

Minding Your Hs and Ls

43rd Annual Conference on Immigration and Nationality Law

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RFEs: The Smell of Burning Popcorn

The sharp escalation of RFE rates in H-1B adjudications requires a different approach from the outset of a case to get the best results.

- Setting client expectations appropriately
- Extra attention to what is or is not included in an initial filing
- Preparing the filing with potential litigation in mind



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Whose Form Is It Anyway?

DOL may be responsible for creating and processing the Labor Condition Application forms, but USCIS isn't overly concerned about respecting the DOL's turf

- RFEs targeting LCA-centric issues like appropriateness of wage levels are encouraged
- Some adjudicators don't appear to understand the LCA form layout and instructions
- USCIS also tends to cherry-pick DOL reference materials even when their plain meaning is unhelpful to them

Prevailing Wages Aren't Just for PERM

When advance planning allows, using a formal PWD from DOL may not be as crazy as it can initially seem

- Particularly helpful in cases where the match between the job description and SOC code is unclear or complicated
- Simplifies the process of rebutting RFEs about wage level, but unfortunately cannot avoid them entirely
- Lengthy processing time limits the availability of the option, but it can be started even if no employee/candidate is in the picture yet

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