

U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification
Frequently Asked Questions
H-2B Program: Temporary Stay of the Court's
Vacatur of 2008 Final Rule
March 2015

Question: I understand that the Department requested and received a temporary stay through April 15, 2015, of the Court's earlier order to vacate the Department's 2008 H-2B Final Rule. What does this mean for the H-2B program?

Answer: This means a temporary reprieve from the district court in the Northern District of Florida's March 4, 2015 order and judgment in *Perez v. Perez* which vacated the Department's 2008 H-2B regulations on the ground that the Department did not have authority under the Immigration and Nationality Act to issue them. That ruling left the Department without the authority to operate the H-2B program, and thus we were forced to suspend the processing of prevailing wage determinations and temporary labor certifications.

As a result of the court's order on March 18, 2015, the Department has received a temporary stay of the implementation of the vacatur order and can now temporarily resume processing prevailing wage determinations and H-2B applications through April 15, 2015. The vacatur of the Department's 2008 H-2B Final Rule will be reinstated as of April 16; therefore, under the terms of the order, any employer prevailing wage request and temporary labor certification application that has not already completed the DOL certification process by then can no longer be processed under the 2008 rule. The Departments of Labor and Homeland Security are working expeditiously on a new joint rule to govern the H-2B program that the Departments plan to promulgate by April 30th.

Question: I filed my H-2B job order with the State Workforce Agency (SWA) on or before March 5, 2015, and received notification that the SWA ceased processing my job order, as an H-2B order, due to the Court's vacatur of the Department's 2008 H-2B Final Rule. What happens to my job order now that the Court has granted a stay of the decision in *Perez v. Perez*?

Answer: On and after March 5, 2015, the SWAs were prohibited from accepting and processing job orders under the H-2B program for the purpose of complying with H-2B recruitment requirements. Now that a temporary stay of the Court's decision has been granted, the SWAs can resume accepting and processing job orders associated with the H-2B program through April 15, 2015, and employers who meet the all pre-filing requirements under the 2008 H-2B regulations can submit H-2B applications to the Chicago NPC.

Question: I am interested in applying for H-2B workers. Can I file an H-2B job order for H-2B recruitment during the stay of the Court's decision in *Perez v. Perez*?

Answer: Yes. During the temporary stay granted by the Court, employers may continue to file H-2B job orders with the SWAs for purposes of recruiting U.S. workers. In circumstances where the SWA has posted a job order prior to April 16 and remains active after the end of the temporary stay, the SWA will be required, in accordance with the terms of the Court's order, to cease processing the job order for the purpose of complying with the 2008 H-2B regulations. On or after April 16, SWAs will not be able to post job orders for purposes of complying with the 2008 H-2B program. However, employers can continue to submit job orders for the purpose of soliciting U.S. workers for job opportunities.

Question: I filed a prevailing wage request with the National Prevailing Wage Center (NPWC) prior to March 5, 2015, and it has been held in abeyance due to the Court's order. However, I understand that the Court has granted a temporary stay through April 15th. What will happen to my prevailing wage request under the H-2B program?

Answer: As soon as the Court's temporary stay order was issued on March 18, 2015, the NPWC resumed processing the prevailing wage requests under the H-2B program filed prior to the vacatur of the 2008 regulations and held in abeyance. In accordance with standard operating procedures, the NPWC resumed processing these prevailing wage requests on a First-In-First-Out basis and will make every effort to process them as expeditiously as possible up to April 15, 2015. However, because of the court's order, those requests not completed prior to April 16, 2015, cannot be processed under the 2008 H-2B rule as of that date.

Question: I filed a prevailing wage request with the NPWC during the temporary stay on or before April 15, 2015, but I have not received a determination and it is now after April 15, 2015. What will happen to my prevailing wage request?

Answer: Because of the Court's order, the Department will not be able to accept or process requests for prevailing wage determinations or applications for labor certification in the H-2B program under the 2008 rule on and after April 16, 2015.

Question: I filed my H-2B application with the Chicago NPC prior to March 5, 2015, and received notification that it is being held in abeyance due to the Court's order. However, I understand that the Court has granted a temporary stay through April 15th. What will happen to my H-2B application?

Answer: As soon as the Court's order was issued on March 18, 2015, the Chicago NPC resumed processing all H-2B applications filed prior to the vacatur of the 2008 regulations that were being held in abeyance. In accordance with standard operating procedures, the Chicago NPC will resume processing H-2B applications based on a First-In-First-Out basis as expeditiously as possible during this temporary stay through April 15, 2015. Because of the court's order, beginning on and after April 16, 2015, DOL will not be able to process applications under the 2008 H-2B rule.

Question: I filed my H-2B application after March 5, 2015, and received notification from the Chicago NPC that my application could not be accepted due to the Court's vacatur of the 2008 H-2B Final Rule. I understand that the Court has now granted a temporary stay through April 15. Will the Chicago NPC accept my H-2B application if I file before April 15?

Answer: Yes. The Chicago NPC will accept new H-2B applications filed during the Court's temporary stay until April 15, 2015, but you will need to re-submit your application for processing. However, please be aware that due to the length of the time period granted by the Court and the existing queue of applications that were filed prior to March 5, the Chicago NPC will not be able to process and issue a final determination on all applications submitted before April 15, 2015, and must stop processing applications under the 2008 H-2B rule at the end of that day.