

**When a beneficiary will be placed at a third-party worksite – PM-602-0157  
February 22, 2018 (hereinafter referred to as PM-602-0157)**

H-1B Petitioner MUST provide the following:

1. The submission of third-party contracts between Petitioner and End-Client is REQUIRED AT THE TIME OF FILING. The PM-602-0157 does not make clear whether contracts with middle vendors, between two or more middle vendors, or between middle vendor and end-client, are required  
Safe Harbor: Provide all contracts between all parties within the chain between the Petitioner and the location where the beneficiary will perform the job duties identified in the I-129 Petition. If necessary, Contracts OTHER THAN those between Petitioner and End-Client (no middle vendor), may be redacted, to maintain confidentiality of sensitive information.
2. Specific and non-speculative qualifying assignments in a specialty occupation for the beneficiary for the entire time requested on the petition.  
Safe Harbor: Consider requesting a validity period for the period identified in the Contract between Petitioner and End-Client, or in any intermediary vendor contracts. Although USCIS has the discretion to limit the validity period requested they can also deny the petition if you are unable to support the immigration benefit requested. The Petitioner has the burden to show that they are entitled to the immigration benefit sought in the petition. The PM-602-0157 does not make a clear statement that petitions that request validity periods longer than that supported by the submitted documentation will be denied without issuance of an RFE, contrary to No. 3. below.
3. Examples of corroborating evidence that demonstrates there is a specific work assignment for the H-1B Beneficiary:
  - a. Evidence of actual work assignments, which may include technical documentation, milestone tables, marketing analysis, cost-benefit analysis, brochures, and funding documents.  
Safe Harbor: provide as many of these as possible for both the petitioner, the end-client and the middle vendors, if any. If one or more of these is not available for any involved party, an explanation should be provided as to why. See sample letter attached hereto. See attached sample Exhibit letter attached hereto.
  - b. Copies of relevant, signed contractual agreements between the petitioner and all other companies involved in the beneficiary's placement, if the petitioner has not directly contracted with the third-party worksite.  
Safe Harbor: In the past middle vendors have been reluctant or refused to provide their contractual agreements. Based on PM-602-0157 it should be expected that if they are not submitted an RFE will be issued for same. If necessary Redacted versions of the middle vendor contracts should be provided accompanied with a cover letter informing of the reason for redaction and contact information for an authorized representative of the middle-vendor in the event USCIS needs to contact them.
  - c. Copies of detailed statements of work or work orders signed by an authorized official of the ultimate end-client company where the work will actually be performed by the beneficiary. The statement should detail the specialized duties the beneficiary will perform, the qualifications that are required to perform the job duties, the duration of the job, and the hours to be worked.  
Safe Harbor: Provide as detailed above.

