementation of the start date and site inspection issues into our H-2B program. The DHS statement that long term reforms need to be addressed by Congress is an indication that some kind of reform is being contemplated. Guam stakeholders should continue to lobby officials in Washington DC to make sure that Guam’s unique situation is addressed in any such reform legislation. The Guam DOL and Leon Guerrero Administration are committed to keeping that dialog going from the Government of Guam level.
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