

This is an unedited response from DOL. The section on protections that apply to **less than one percent** of employers is highlighted in **RED**. In other words, DOL permits 99% of employers to displace American workers with foreigners, hire foreign workers without recruiting Americans, and hire foreigners even when Americans who are **more** qualified are available and need a job.

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April 18, 2003

Joseph Valley

Dear Mr. Valley:

This is in response to your email correspondence by which you inquired about the H1-B regulations which require that employers recruit American workers first over H1-B employees.

Foreign workers are allowed to temporarily enter the United States for employment under the provisions of the Immigration and Nationality Act (INA). The H-1B provisions of the INA allow employers to hire foreign workers to work in the U.S. for up to six years in a specialty occupation (generally speaking an occupation requiring a four-year college degree). These employers must file a Labor Condition Application (LCA)(form ETA 9035 or 9035E) and attest (promise) to meet certain conditions. These conditions include payment of the required wage rate (the higher of the local prevailing wage or the actual wage paid by the employer to other workers) to H-1B workers and public notification of the intent to employ H-1B workers.

The INA also requires that certain employers undertake additional attestation obligations to:

- (1) Not displace any of its own U.S. employees;
- (2) Not place an H-1B at another employer's worksite without making an Inquiry as whether the other employer has displaced or will displace any of its Own U.S. employees;
- (3) Recruit U.S. workers; and

(4) Offer the job to any U.S. worker who applied who is equally or better qualified than the H-1B worker whom the employer seeks to employ.

These additional requirements apply only to that small subset of businesses using an LCA filed after January 19, 2001 (the effective date of these additional provisions), who are “H-1B-dependent” (generally employers who employ a significant number of H-1B, e.g., 15% of their total workforce). These requirements do not apply to the employer mentioned in your letter, since the employer is not H-1B dependent.

The Department and other agencies involved in immigration related programs strive to protect the interest of U.S. workers to the extent authorized by Federal law. The INA requires an investigation of a complaint filed by an aggrieved person or organization if there is a reasonable cause to believe that the H-1B employer failed to meet one of the applicable LCA attestations or misrepresented a material fact on the LCA.

The information in your letter indicates that you have no evidence of a violation of the H-1B requirements has occurred. Consequently, we are not able to do the investigation you request. If you have evidence that the employer you cite is H-1B dependent and you were displaced by the employer’s hiring of an H-1B worker or you were not offered a job after making application, please contact your nearest Wage and Hour office to file a complaint.

You may also wish to contact the Office of Special Counsel at P.O. Box 27728, Washington, DC 20038. That office administers several statutes concerning employment discrimination based on national origin, citizenship status, and immigration document abuse. Their telephone number and internet address: 1-800-255-7688 or USDOJ.gov/crt/osc. We trust that the above information is responsive to your request.

Sincerely,

Susana Rincon
Assistant District Director