

U.S. Department of Labor



JUL 10 2003

Employment and Training Administration
200 Constitution Avenue, N.W
Washington, D.C. 20210

Mr. Kim Berry
----- Citrus Heights, California 95621

Dear Mr. Berry:

This is in response to your recent letter to Secretary Chao concerning the H-1 B program for nonimmigrant professionals in specialty occupations.

As indicated in my response to your May 3 letter, several aspects of the H-1 B program are scheduled to terminate on September 30, 2003. Requirements such as the H-1 B visa cap and additional protections for U.S. workers will cease unless Congress passes legislation to reinstate these requirements. We anticipate that Congress will request our advice regarding what actions they should take at this important juncture for H-1B. The Department is currently considering its position regarding H-1 B, and your views will be kept in mind if the Congress requests our advice on this important issue.

In answer to your question about tracking the number of U.S. workers who have been displaced by H-1 B holders, no such tracking system exists. Congress did not mandate such a system and we do not identify and track U.S. workers who are displaced by H-1 B holders. Also, we are unaware of any entity, either public or private, that maintains information which can be utilized for this purpose. For example, unemployment insurance records which are not available on a national basis would not be accurate because many U.S. workers have been forced to leave their jobs as a result of general economic conditions, and those dislocations cannot be differentiated from those who were displaced by H-1 B holders. We are currently looking into the possibility of a sample survey to determine the impact which the H-1 B program may have on displacing U.S. workers.

The limited authority which exists under current H-1 B legislation to protect U.S. workers from being displaced by H-1B holders resides with the Department of Justice. The Department of labor only has authority to respond to a complaint from a U.S. worker if that complaint indicates that the U.S. worker is being adversely affected by the employer not living up to the agreement made on the labor Condition Application (ETA 9035). Examples include the employer paying the H-1 B worker less than the wage stated on the ETA 9035, or the employer employing the H-1 B worker in an occupation other than that shown on the ETA 9035. In such instances, the U.S. worker can make a complaint to the Wage and Hour Division of the Employment Standards Administration. Such complaints should be made to the appropriate district office of Wage and Hour. The addresses and telephone numbers of these offices can be found on our Web site at: www.dol.gov/esa.

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I certainly appreciate your frustrations with respect to the impact that the H-1 B program may have on employment opportunities for U.S. workers. We believe the Department administers this program in accordance with the current law. As indicated in our previous letter to you, the Department has recommended substantial reform of the H-1 B program for temporary foreign professionals, including requiring employers to make bona fide efforts to recruit and retain U.S. workers before hiring temporary foreign workers, and prohibiting the displacement of U.S. workers with temporary foreign workers. Until these proposed reforms are enacted by the Congress, the Department will continue to certify employer labor condition applications in accordance with the current law.

I wish to thank you for again bringing this important issue to our attention.

Sincerely,

William I. Carlson, Ph.D.
Chief
Division of Foreign labor Certification