

Adjudicator's Field Manual Chapter 22.2(b)(3)(F) – Validity of Approved Labor Certifications

(F) Validity of Approved Labor Certifications.

(i) DOL 180 Day Labor Certification Validity Period.

DOL amended its regulations at 20 CFR part 656 on May 17, 2007 with an effective date of July 16, 2007. 71 FR 27904. DOL established a 180 day validity period for individual labor certifications approved on or after July 16, 2007, as well as an implementation period for the imposition of a validity period on labor certifications that were approved prior to July 16, 2007. An approved labor certification must be submitted in support of a Form I-140 petition during the validity period of the labor certification. See 20 CFR 656.30(b).

USCIS will reject Form I-140 petitions that require an approved labor certification if the labor certification has expired, or if the Form I-140 is filed without the approved labor certification. USCIS will deny a petition that was inadvertently accepted without a required, valid labor certification.

<u>Exception</u>
USCIS will continue to accept amended or duplicate Form I-140 petitions that are filed with a copy of a labor certification that is expired at the time the amended or duplicate Form I-140 petition is filed, if the original labor certification was submitted in support of a previously filed petition during the labor certification's validity period. These filings may occur when:
• A new petition is required due to a successor-in-interest employer change;
• The petitioning employer wishes to file a new petition subsequent to the denial, revocation or abandonment of the previously filed petition, and the labor certification was not invalidated due to material misrepresentation or fraud relating to the labor certification application;
• An amended petition is filed to request a different visa classification than the visa classification requested in the previously filed petition; or
• The previously filed Form I-140 petition has been determined to have been lost by USCIS or DOS.

In accordance with 8 CFR 103.1(f)(3)(iii)(B), as in effect on February 28, 2003, petitioning employers may not file an appeal of a USCIS decision to deny a Form I-140 petition that is filed with an expired labor certification issued by DOL.

Adjudicator's Field Manual Chapter 22.2(d) – Priority Dates

(d) Priority Dates.

The priority date is used in conjunction with the Visa Bulletin issued by the Department of State (DOS) to determine when the beneficiary can apply for adjustment of status or for an immigrant visa abroad. Determining the correct priority date for an immigrant visa petition is very important. Of equal importance is making sure that the Form I-140 approval notice carries the

correct date. Another USCIS office or DOS may use the information on the approval notice to make a determination on the beneficiary's eligibility to file an application for adjustment or for a visa. Issuance of an incorrect approval notice can create problems for USCIS, other DHS entities, consular posts, petitioners, and alien beneficiaries.

(1) Determining the Priority Date.

In general, if a petition is supported by an individual labor certification issued by DOL, the priority date is the earliest date upon which the labor certification application was filed with DOL. In those cases where the alien's priority date is established by the filing of the labor certification, once the alien's Form I-140 petition has been approved, the alien beneficiary retains his or her priority date as established by the filing of the labor certification for any future Form I-140 petitions, unless the previously approved Form I-140 petition has been revoked because of fraud or willful misrepresentation. This includes cases where a change of employer has occurred; however, the new employer must obtain a new labor certification if the classification requested requires a labor certification (see the section on successor in interest).

[...]

(B) Individual Labor Certifications Filed with DOL Prior to March 28, 2005:

The priority date for a petition supported by a Form ETA-750 labor certification filed with DOL prior to March 28, 2005, is the earliest date the application for labor certification, Form ETA-750, was accepted by any office in the employment service system of DOL.

(C) Individual Labor Certifications Filed with DOL on or after March 28, 2005 :

The priority date for a petition supported by a Form ETA-9089 labor certification filed with DOL on or after March 28, 2005, is the earliest date the application for labor certification is filed with the ETA Processing Center.

(D) Re-filed Individual Labor Certifications During PERM Transition :

The priority date for a petition supported by a Form ETA-9089 labor certification that was filed with DOL on or after March 28, 2005 as a re-filed labor certification application after a withdrawal of a previously filed Form ETA-750 will be the filing date that DOL specifies in Section "O." of the Form ETA-9089. Please Note : As part of the implementation of the PERM labor certification system DOL is allowing U.S. employers who have not already had a job order placed by the SWA for labor certification applications that were filed prior March 28, 2005, to withdraw the pending Form ETA-750 labor certification application and re-file under the new PERM system. The new labor certification will be assigned a new priority date unless all of the elements relating to the job opportunity and the alien beneficiary on the newly filed Form ETA-9089 labor certification application are identical to the elements specified on the Form ETA-750 (with the exception of the prevailing wage determination.) DOL will examine the previously filed Form ETA-750 and compare it with the newly filed Form ETA-9089 to make that determination and will annotate the correct priority date in Section "O." of the Form ETA-9089.

(E) Incorrect or Disputed Priority Date Assignments by DOL for Labor Certifications Filed with DOL on or after March 28, 2005 :

There may be instances where the petitioner indicates that DOL erred by assigning a new priority date on the Form ETA-9089 even though a request for the treatment of the newly-filed Form ETA-9089 as a re-file was requested by the petitioning employer. In other cases, Section O. of the Form ETA-9089 may be blank. In such instances, it is appropriate to request a corroborative statement or other evidence from DOL that clarifies what the correct priority date should be. USCIS adjudicators will not attempt to determine whether DOL's decision to deny the re-file request and assign a priority date was in error, and assign a priority date that differs from the priority date annotated by DOL. These determinations are made by DOL.

[...]

(3) Priority Date Based on Earlier Petition .

If an alien is the beneficiary of two (or more) approved employment-based immigrant visa petitions, the priority of the earlier petition may be applied to all subsequently-filed employment-based petitions. For example:

Company A files a labor certification request on behalf of an alien ("Joe") as a janitor on January 10, 2003. The DOL issues the certification on March 20, 2003. Company A later files, and USCIS approves, a relating I-140 visa petition under the EB-3 category. On July 15, 2003, Joe files a second I-140 visa petition in his own behalf as a rocket scientist under the EB-1 category, which USCIS approves. Joe is entitled to use the January 10, 2003, priority date to apply for adjustment under either the EB- 1 or the EB-3 classification.

[...]

<http://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-6330/0-0-0-6423.html> (Accessed Aug. 16, 2012)