IRLI IMMIGRATION REFORM
LAW INSTITUTE

25 Massachusetts Avenue, NW
Suite 335
Washington, DC 20001
202 232 5590
202 464 3590 (fax)
www.irli.org

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IRLI is a public interest law firm working to protect the American people from the negative effects of uncontrolled immigration.

IRLI is a supporting organization of the Federation for American Immigration Reform.

September 27, 2017

William W. Thompson II
Administrator, Office of Foreign Labor Certification
Box# 12–200, Employment & Training Administration
U.S. Department of Labor
200 Constitution Avenue N.W.
Washington, DC 20210

OMB Control Number 1205-0310: Public Comment of the Immigration Reform Law Institute Regarding Labor Condition Application for Nonimmigrant Workers

Dear Administrator Thompson:

The Immigration Reform Law Institute ("IRLI") submits the following public comment to the U.S. Department of Labor ("DOL") in response to the agency's Notice of Proposed Rulemaking, as published in the Federal Register on August 3, 2017. *See* ***Comment Request for Information Collection for Form ETA–9035, Labor Condition Application for Nonimmigrant Workers*** (OMB Control Number 1205–0310), Revision of a Currently Approved Collection, 82 Fed. Reg. 36,158–61.

IRLI is a non-profit public interest law organization that exists to defend the rights of individual Americans and their local communities from the harms and challenges posed by mass migration to the United States, both lawful and unlawful. IRLI works to monitor and hold accountable federal, state, and local government officials who undermine, fail to respect, or fail to comply with our national immigration and citizenship laws. IRLI also provides expert immigration-related legal advice, training, and resources to public officials, the legal community, and the general public.

While IRLI applauds DOL's recognition of problems within the Labor Condition Application ("LCA") system, the proposed changes do not go far enough to align the system with congressional purposes. In particular, the LCA form has not kept up to date with the provisions of 8 U.S.C. § 1182(n)(1)(E)-(G). Also, a number of policy changes should be made with respect to LCAs. Though some of these changes will require regulation, they should be made before the LCA form is updated.

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[1] Admitted in DC & IN
[2] Admitted in DC & PA
[3] Admitted in DC & MD
[4] Admitted in DC & VA
[5] Admitted in DC & VA
[6] Admitted in DC & CA
[7] Admitted in DC & MD
[8] Admitted in NE & KS
[9] Admitted in DC, NJ, & NY

I. Completed LCAs should uniquely identify foreign workers.

The proposed form continues the practice of allowing LCAs to be filed for unknown individuals. This practice is contrary to the provisions of 8 U.S.C. § 1182(n)(1)(E)-(G), which require, *inter alia,* that a good faith effort to recruit U.S. workers be made, and that U.S. workers be hired if they are as qualified as or more qualified than H-1B workers. 8 U.S.C. § 1182(n)(1)(G)(I)-(II). The current lack of a worker identification requirement allows an employer to certify on an LCA that the employer has made a good faith effort to recruit U.S. workers, but that a number of unidentified alien workers were more qualified than any U.S. workers that applied.

Most employers do use a single LCA for a single, identified worker. Some employers, however, exploiting the lack of a worker identification requirement, use blanket petitions to hire many unidentified alien workers. Such forms create two problems. First, they make it difficult to enforce the requirement that equally or more qualified U.S. workers be hired first. Since the supposedly more qualified alien workers are unidentified, there is no ready way to ensure that they actually are more qualified. Second, such forms defeat the disclosure purpose of an LCA. For example, if one is trying to determine from the disclosure data which employers are the largest users of the H-1B visa program, one gets an entirely different answer from the number of LCAs than from the number of workers. Both of these problems would be lessened if, for each beneficiary, a separate LCA form were required, identifying that beneficiary.

Accordingly, IRLI recommends that the LCA require that the employer identify the specific individual workers for which the LCA applies.

II. Full time employment should be required.

The statutes are silent on whether part-time employment should be permitted. Until now, the Secretary has interpreted this silence as permitting part-time employment. That should change now. Permitting part-time employment is inconsistent with congressional intent. If an alien is only working part-time and was admitted on an employment visa for the purpose of employment, then for much of the time the alien is not actually doing anything that fits the visa category for which he was admitted. Furthermore, aliens only working part-time would have difficulty supporting themselves. Such aliens thus have every opportunity and incentive to supplement their income through illegal work.

Accordingly, IRLI recommends that DOL regulations should require full-time employment for H-1B workers, and that the LCA form reflect that requirement.

III. Employers should have a *bona fide* place of business.

The address listed on many LCAs is a drop box or residence. An employer that is seeking foreign workers should be sufficiently established to have a *bona fide* place of business.

For example, the 2016 H-1B disclosure data show:

- Four approved LCAs for computer workers at 2624 Wildberry Ct., Edison, NJ, a residence.
- Two approved LCAs for computer workers at 1014 Wood Ave., Edison, NJ, a residence.
- Four approved LCAs for computer workers at 15 Norman St., Edison, NJ, a residence.

Accordingly, IRLI recommends that DOL regulations be changed to require the employer to have a *bona fide* place of business, and that this change be reflected in the instructions for the LCA form.

IV. The LCA form should require a government wage source.

DOL regulations currently permit employers to use nearly any source for a prevailing wage. Combined with DOL's limited authority to review LCAs, this allows employers to use any prevailing wage source that they want. When, for example, employer surveys or commercial surveys are used, there is no way to ensure that such surveys comply with regulatory requirements, and DOL may not even have access to the data for enforcement purposes. If prevailing wage claims were required to be based on official government sources, those claims could be automatically verified. By continuing to allow employers to choose the prevailing wage source, DOL limits its already limited enforcement capability.

Accordingly, IRLI recommends DOL regulations be changed to require that a government prevailing wage source be used, and that the LCA form be updated to reflect that change.

V. Conclusion.

To conclude: (1) LCA form should specifically identify each alien worker; (2) DOL should require full-time employment of H-1B workers; (3) employers of H-1B workers should be required to specify a *bona fide* place of business; and (4) the LCA form should require the use of a government wage source.

John M. Miano