

## Employment and Training Administration, Labor

## § 656.21a

(i) Identify each recruitment source by name;

(ii) State the number of U.S. workers responding to the employer's recruitment;

(iii) State the names, addresses, and provide resumes (if any) of the U.S. workers interviewed for the job opportunity and job title of the person who interviewed each worker; and

(iv) Explain, with specificity, the lawful job-related reasons for not hiring each U.S. worker interviewed.

(2) If, after the required recruitment period, the recruitment is not successful, the local office shall send the application, its prevailing wage finding, copies of all documents in the particular application file, and any additional appropriate information (such as local labor market data), to the Employment Service agency's State office or, if authorized, to the regional Certifying Officer.

(k) A Employment Service agency's State office which receives an application pursuant to paragraph (j)(2) of this section may add appropriate data or comments, and shall transmit the application promptly to the appropriate Certifying Officer.

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[45 FR 83933, Dec. 19, 1980, as amended at 46 FR 3830, Jan. 16, 1981; 49 FR 18295, Apr. 30, 1984; 56 FR 54928, Oct. 23, 1991; 66 FR 40590, Aug. 3, 2001]

### **§ 656.21a Applications for labor certifications for occupations designated for special handling.**

(a) An employer shall apply for a labor certification to employ an alien as a college or university teacher or an alien represented to be of exceptional ability in the performing arts by filing, in duplicate, an *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.

(1) The employer shall set forth the following on the *Application for Alien Employment Certification* form, as appropriate, or in attachments:

(i) A statement of the qualifications of the alien, signed by the alien.

(ii) A full description of the job offer for the alien employment.

(iii) If the application involves a job offer as a college or university teacher, the employer shall submit documentation to show clearly that the employer selected the alien for the job opportunity pursuant to a competitive recruitment and selection process, through which the alien was found to be more qualified than any of the United States workers who applied for the job. For purposes of this paragraph (a)(1)(iii), evidence of the "competitive recruitment and selection process" shall include:

(A) A statement, signed by an official who has actual hiring authority, from the employer outlining in detail the complete recruitment procedure undertaken; and which shall set forth:

(1) The total number of applicants for the job opportunity;

(2) The specific lawful job-related reasons why the alien is more qualified than each U.S. worker who applied for the job; and

(3) A final report of the faculty, student, and/or administrative body making the recommendation or selection of the alien, at the completion of the competitive recruitment and selection process;

(B) A copy of at least one advertisement for the job opportunity placed in a national professional journal, giving the name and the date(s) of publication; and which states the job title, duties, and requirements;

(C) Evidence of all other recruitment sources utilized; and

(D) A written statement attesting to the degree of the alien's educational or professional qualifications and academic achievements.

(E) Applications for permanent alien labor certification for job opportunities as college and university teachers shall be filed within 18 months after a selection is made pursuant to a competitive recruitment and selection process.

(iv) If the application is for an alien represented to have exceptional ability in the performing arts, the employer shall document that the alien's work experience during the past twelve months did require, and the alien's intended work in the United States will

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require, exceptional ability; and shall submit:

(A) Documentation to show this exceptional ability, such as:

(1) Documents attesting to the current widespread acclaim and international recognition accorded to the alien, and receipt of internationally recognized prizes or awards for excellence;

(2) Published material by or about the alien, such as critical reviews or articles in major newspapers, periodicals, and/or trade journals (the title, date, and author of such material shall be indicated);

(3) Documentary evidence of earnings commensurate with the claimed level of ability;

(4) Playbills and starbillings;

(5) Documents attesting to the outstanding reputation of theaters, concert halls, night clubs, and other establishments in which the alien has appeared, or is scheduled to appear; and/or

(6) Documents attesting to the outstanding reputation of repertory companies, ballet troupes, orchestras, or other organizations in which or with which the alien has performed during the past year in a leading or starring capacity; and

(B) A copy of at least one advertisement placed in a national publication appropriate to the occupation (and a statement of the results of that recruitment) which shall:

(1) Identify the employer's name, address, and the location of the employment, if other than the employer's location;

(2) Describe the job opportunity with particularity;

(3) State the rate of pay, which shall not be below the prevailing wage for the occupation, as calculated pursuant to § 656.40;

(4) Offer prevailing working conditions;

(5) State the employer's minimum job requirements;

(6) Offer training if the job opportunity is the type for which employers normally provide training; and

(7) Offer wages, terms, and conditions of employment which are no less favorable than those offered to the alien; and

(C) Documentation that unions, if customarily used as a recruitment source in the area or industry, were unable to refer equally qualified U.S. workers.

(2) The local Employment Service office, upon receipt of an application for a college or university teacher or an alien represented to have exceptional ability in the performing arts, shall follow the application processing and prevailing wage determination procedures set forth in §§ 656.21 (d) and (e), and shall transmit a file containing the application, the local office's prevailing wage findings, and any other information it determines is appropriate, to the State Employment Service agency office, or if authorized by the State office, to the appropriate Certifying Officer.

(3) If the local office transmits the file described in paragraph (a)(3) of this section to the State office, the State office shall follow the procedures set forth at § 656.21(k).

(b) (1) An employer shall apply for a labor certification to employ an alien (who has been employed legally as a nonimmigrant shepherd in the United States for at least 33 of the preceding 36 months) as a shepherd by filing an *Application for Alien Employment Certification* form, and any attachments required by this paragraph (b), directly with a Department of State Consular Officer or with a District Office of INS, not with a local or State office of a State Employment Service agency, and not with an office of DOL. The documentation for such an application shall include:

(i) A completed *Application for Alien Employment Certification* form, including the Job Offer for Alien Employment, and the Statement of Qualification of Alien; and

(ii) A signed letter or letters from all U.S. employers who have employed the alien as a shepherd during the immediately preceding 36 months, attesting that the alien has been employed in the United States lawfully and continuously as a shepherd, for at least 33 of the immediately preceding 36 months.

(2) An Immigration Officer, or a Consular Officer, shall review the application and the letters attesting to the

alien's previous employment as a shepherd in the United States, and shall determine whether or not the alien and the employer(s) have met the requirements of this paragraph (b).

(i) The determination of the Immigration or Consular Officer pursuant to this paragraph (b) shall be conclusive and final. The employer(s) and the alien, therefore, may not make use of the review procedures set forth at §§ 656.26 and 656.27.

(ii) If the alien and the employer(s) have met the requirements of this 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.

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**§ 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 ap-

plication 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 certification 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