

§ 656.23

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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.

(d) An individual employer or the employer's attorney or agent may petition the regional Certifying Officer for the geographic area in which the job opportunity is located for a *Schedule B* waiver on behalf of an alien with respect to a specific job opportunity. The petition shall be submitted to the local office serving the geographic area of intended employment. The petition shall include a written request for a *Schedule B* waiver, a completed *Application for Alien Employment Certification* form, and the following:

(1) The documentation required by §§ 656.20(b), (c), (e), (f), and (g) and 656.21; and

(2) Documentary verification, which the employer has obtained from the local job service office which contains the job opportunity in its administrative area, that the employer has had a job order for the same job on file with the same local office for a period of 30 calendar days and that the local office and the employer, using the job order, were not able to obtain a qualified U.S. worker.

(e) The regional Certifying Officer, using the procedures and standards set forth in § 656.24, shall either grant or deny the waiver and shall inform the employer of the determination in writing.

(f) If the waiver is granted, the regional Certifying Officer shall issue a labor certification.

(g) If the waiver is denied, the regional Certifying Officer shall follow the procedures set forth at paragraphs (c) through (g) of § 656.25.

(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 54929, Oct. 23, 1991]

§ 656.24 Labor certification determinations.

(a) If the labor certification presents a special or unique problem, the regional Certifying Officer may refer the application to the national Certifying Officer for determination. If the Director has directed that certain types of applications or specific applications be handled in the USES national office, the regional Certifying Officer shall refer such applications to the national Certifying Officer.

(b) The regional or national Certifying Officer, as appropriate, shall make a determination either to grant the labor certification or to issue a *Notice of Findings* on the basis of whether or not:

(1) The employer has met the requirements of this part. However, where the Certifying Officer determines that the employer has committed harmless error, the Certifying Officer nevertheless may grant the labor certification, *Provided*, That the labor market has been tested sufficiently to warrant a finding of unavailability of and lack of adverse effect on U.S. workers. Where the Certifying Officer makes such a determination, the Certifying Officer shall document it in the application file.

(2) There is in the United States a worker who is able, willing, qualified and available for and at the place of the job opportunity according to the following standards:

(i) The Certifying Officer, in judging whether a U.S. worker is willing to take the job opportunity, shall look at the documented results of the employer's and the Local (and State) Employment Service office's recruitment efforts, and shall determine if there are other appropriate sources of workers where the employer should have recruited or might be able to recruit U.S. workers.

(ii) The Certifying Officer shall consider a U.S. worker able and qualified for the job opportunity if the worker, by education, training, experience, or a combination thereof, is able to perform in the normally accepted manner the duties involved in the occupation as customarily performed by other U.S. workers similarly employed, except that, if the application involves a job