



**Permanent Labor Certification
Frequently Asked Questions: Appeals**
December 1, 2009

The following “Frequently Asked Questions” (FAQs) are to clarify best practices for filing a PERM appeal request with the National Processing Center (NPC). The Department of Labor (the Department) has created three distinct appeals queues. Distinguishing the type of review being sought by the employer ensures the appeal enters the correct processing appeals queue. Employers are encouraged to follow these FAQs as guidance for future appeal filings.

Question: I received a decision on my labor certification. I want to appeal the Department’s decision. What are my options for filing an appeal?

Answer: An employer currently has three options for appealing the Department’s decision:

- Request for Reconsideration, pursuant to 20 CFR 656.24(g)(1)
- Request for Review before the Board of Alien Labor Certification Appeals (BALCA), pursuant to 20 CFR 656.26(a)
- Request for Reconsideration based on alleged Department Error

Depending on the specific language used in the cover letter of the employer’s appeal, the Department will assign the appeal request to the appropriate appeals queue.

Question: I would like the NPC to reconsider its decision on my labor certification application. What should I include in my appeal to receive NPC reconsideration on my application?

Answer: An employer’s cover letter should make the reconsideration request by explicitly using the term “reconsideration” to ensure proper classification of the appeal. If an employer’s appeal request does not indicate which type of appeal is being sought, the NPC will assume the appeal is a request for reconsideration and the appeal will enter the request for reconsideration appeals queue.

Question: I filed an application that was denied based on incorrect or missing information on the ETA Form 9089. I would like to correct the errors and appeal the denial. How should I file this appeal to notify the NPC of my request?

Answer: An employer may, in limited circumstances as outlined below, make corrections to the denied application and appeal the denial by requesting reconsideration within 30 days from the date of issuance of the denial. An employer

only may make corrections to a denied application and appeal the decision if the incorrect or missing information is the result of a typographical error or oversight and the correction is supported by documentation that existed at the time the Application for Permanent Labor Certification was filed (e.g., tear sheet or other advertisements, notice of filing, prevailing wage determination, etc.). This documentation will be accepted for reconsideration only if the employer did not have an opportunity to present the documentation previously (e.g., in response to an audit notification letter or other such request by the Certifying Officer). Requests for reconsideration will be adjudicated in the reconsideration appeals queue. If the CO chooses to uphold the decision the application will be forwarded to BALCA. If the CO chooses to overturn the decision the application will be processed according to Department procedures.

Question: If I file a request for reconsideration and the NPC upholds its decision, what happens to my appeal request?

Answer: If the NPC upholds its decision, the appeal is automatically forwarded to BALCA for review. The NPC will create an appeal file for BALCA and will send a copy of the appeal file to the employer.

Question: May I concurrently file a request for reconsideration before the NPC and request for review before BALCA?

Answer: If an employer files a cover letter requesting multiple forms of appeal, the NPC will first process the appeal as a request for reconsideration. If the NPC upholds its decision, the appeal file will be sent to BALCA for review.

Question: For future cases, how will I know if my case was forwarded to BALCA?

Answer: An employer will receive a copy of the appeal file from the Department, which will serve as notification to the employer that the NPC has upheld its decision and the case has been forwarded to BALCA for review.

Question: I do not want the NPC to reconsider its decision. I would like only BALCA to review my appeal. How do I file a request for review solely before BALCA?

Answer: An employer's cover letter should expressly include the terms "request for review" to notify the NPC of the desired request for only BALCA review. Upon receipt of the request for review, the NPC will assemble and send the appeal file to BALCA. A copy of the NPC assembled appeal file will be sent to the employer, as well.

Question: I previously submitted a request for reconsideration before the NPC. Now I only want BALCA review. Can I now change my case's appeal classification from a request for reconsideration to a request for BALCA review?

Answer: No. Once the appeal request enters the request for reconsideration appeal queue, the case may not be reclassified. If the NPC upholds its decision, the appeal case will be forwarded to BALCA for review.

Question: I received a decision of my labor certification application for what I believe is a Department error. How should I file an appeal claiming a Department error?

Answer: In general, a Department error may be a denial due to a data entry error or a denial for failure to respond to an audit where the employer has proof of its audit response or proof it never received an audit request letter. If you believe your application was inadvertently denied on this type of basis, the employer's cover letter must clearly state that the basis for the appeal is an alleged Department error. The Department suggests a brightly colored cover sheet stating that the appeal is being filed because the employer believes that the Department error is the sole reason for the denial. If accepted as a Department error, the appeal will go to the Department error appeals queue and be processed accordingly.

Question: What happens to my Department error appeal if the Department does not agree that it made an error in its decision?

Answer: The Department determines what constitutes a Department error. It is possible that the Department denial will list several reasons for a denial, with only one that is based on a Department error. Each ground for appeal is viewed by the Department individually. If the decision contains additional grounds that are not based on Department error, or if the Department does not agree there is a Department error, the Department will process the appeal as a request for reconsideration and place the appeal in the NPC reconsideration appeals queue.

Question: Prior to the issuance of this FAQ I submitted an appeal with the NPC. How can I find out in which queue my appeal request is?

Answer: An employer may inquire about the status of an appeal through the Help Desk either via email at PLC.Atlanta@dol.gov or mailing a letter requesting the status of the appeal to the Atlanta National Processing Center at: U.S. Department of Labor, Employment & Training Administration, Atlanta National Processing Center, Harris Tower, 233 Peachtree Street, Suite 410, Atlanta, GA 30303.