

## 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

at a place within the United States or the authorized representative of such a person, association, firm, or corporation. For purposes of this definition an "authorized representative" means an employee of the employer whose position or legal status authorizes the employee to act for the employer in labor certification matters.

*Final Determination form* means the form used by the Certifying Officer to notify employers (and aliens) of labor certification determinations (and was formerly known as the "Determination and Transmittal form").

*Immigration and Naturalization Service (INS)* means the agency within the U.S. Department of Justice which administers that Department's principal functions under the Act.

*Immigration Officer* means an official of the Immigration and Naturalization Service (INS) who handles applications for labor certifications pursuant to this part.

*INS*, see Immigration and Naturalization Service.

*Job opportunity* means a job opening for employment at a place in the United States to which U.S. workers can be referred.

*Labor certification* means the certification to the Secretary of State and to the Attorney General of the determination by the Secretary of Labor pursuant to section 212(a)(14) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(14)):

(1) That there are not sufficient U.S. workers who are able, willing, qualified, and available at the time of an alien's application for a visa and admission to the United States and at the place where the alien is to perform the work; and

(2) That the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers.

*Local Employment Service office and local office* mean a full-time office of a State Employment Service agency (also known as a State Employment Security Agency (SESA) also known as a State employment service), which is maintained for the purpose of providing placement and other services of the Employment Service System, and which serves a particular geographic

area within a State. Unless specified otherwise in this part, the local office performing the functions required by this part shall be the local Employment Service office serving the area where the job opportunity is located.

*Notice of Findings* means a notice which sets for the bases upon which a Certifying Officer intends to deny a labor certification unless the bases are satisfactorily rebutted.

*Occupation designated for special handling* means an occupation, described at § 656.21a, for which DOL has determined that special labor market tests are appropriate.

*Physicians (and/or surgeons)* means persons who apply the art and science of medicine or surgery primarily in patient care to the diagnosis, prevention, and treatment of human diseases, disorders of the mind, and pregnancy. This definition includes persons practicing medicine, surgery, osteopathy, psychiatry, and ophthalmology. The physician or surgeon may specialize in treating a specific area of the body, or a particular disease, sex, or age group.

*Professional nurses* means persons who apply the art and science and nursing, which reflects comprehension of principles derived from the physical, biological, and behavioral sciences. Professional nursing generally includes the making of clinical judgements concerning the observation, care, and counsel of persons requiring nursing care; and administering of medicines and treatments prescribed by the physician or dentist; the participation in activities for the promotion of health and the prevention of illness in others. A program of study for professional nurses generally includes theory and practice in clinical areas such as: obstetrics, surgery, pediatrics, psychiatry, and medicine. This definition includes only those occupations within Occupational Group No. 075 of the *Dictionary of Occupational Title* (4th ed.)

*Regional Administrator, Employment and Training Administration (RA)* means the chief official of the Employment and Training Administration (ETA) in a Department of Labor (DOL) regional office.

*Schedule A* means the list of occupations set forth at § 656.10, with respect to which the Director has determined

that there are not sufficient United States workers who are able, willing, qualified and available, and that the employment of aliens in such occupations will not adversely affect the wages and working conditions of United States workers similarly employed.

*Schedule B* means the list of occupations set forth in § 656.11, with respect to which the Director has determined that there are generally sufficient United States workers who are able, willing, qualified and available, and that the employment of aliens in such occupations will generally adversely affect the wages and working conditions of the United States workers similarly employed.

*Secretary* means the Secretary of Labor, the chief official of the U.S. Department of Labor, or the Secretary's designee.

*Secretary of State* means the chief official of the U.S. Department of State or the Secretary of State's designee.

*United States*, when used in a geographic sense, means the fifty States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam.

*United States Employment Service (USES)* means the agency of the U.S. Department of Labor, established under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*), which is charged with administering the national system of public employment offices (the Employment Service (ES) System) and with carrying out the functions of the Secretary under section 212(a)(14) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(14)).

*United States worker* means any worker who is a U.S. citizen; is a U.S. national; is lawfully admitted for permanent residence; is granted the status of an alien lawfully admitted for permanent residence under 8 U.S.C. 1160(a), 1161(a), or 1255a(a)(1); is admitted as a refugee under 8 U.S.C. 1157; or is granted asylum under 8 U.S.C. 1158.

[45 FR 83933, Dec. 19, 1980, as amended at 52 FR 11219, Apr. 8, 1987; 52 FR 20596, June 2, 1987; 56 FR 54930, Oct. 23, 1991. Redesignated and amended at 56 FR 54930, Oct. 23, 1991; 63 FR 13767, Mar. 20, 1998; 65 FR 80238, Dec. 20, 2000]

## Subpart B—Occupational Labor Certification Determinations

### § 656.10 Schedule A.

The Director, United States Employment Service (Director), has determined that there are not sufficient United States workers who are able, willing, qualified, and available for the occupations listed below on *Schedule A* and that the wages and working conditions of United States workers similarly employed will not be adversely affected by the employment of aliens in *Schedule A* occupations. An alien seeking a labor certification for an occupation listed on *Schedule A* may apply for that labor certification pursuant to § 656.22.

#### SCHEDULE A

##### (a) Group I:

(1) Persons who will be employed as physical therapists, and who possess all the qualifications necessary to take the physical therapist licensing examination in the State in which they propose to practice physical therapy.

(2) Aliens who will be employed as professional nurses; and (i) who have passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination; or (ii) who hold a full and unrestricted license to practice professional nursing in the State of intended employment.

##### (3) Definitions of Group I occupations:

(i) "Physical therapist" means a person who applies the art and science of physical therapy to the treatment of patients with disabilities, disorders and injuries to relieve pain, develop or restore function, and maintain performance, using physical means, such as exercise, massage, heat, water, light, and electricity, as prescribed by a physician (or surgeon).

(ii) "Professional nurse" is defined in § 656.50.

##### (b) Group II:

Aliens (except for aliens in the performing arts) of exceptional ability in the sciences or arts including college and university teachers of exceptional ability who have been practicing their science or art during the year prior to application and who intend to practice the same science or art in the United States. For purposes of this group, the term "science or art" means any field of knowledge and/or skill with respect to which colleges and universities commonly offer specialized courses leading to a degree in the knowledge and/or skill. An alien, however,