

Specialization FAQs, Round 1

OFLC announced that effective June 1, 2008 it will centralize the filings of it applications. 73 FR 11954 (March 5, 2008). As of that date, permanent labor certification applications (PERM) will be handled by the Atlanta National Processing Center (NPC), and temporary applications (H-2A, H-2B, etc.) by the Chicago NPC. The following "Specialization FAQs" deal with issues arising as a result of this transition.

PERM Notices of Filing

Q: Part of the PERM process requires a Notice of Filing be placed, containing information enabling persons wishing to provide evidence bearing on the application to the Department. Given the transition of cases from the Chicago NPC to Atlanta NPC, what should employers list for the address of the Department on the Notice?

A: Pursuant to 20 CFR 656.10(d), an employer seeking to file an Application for Permanent Labor Certification must provide notice of the filing, either to the bargaining representative or, if there is no such bargaining representative, by posted notice to the employer' employees at the location of the employment. The notice must contain certain information, including the address of the "appropriate Certifying Officer." 20 CFR 656.10(d)(3)(iii). Because cases filed after June 1, 2008 will be filed with the Atlanta NPC, but may have been prepared under the jurisdiction of the Chicago NPC, notices prepared in connection with an application may list an NPC that does not actually receive the case. However, as long as an address for the Certifying Officer in either the Chicago or Atlanta NPC is identified on the Notice, this will be sufficient to ensure notice of the filing has been provided and an appropriate office can receive information. OFLC recommends that any application in which a "transfer" of jurisdiction is expected to take place (ie, the case might be filed before or after June 1) should list both the Chicago and Atlanta addresses.

Applications in which the posting of the Notice of Filing commences after June 1, 2008 must list the Atlanta address. Listing the Chicago NPC in addition to the Atlanta NPC, however, will not result in a denial.

Q. How does USDOL plan to transition PERM cases pending at the Chicago NPC to the Atlanta NPC?

A: As outlined in the Federal Register Notice (Vol. 73, No. 44) of March 5, 2008, effective June 1, 2008, employers who do not wish to file online at <http://www.plc.doleta.gov> must mail their PERM applications directly to the Atlanta NPC. All employers who file their PERM applications online on or after June 1, 2008, will receive case numbers with the prefix "A" and be automatically routed to the Atlanta NPC for processing. Except as outlined below, all PERM applications pending with the Chicago NPC on May 31st will be transferred to the Atlanta NPC on June 1st.

Requests for Reconsideration/Appeals

Beginning April 15th, all denial determination letters generated by the Chicago NPC will contain instructions requiring the employer to submit a request for reconsideration directly to the Atlanta NPC. In other words, denial letters generated on or after April 15th will no longer direct employers to submit requests for reconsideration to the Chicago NPC, but rather to the Atlanta NPC. The employer or the employer's authorized representative must adhere to the instructions contained in the denial letter.

The Chicago NPC will continue to receive and process all requests for reconsideration where the denial determination letter instructs the employer to submit such a request directly to the Chicago NPC. However, requests for reconsideration incorrectly submitted by the employer or the employer's authorized representative to the Chicago NPC, where the letter specified the response be submitted to the Atlanta NPC, will be date stamped as received and then forwarded by the Chicago NPC to the Atlanta NPC for processing.

The Chicago NPC will continue to process all BALCA cases through May 31st. On June 1st, the responsibility for processing all BALCA cases will be transferred to the Atlanta NPC.

Responses to Audit Letters

Beginning April 15th, all audit examination letters generated by the Chicago NPC will contain instructions requiring the employer to submit all required documentation directly to the Atlanta NPC. In other words, audit letters generated on or after April 15th will no longer direct employers to submit required documentation to the Chicago NPC, but rather to the Atlanta NPC. The employer or the employer's authorized representative must adhere to the instructions contained in the audit letter.

The Chicago NPC will continue to receive and process all audit review cases where the audit examination letter instructs the employer to submit required documentation directly to the Chicago NPC. However, requests for reconsideration incorrectly submitted by the employer or the employer's authorized representative to the Chicago NPC, where

the letter specified the response be submitted to the Atlanta NPC, will be date stamped as received and then forwarded by the Chicago NPC to the Atlanta NPC for processing.

Q. How does USDOL plan to transition H-2B cases pending at the State Workforce Agency (SWA) to the Chicago NPC?

A: As outlined in the Federal Register Notice (Vol. 73, No. 44) of March 5, 2008, and except for emergency boilermakers, entertainers, and professional athletes, employers must continue to file applications for H-2B temporary labor certification with the SWA serving the area of intended employment. For all applications filed with the SWA on or after June 1, 2008, the SWA must send completed applications to the Chicago NPC.

For H-2B applications currently under review by the SWA, the Department will implement the following transition policies:

1. If the H-2B application was filed with a SWA under the jurisdiction of the Atlanta NPC prior to June 1, 2008, and the completed application is ready for submission to the NPC prior to June 1, 2008, the SWA shall continue to send the completed application to the Atlanta NPC.
2. If the H-2B application was filed with a SWA under the jurisdiction of the Atlanta NPC prior to June 1, 2008, and the completed application is ready for submission to the NPC on or after June 1, 2008, the SWA shall continue to send the completed application to the Chicago NPC.

The Atlanta NPC will review and process all completed H-2B applications it receives from the SWA based on the transition policies outlined above.