

(49) *Yard Workers* maintain the grounds of private residences in good order by performing such tasks as mowing and watering lawns, planting flowers and shrubs, and repairing and painting fences. They work on the instructions of private employers.

(c) *Requests for waivers from Schedule B.* Any employer who desires a labor certification involving a *Schedule B* occupation may request such a waiver by submitting a written request along with the *Application for Alien Employment Certification* form at the appropriate local employment service office pursuant to § 656.23.

(d) The Administrator may revise *Schedule B* from time to time on the Administrator's own initiative, upon the request of a Regional Administrator, Employment and Training Administration, or upon the written request of any other person which sets forth reasonable grounds therefor. Such requests should be mailed to the Administrator, United States Employment Service, room 8000, Patrick Henry Building, 601 D Street, NW., Washington, DC 20213.

[45 FR 83933, Dec. 19, 1980, as amended at 56 FR 54927, Oct. 23, 1991]

Subpart C—Labor Certification Process

§ 656.20 General filing instructions.

(a) A request for a labor certification on behalf of any alien who is required by the Act to become a beneficiary of a labor certification in order to obtain permanent resident status in the United States may be filed as follows:

(1) Except as provided in paragraphs (a)(2) through (4) of this section, an application for a labor certification shall be filed pursuant to this section and § 656.21.

(2) An employer seeking a labor certification for an occupation designated for special handling shall apply for a labor certification pursuant to this section and § 656.21a.

(3) An alien seeking labor certification for an occupation listed on *Schedule A* may apply for a labor certification pursuant to this section and § 656.22.

(4) An employer seeking a labor certification for an occupation listed on *Schedule B* shall apply for a waiver and a labor certification pursuant to this section and §§ 656.21 and 656.23.

(b) (1) Aliens and employers may have agents represent them throughout the labor certification process. If an alien and/or an employer intends to be represented by an agent, the alien and/or the employer shall sign the statement set forth on the *Application for Alien Employment Certification* form: That the agent is representing the alien and/or employer and that the alien and/or employer takes full responsibility for the accuracy of any representations made by the agent.

(2) Aliens and employers may have attorneys represent them. Each attorney shall file a notice of appearance on Immigration and Naturalization Service (INS) Form G-28, naming the attorney's client or clients. Whenever, under this part, any notice or other document is required to be sent to an employer or alien, the document shall be sent to their attorney or attorneys who have filed notices of appearance on INS Form G-28, if they have such an attorney or attorneys.

(3) (i) It is contrary to the best interests of U.S. workers to have the alien and/or agents or attorneys for the alien participate in interviewing or considering U.S. workers for the job offered to the alien. As the beneficiary of a labor certification application, the alien cannot represent the best interests of U.S. workers in the job opportunity. The alien's agent and/or attorney cannot represent the alien effectively and at the same time truly be seeking U.S. workers for the job opportunity. Therefore, the alien and/or the alien's agent and/or attorney may not interview or consider U.S. workers for the job offered to the alien, unless the agent and/or attorney is the employer's representative as described in paragraph (b)(3)(ii) of this section.

(ii) The employer's representative who interviews or considers U.S. workers for the job offered to the alien shall be the person who normally interviews or considers, on behalf of the employer, applicants for job opportunities such as that offered to the alien, but which do not involve labor certifications.

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(4) No person under suspension or disbarment from practice before the United States Department of Justice's Board of Immigration Appeals pursuant to 8 CFR 292.3 shall be permitted to act as an agent, representative, or attorney for an employer and/or alien under this part.

(c) Job offers filed on behalf of aliens on the *Application for Alien Employment Certification* form must clearly show that:

(1) The employer has enough funds available to pay the wage or salary offered the alien;

(2) The wage offered equals or exceeds the prevailing wage determined pursuant to § 656.40, and the wage the employer will pay to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work;

(3) The wage offered is not based on commissions, bonuses or other incentives, unless the employer guarantees a wage paid on a weekly, bi-weekly, or monthly basis;

(4) The employer will be able to place the alien on the payroll on or before the date of the alien's proposed entrance into the United States;

(5) The job opportunity does not involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap, or citizenship;

(6) The employer's job opportunity is not:

(i) Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute involving a work stoppage; or

(ii) At issue in a labor dispute involving a work stoppage;

(7) The employer's job opportunity's terms, conditions and occupational environment are not contrary to Federal, State or local law; and

(8) The job opportunity has been and is clearly open to any qualified U.S. worker.

