
USCIS Agrees to Temporarily Accept Uncertified LCAs with H-1B Filings

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In a decision sure to please H-1B employers hamstrung by the new Labor Condition Application (LCA) process and H-1B workers soon to be out of status due to LCA delays, the USCIS has agreed to accept H-1B petitions filed with uncertified LCAs for a 120-day period that ends March 4, 2010. Note that USCIS will only accept such H-1B petitions if they are submitted at least seven (7) calendar days after the LCAs are filed with the Department of Labor (DOL) and include evidence of these filings. The only acceptable evidence of filing is a copy of DOL's auto-email giving notice of receipt of the LCA.

Prior to this change in process, an employer could not file the H-1B petition without the certified LCA attached.

The LCA process took a turn for the worse last summer. Previously, an employer filed the LCA online with the DOL and, barring any problems, it was certified at that time. Under the new process, it takes the DOL 5-7 business days to approve an LCA, which is a required part of the H-1B process. But the DOL has for the past few months been denying many LCAs due to its own inability to match the petitioning company name to its Federal Employer Identification Number (FEIN) - even when the employer correctly submitted it the first time. Upon denial, the employer is required to email corporate documents to the DOL proving its FEIN. It then takes DOL 3-4 days to confirm the FEIN and email the employer to refile. The refiled LCA then takes another 5-7 days for certification.

Such delays on extensions of H-1B have been causing some workers to fall out of status even when their employers timely filed petitions before the worker's valid status expired.