

§ 656.22

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paragraph (b), the Immigration or Consular Officer shall indicate on the *Application for Alien Employment Certification* form the occupation, the immigration or consular office which made the determination pursuant to this paragraph (b), and the date of the determination (see § 656.30 of this part for the significance of this date). The Immigration or Consular Officer then shall forward promptly to the Director copies of the *Application for Alien Employment Certification* form, without the attachments.

(c) If an application for a college or university teacher, an alien represented to be of exceptional ability in the performing arts, or a shepherd does not meet the requirements for an occupation designated for special handling under this section, the application may be filed pursuant to § 656.21.

(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 54928, Oct. 23, 1991]

§ 656.22 Applications for labor certification for Schedule A occupations.

(a) An employer shall apply for a labor certification for a Schedule A occupation by filing an Application for Alien Employment Certification in duplicate with the appropriate Immigration and Naturalization Service office, not with the Department of Labor or a State Employment Service office.

(b) The Application for Alien Employment Certification form shall include:

(1) Evidence of prearranged employment for the alien beneficiary by having an employer complete and sign the job offer description portion of the application form. There is, however, no need for the employer to provide the other documentation required under § 656.21 of this part for non-Schedule A occupations.

(2) Evidence that notice of filing the application for Alien Employment Certification was provided to the bargaining representative or the employer's employees as prescribed in § 656.20(g)(3) of this part.

(c) An employer seeking labor certification under Group I of Schedule A shall file, as part of its labor certifi-

cation application, documentary evidence of the following:

(1) An employer seeking Schedule A labor certification for an alien to be employed as a physical therapist (§ 656.10(a)(1) of this part) shall file as part of its labor certification application a letter or statement signed by an authorized State physical therapy licensing official in the State of intended employment, stating that the alien is qualified to take that State's written licensing examination for physical therapists. Application for certification of permanent employment as a physical therapist may be made only pursuant to this § 656.22 and not pursuant to §§ 656.21, 656.21a, or 656.23 of this part.

(2) An employer seeking a Schedule A labor certification as a professional nurse (§ 656.10(a)(2) of this part) shall file, as part of its labor certification application, documentation that the alien has passed the Commission on Graduates of Foreign Nursing Schools (CGFN) Examination; or that the alien holds a full and unrestricted (permanent) license to practice nursing in the State of intended employment. Application for certification of employment as a professional nurse may be made only pursuant to this § 656.22(c), and not pursuant to §§ 656.21, 656.21a, or 656.23 of this part.

(d) An employer seeking labor certification on behalf of an alien under Group II of Schedule A shall file, as part of its labor certification application, documentary evidence testifying to the widespread acclaim and international recognition accorded the alien by recognized experts in their field; and documentation showing that the alien's work in that field during the past year did, and the alien's intended work in the United States will, require exceptional ability. In addition, the employer shall file, as part of the labor certification application, documentation concerning the alien from at least two of the following seven groups:

(1) Documentation of the alien's receipt of internationally recognized prizes or awards for excellence in the field for which certification is sought.

(2) Documentation of the alien's membership in international associations, in the field for which certification is sought, which require outstanding achievement of their members, as judged by recognized international experts in their disciplines or fields.

(3) Published material in professional publications about the alien, relating to the alien's work in the field for which certification is sought, which shall include the title, date, and author of such published material.

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which certification is sought.

(5) Evidence of the alien's original scientific or scholarly research contributions of major significance in the field for which certification is sought.

(6) Evidence of the alien's authorship of published scientific or scholarly articles in the field for which certification is sought, in international professional journals or professional journals with an international circulation.

(7) Evidence of the display of the alien's work, in the field for which certification is sought, at artistic exhibitions in more than one country.

(e) An Immigration Officer shall determine whether the employer and alien have met the applicable requirements of § 656.20 of this part, of this section, and of Schedule A (§ 656.10 of this part); shall review the application; and shall determine whether or not the alien is qualified for and intends to pursue the Schedule A occupation.

(1) The Immigration Officer may request an advisory opinion as to whether the alien is qualified for the Schedule A occupation from the Division of Foreign Labor Certifications, United States Employment Service, Washington, DC 20210.

(2) The Schedule A determination of INS shall be conclusive and final. The employer, therefore, may not make use of the review procedures at § 656.26 of this part.

(f) If the alien qualifies for the occupation, the Immigration Officer shall indicate the occupation on the Application for Alien Employment Certification form. The Immigration Officer

then shall promptly forward a copy of the Application for Alien Employment Certification form, without attachments, to the Director, indicating thereon the occupation, the Immigration Officer who made the Schedule A determination, and the date of the determination (see § 656.30 of this part for the significance of this date).

[56 FR 54929, Oct 23, 1991]

§ 656.23 Applications for labor certifications for Schedule B occupations; requests for waivers from Schedule B.

(a) Occupations listed on *Schedule B* require little or no education or experience, and employees can be trained quickly to perform them satisfactorily. In addition, many of these occupations are entry jobs in their industries which offer opportunities for high school graduates and other U.S. workers who otherwise would have difficulty finding their first employment and gaining work experience. The Director has determined that there is generally a nationwide surplus of U.S. workers who are available for and who can qualify for *Schedule B* job opportunities which offer prevailing wages and working conditions.

(b) Some of the occupations on *Schedule B* are also often characterized by relatively low wages, long and irregular working hours, and poor working conditions which lead to excessive turnover. In most instances, the Director has determined through past experience that the employment of aliens has failed to resolve such employment problems since the aliens, like U.S. workers, often quickly move to other jobs. This results in an adverse effect upon the wages and working conditions of U.S. workers who are employed in occupations which require similar education and experience.

(c) Therefore, the Director has determined that for occupations listed on *Schedule B* U.S. workers are generally available throughout the United States, and that the employment of aliens in *Schedule B* occupations will generally adversely affect the wages and working conditions of U.S. workers similarly employed.