(9) The conditions of employment listed in paragraphs (c) (1) through (8) of this section shall be sworn (or affirmed) to, under penalty of perjury pursuant to 28 U.S.C. 1746, on the *Application for Alien Employment Certification* form.

(d) If the application involves labor certification as a physician (or surgeon) (except a physician (or surgeon) of international renown), the labor certification application shall include the following documentation:

(1) (i) Documentation which shows clearly that the alien has passed parts I and II of the National Board of Medical Examiners Examination (NBME), or the Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS) offered by the Educational Commission for Foreign Medical Graduates (ECFMG); or

(ii) Documentation which shows clearly that:

(A) The alien was on January 9, 1978, a doctor of medicine fully and permanently licensed to practice medicine in a State within the United States;

(B) The alien was on January 9, 1978, practicing medicine in a State within the United States; or

(iii) The alien is a graduate of a school of medicine accredited by a body or bodies approved for the purpose by the Secretary of Education or that Secretary's designee (regardless of whether such school of medicine is in the United States).

(e) Whenever any document is submitted to a State or Federal agency pursuant to this part, the document either shall be in the English language or shall be accompanied by a written translation into the English language, certified by the translator as to the accuracy of the translation and his/her competency to translate.

(f) The forms required under this part for applications for labor certification are available at U.S. Consular offices abroad, at INS offices in the United States, and at local offices of the State; job service agencies. The forms will contain instructions on how to comply with the documentation requirements for applying for a labor certification under this part.

(g)(1) In applications filed under §§ 656.21 (Basic Process), 656.21a (Special Handling) and 656.22 (Schedule A), the employer shall document that notice of the filing of the Application for Alien Employment Certification was provided:

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(i) To the bargaining representative(s) (if any) of the employer's employees in the occupational classification for which certification of the job opportunity is sought in the employer's location(s) in the area of intended employment.

(ii) If there is no such bargaining representative, by posted notice to the employer's employees at the facility or location of the employment. The notice shall be posted for at least 10 consecutive days. The notice shall be clearly visible and unobstructed while posted and shall be posted in conspicuous places, where the employer's U.S. workers can readily read the posted notice on their way to or from their place of employment. Appropriate locations for posting notices of the job opportunity include, but are not limited to, locations in the immediate vicinity of the wage and hour notices required by 20 CFR 516.4 or occupational safety and health notices required by 20 CFR 1903.2(a).

(2) In the case of a private household, notice is required under this paragraph (g) only if the household employs one or more U.S. workers at the time the application for labor certification is filed with a local Employment Service office.

(3) Any notice of the filing of an Application for Alien Employment Certification shall:

(i) state that applicants should report to the employer, not to the local Employment Service office;

(ii) State that the notice is being provided as a result of the filing of an application for permanent alien labor certification for the relevant job opportunity; and

(iii) State that any person may provide documentary evidence bearing on the application to the local Employment Service Office and/or the regional Certifying Officer of the Department of Labor.

(4) If an application is filed under § 656.21 and does not involve a request for reduction in recruitment, the notice shall be provided in conjunction with the recruitment required under § 656.21(f) of this part, shall contain the information required for advertisements by §§ 656.21 (g)(3) through (g)(8), and shall contain the information re-

quired by paragraph (g)(3) of this section.

(5) If an application is filed under the reduction in recruitment provisions at § 656.21(i) of this part, the notice does not have to be posted in conjunction with the recruitment required under § 656.21(f) of this part, but shall include the information required for advertisements by §§ 656.21 (g)(3) through (g)(8), and the requirements of paragraph (g)(3) of this section;

(6) If an application is filed on behalf of a college and university teacher pursuant to § 656.21a(a)(1)(iii) of this part, the notice shall include the information required for advertisements by § 656.21a(a)(1)(iii)(B), and the requirements of paragraph (g)(3) of this section.