- d. A letter signed by an authorized official of each ultimate end-client company where the beneficiary will actually work. The letter should provide information, such as a detailed description of the specialized duties the beneficiary will perform, the qualifications required to perform those duties, the duration of the job, salary or wages paid, hours worked, benefits, a detailed description of who will supervise the beneficiary and the beneficiary's duties, and any other related evidence.  
Safe Harbor: See 2. Above.
4. The submission of a Letter from the company where the Beneficiary will perform the job duties detailed in the petition (End-Client Letter) IS REQUIRED.  
Safe Harbor: End-Client Letter must be in place at the time of filing. USCIS is not required to issue an RFE requesting the End-Client letter. Pursuant to regulations, USCIS has the discretion to deny the petition based on the filing. Given the tenor and detail of the above-referenced PM-602-0157, and current adjudicative trends, petitions for third-party worksite that do not "submit corroborating evidence or otherwise demonstrate that there is a specific work assignment for the H-1B beneficiary, **USCIS may deny the petition.**" (Page 4 of the PM-602-0157). Adjudicators may deny the petition if the petitioner fails to provide an itinerary, either **with the initial petition** or in response to a Request for Evidence." (Page 4 of the PM-602-0157). At a minimum the End-Client letter (We can provide a sample template) should contain the following:
- The dates of each service or engagement;
  - The names and addresses of the ultimate employer(s);
  - The names, addresses (including floor, suite, and office) and telephone numbers of the locations where the services will be performed for the period of time requested; and attach
  - Corroborating evidence for all of the above.
- Sage Harbor: Historically End-Clients have been reticent to provide an End-Client letters and if they did, nothing more. Based on the tenor of PM-602-0157 and current adjudicative trends, failing to submit documentation that proves the information above could lead to a denial without an RFE. The PM-602-0157 identifying the information to be provided in the End-Client letter and then concluding with a request for corroborating evidence for all of the above, implies that a statement on company letterhead is not going to be sufficient to reach the threshold of proof required of the Petitioner. The End-Client, and each Middle Vendor, if any, will have to provide documents that corroborate each item of the End-Client Letter. The PM-602-0157 does not provide suggested evidence that USCIS will deem corroborating. The guidance here would be to provide the same evidence that the Petitioner would submit to prove similar statements. For e.g. an organizational chart of the End-Client would show the position and title of the person signing on behalf of the End-Client; Lease Agreements, Deeds, web-site printouts or other publicly available information, showing the End-Client business location; reviews
5. Contracts as evidence to demonstrate the employer will maintain an employer-employee relationship with the beneficiary for the duration of the requested validity period.  
Safe Harbor: Contractual Agreements between petitioner and beneficiary should be provided and should include language that contemplates the third-party client assignment and the possibility of intermediary vendors. Regardless of which the employee is and shall remain an employee of the petitioner and report directly to the petitioner for the validity period requested unless earlier

terminated through resignation or termination.<sup>1</sup> Contracts between Petitioner and End-Client and/or Petitioner and Middle-Vendor(s) should be provided that expressly identify the preservation of the employer-employee relationship between Petitioner and Beneficiary<sup>2</sup>

6. Title 8 CFR 214.2(h)(2)(i)(B) requires petitioners to file an itinerary with a petition that requires services to be performed in more than one location.

Safe Harbor: Although a strict reading of this regulation would imply that if the LCA contains only one (1) work location then the regulation does not apply, it is recommended that the petitioner provide an Itinerary as discussed in detail above. The PM-602-0157 suggests that the itinerary can be contained in the End-Client letter.

7. **RENEWALS – “If an H-1B petitioner is applying to extend H-1B employment for a beneficiary who was placed at one or more third-party worksites during the course of past employment with the same petitioner, that petitioner should also establish that the H-1B requirements have been met for the entire prior approval period. This includes establishing that the beneficiary worked in the specialty occupation, that he or she was paid the required wage, and that the employer maintained the right to control the beneficiary’s employment.”**

Safe Harbor: This is a drastic departure previous policy. The requirement was limited to a showing of maintenance of status by presenting the three most recent pay-stubs. Based on the above language, W-2s for all prior years of employment with the petitioner and where the prior validity period did not cover a full calendar year pay stubs should be provided. The PM-602-0157 does not provide guidance or suggested “corroborating evidence” for establishing that the beneficiary worked in the specialty occupation, that he or she was paid the required wage, and that the employer maintained the right to control the beneficiary’s employment. As such any and all evidence that can be provided should be provided. For example, telephone logs, e-mails, written correspondence, and travel records, to show the supervision of the employee while at the work site. If the Beneficiary will continue during the renewal validity period with the current End-Client letter, the End-Client letter should include a detailed statement with respect to the work dates and hours of the Beneficiary. If a contemporaneous record system is kept by the petitioner and/or the End-Client, for the time the beneficiary worked, same should be provided. Examples of Work Product (redacted where necessary for proprietary or corporate confidentiality concerns) produced by the Beneficiary. This is not an exclusive nor exhaustive list. As much information that can be provided should be provided.

---

<sup>1</sup> This should not be taken as legal advice as to the terms of an Employment Agreement as it is not provided as same and drafter of this document specifically advises that competent legal representation regarding Employment Agreements. The recipient of this document, by receiving and reviewing same expressly indemnifies and holds harmless Mar Taylor Esq. and Taylor & Associates Law P.C. for any and all harm that may arise from recipient’s utilization of this document.

<sup>2</sup> See footnote 1 above.