

Subpart A—Purpose and Scope of Part 656

§ 656.1 Purpose and scope of part 656.

(a) Under section 212(a)(5)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(5)(A)) certain aliens may not obtain a visa for entrance into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

(1) There are not sufficient United States workers, who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work, and

(2) The employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

(b) The regulations under this part set forth the procedures whereby such immigrant labor certifications may be applied for, and given or denied.

(c) Correspondence and questions concerning the regulations in this part should be addressed to: Division of Foreign Labor Certifications, United States Employment Service, Department of Labor, Washington, DC 20210.

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

§ 656.2 Description of the Immigration and Nationality Act and of the Department of Labor's role thereunder.

(a)(1) *Description of the Act.* The Immigration and Nationality Act (Act) (8 U.S.C. 1101 *et seq.*) regulates the admission of aliens into the United States. The Act designates the Attorney General and the Secretary of State as the principal administrators of its provisions.

(2) The Immigration and Naturalization Service (INS) performs most of the Attorney General's functions under the Act. See 8 CFR 2.1.

(3) The consular offices of the Department of State throughout the world are generally the initial contact for aliens in foreign countries who wish to come to the United States. These offices determine the type of visa for

which an alien may be eligible, obtain visa eligibility documentation, and issue visas.

(b) *Burden of Proof under the Act.* Section 291 of the Act (8 U.S.C. 1361) states in pertinent part, that:

Whenever any person makes application for a visa or any other documentation required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not subject to exclusion under any provision of this Act * * *.

(c)(1) *Role of the Department of Labor.* The role of the Department of Labor under the Act derives from section 212(a)(5)(A) (8 U.S.C. 1182(a)(5)(A)), which provides that any alien who seeks admission or status as an immigrant for the purpose of employment under paragraph (2) or (3) of section 203(b) of the Act shall be excluded unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

(i) There are not sufficient United States workers, who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(ii) The employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(2) The certification is referred to in this part 656 as a "labor certification".

(3) The Department of Labor issues labor certifications in two instances: For the permanent employment of aliens; and for temporary employment of aliens in the United States classified under 8 U.S.C. 1101(a)(15)(H)(ii) pursuant to regulations of the Immigration and Naturalization Service at 8 CFR 214.2(h)(4) and sections 101(a)(15)(H)(ii), 214, and 218 of the Act. See 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188. The Department also administers attestation and labor condition application programs relating to the admission and/or work authorization of the following nonimmigrants: registered nurses (H-1A visas), professionals (H-1B visas), crewmembers performing longshore work (D visas), and students (F-1

Employment and Training Administration, Labor

§ 656.3

visas), classified under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1101(a)(15)(H)(i)(b), 1101(a)(15)(D), and 1101(a)(15)(F), respectively. See also 8 U.S.C. 1184 (c), (m), and (n), and 1288; and Public Law 101-649 section 221, 8 U.S.C. 1184 note. The regulations under this part 656 apply only to labor certifications for permanent employment.

[56 CFR 54927, Oct. 23, 1991]

§ 656.3 Definitions, for purposes of this part, of terms used in this part.

Act means the Immigration and Nationality Act, as amended, 8 U.S.C. 1101 et seq.

Administrative Law Judge means an official appointed pursuant to 5 U.S.C. 3105.

Agent means a person who is not an employee of an employer, and who has been designated in writing to act on behalf of an alien or employer in connection with an application for labor certification.

Application means an *Application for Alien Employment Certification* form and any other documents submitted by an alien and/or employer (or their agents) in applying for a labor certification under this part.

Area of intended employment means the area within normal commuting distance of the place (address) of intended employment. If the place of intended employment is within a Metropolitan Statistical Area (MSA), any place within the MSA is deemed to be within normal commuting distance of the place of intended employment.

Assistant Secretary means the Assistant Secretary of Labor for Employment and Training, the chief official of the Employment and Training Administration.

Attorney means any person who is a member in good standing of the bar of the highest court of any State, Possession, Territory, or Commonwealth of the United States, or the District of Columbia, and who is not under any order of any court or of the Board of Immigration Appeals suspending, enjoining, restraining, disbaring, or otherwise restricting him or her in the practice of law.

Attorney General means the chief official of the U.S. Department of Justice

or the designee of the Attorney General.

Board of Alien Labor Certification Appeals means the permanent Board of Alien Labor Certification Appeals established by this part, chaired by the Chief Administrative Law Judge, and consisting of Administrative Law Judges assigned to the Department of Labor and designated by the Chief Administrative Law Judge to be members of the Board of Alien Labor Certification Appeals. The Board of Alien Labor Certification Appeals is located in Washington, DC, and reviews and decides appeals in Washington, DC.

Certifying Officer means a Department of Labor official who makes determinations about whether or not to grant applications for labor certifications:

(1) A regional Certifying Officer designated by a Regional Administrator, Employment and Training Administration (RA) makes such determinations in a regional office of the Department;

(2) A national Certifying Officer makes such determinations in the national office of the USES.

(3) The addresses of the regional Certifying Officers are set forth in § 656.60 of this part.

Chief Administrative Law Judge means the chief official of the Office of Administrative Law Judges of the Department of Labor.

Consular Officer means an official of the U.S. Department of State who handles applications for labor certifications pursuant to this part.

Director means the chief official of the United States Employment Service or the Director's designee.

Employment means permanent full-time work by an employee for an employer other than oneself. For purposes of this definition an investor is not an employee.

Employment and Training Administration (ETA) means the agency within the Department of Labor (DOL) which includes the United States Employment Service (USES).

Employer means a person, association, firm, or a corporation which currently has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ a full-time worker