(7) If an application is filed on behalf of an alien represented to be of exceptional ability in the performing arts, the notice required by this paragraph (g) shall include the information required for advertisements by §§ 656.21a(a)(iv)(B) (1) through (7) of this part, and the requirements of paragraph (g)(3) of this section.

(8) If an application is filed under the Schedule A procedures at § 656.22 of this part, the notice shall contain a description of the job and rate of pay, and the requirements of paragraphs (g)(3) (ii) and (iii) of this section.

(h)(1)(i) Any person may submit to the local Employment Service office or to the Certifying Officer documentary evidence bearing on an application for permanent alien labor certification filed under the basic labor certification process at § 656.21 of this part or under the special handling procedures at § 656.21a of this part.

(ii) Documentary evidence submitted pursuant to paragraph (h)(1)(i) of this section may include information on available workers, information on wages and working conditions, and information on the employer's failure to meet terms and conditions with respect to the employment of alien workers and co-workers. The Certifying Officer shall consider this information in making his or her determination.

(2)(ii) Any person may submit to the appropriate INS office documentary evidence of fraud or willful misrepresentation in a Schedule A application

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filed under § 656.22 of this part or a shepherd application filed under § 656.21a(b) of this part.

(B) Documentary evidence submitted pursuant to paragraph (h)(2)(i) of this section shall be limited to information relating to possible fraud or willful misrepresentation. The INS may consider this information pursuant to § 656.31 of this part.

(Approved by the Office of Management and Budget under control number 1205-0015)

[45 FR 83933, Dec. 19, 1980, as amended at 49 FR 18295, Apr. 30, 1984; 56 FR 54927, Oct. 23, 1991]

§ 656.21 Basic labor certification process.

(a) Except as otherwise provided by §§ 656.21a and 656.22, an employer who desires to apply for a labor certification on behalf of an alien shall file, signed by hand and in duplicate, a Department of Labor *Application for Alien Employment Certification* form and any attachments required by this part with the local Employment Service office serving the area where the alien proposes to be employed. The employer shall set forth on the *Application for Alien Employment Certification* form, as appropriate, or in attachments:

(1) A statement of the qualifications of the alien, signed by the alien;

(2) A description of the job offer for the alien employment, including the items required by paragraph (b) of this section; and

(3) If the application involves a job offer as a live-in household domestic service worker:

(i) A statement describing the household living accommodations;

(ii) Two copies of the employment contract, each signed and dated by both the employer and the alien (not by their agents). The contract shall clearly state:

(A) The wages to be paid on an hourly and weekly basis;

(B) Total hours of employment per week, and exact hours of daily employment;

(C) That the alien is free to leave the employer's premises during all non-work hours except that the alien may work overtime if paid for the overtime at no less than the legally required hourly rate;

(D) That the alien will reside on the employer's premises;

(E) Complete details of the duties to be performed by the alien;

(F) The total amount of any money to be advanced by the employer with details of specific items, and the terms of repayment by the alien of any such advance by the employer;

(G) That in no event shall the alien be required to give more than two weeks' notice of intent to leave the employment contracted for and that the employer must give the alien at least two weeks' notice before terminating employment;

(H) That a duplicate contract has been furnished to the alien;

(I) That a private room and board will be provided at no cost to the worker; and

(J) Any other agreement or conditions not specified on the *Application for Alien Employment Certification* form; and

(iii) (A) Documentation of the alien's paid experience in the form of statements from past or present employers setting forth the dates (month and year) employment started and ended, hours of work per day, number of days worked per week, place where the alien worked, detailed statement of duties performed on the job, equipment and appliances used, and the amount of wages paid per week or month. The total paid experience must be equal to one full year's employment on a full-time basis. For example, two year's experience working half-days is the equivalent of one year's full time experience. Time spent in a household domestic service training course cannot be included in the required one year of paid experience.

(B) Each statement must contain the name and address of the person who signed it and show the date on which the statement was signed. A statement not in the English language shall be accompanied by a written translation into the English language certified by the translator as to the accuracy of the translation, and as to the translator's competency to translate.

(b) Except for labor certification applications involving occupations designated for special handling (see § 656.21a) and *Schedule A* occupations