

(2) Require the employer to conduct supervised recruitment under § 656.21.

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§ 656.21 Supervised recruitment.

(a) *Supervised recruitment.* Where the Certifying Officer determines it appropriate, post-filing supervised recruitment may be required of the employer for the pending application or future applications pursuant to § 656.20(b).

(b) *Requirements.* Supervised recruitment shall consist of advertising for the job opportunity by placing an advertisement in a newspaper of general circulation or in a professional, trade, or ethnic publication, and any other measures required by the CO. If placed in a newspaper of general circulation, the advertisement must be published for 3 consecutive days, one of which must be a Sunday; or, if placed in a professional, trade, or ethnic publication, the advertisement must be published in the next available published edition. The advertisement must be approved by the Certifying Officer before publication, and the CO will direct where the advertisement is to be placed.

(1) The employer must supply a draft advertisement to the CO for review and approval within 30 days of being notified that supervised recruitment is required.

(2) The advertisement must:

(i) Direct applicants to send resumes or applications for the job opportunity to the CO for referral to the employer;

(ii) Include an identification number and an address designated by the Certifying Officer;

(iii) Describe the job opportunity;

(iv) Not contain a wage rate lower than the prevailing wage rate;

(v) Summarize the employer's minimum job requirements, which can not exceed any of the requirements entered on the application form by the employer;

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

(vii) Offer wages, terms and conditions of employment no less favorable than those offered to the alien.

(c) *Timing of advertisement.* (1) The advertisement shall be placed in accord-

ance with the guidance provided by the CO.

(2) The employer will notify the CO when the advertisement will be placed.

(d) *Additional or substitute recruitment.* The Certifying Officer may designate other appropriate sources of workers from which the employer must recruit for U.S. workers in addition to the advertising described in paragraph (b) of this section.

(e) *Recruitment report.* The employer must provide to the Certifying Officer a signed, detailed written report of the employer's supervised recruitment, signed by the employer or the employer's representative described in § 656.10(b)(2)(ii), within 30 days of the Certifying Officer's request for such a report. The recruitment report must:

(1) Identify each recruitment source by name and document that each recruitment source named was contacted. This can include, for example, copies of letters to recruitment sources such as unions, trade associations, colleges and universities and any responses received to the employer's inquiries. Advertisements placed in newspapers, professional, trade, or ethnic publications can be documented by furnishing copies of the tear sheets of the pages of the publication in which the advertisements appeared, proof of publication furnished by the publication, or dated copies of the web pages if the advertisement appeared on the web as well as in the publication in which the advertisement appeared.

(2) State the number of U.S. workers who responded to the employer's recruitment.

(3) State the names, addresses, and provide resumes (other than those sent to the employer by the CO) of the U.S. workers who applied for the job opportunity, the number of workers interviewed, and the job title of the person who interviewed the workers.

(4) Explain, with specificity, the lawful job-related reason(s) for not hiring each U.S. worker who applied. Rejection of one or more U.S. workers for lacking skills necessary to perform the duties involved in the occupation, where the U.S. workers are capable of acquiring the skills during a reasonable period of on-the-job training, is

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not a lawful job-related reason for rejecting the U.S. workers. For the purpose of this paragraph (e)(4), a U.S. worker is able and qualified for the job opportunity if the worker can acquire the skills necessary to perform the duties involved in the occupation during a reasonable period of on-the-job training.

(f) The employer shall supply the CO with the required documentation or information within 30 days of the date of the request. If the employer does not do so, the CO shall deny the application.

(g) The Certifying Officer in his or her discretion, for good cause shown, may provide one extension to any request for documentation or information.

§ 656.24 Labor certification determinations.

(a)(1) The Office of Foreign Labor Certification Administrator (OFLC Administrator) is the National Certifying Officer. The OFLC Administrator and the certifying officers in the ETA application processing centers have the authority to certify or deny labor certification applications.

(2) If the labor certification presents a special or unique problem, the Director of an ETA application processing center may refer the matter to the Office of Foreign Labor Certification Administrator (OFLC Administrator). If the OFLC Administrator has directed that certain types of applications or specific applications be handled in the ETA national office, the Directors of the ETA application processing centers shall refer such applications to the OFLC Administrator.

(b) The Certifying Officer makes a determination either to grant or deny the labor certification on the basis of whether or not:

(1) The employer has met the requirements of this part.

(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.

(i) The Certifying Officer must 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. For the purposes of this paragraph (b)(2)(i), a U.S. worker is able and qualified for the job opportunity if the worker can acquire the skills necessary to perform the duties involved in the occupation during a reasonable period of on-the-job training.

(ii) If the job involves a job opportunity as a college or university teacher, the U.S. worker must be at least as qualified as the alien.

(3) The employment of the alien will not have an adverse effect upon the wages and working conditions of U.S. workers similarly employed. In making this determination, the Certifying Officer considers such things as: labor market information, the special circumstances of the industry, organization, and/or occupation, the prevailing wage in the area of intended employment, and prevailing working conditions, such as hours, in the occupation.

(c) The Certifying Officer shall notify the employer in writing (either electronically or by mail) of the labor certification determination.

(d) If a labor certification is granted, except for a labor certification for an occupation on *Schedule A* (§ 656.5) or for employment as a sheepherder under § 656.16, the Certifying Officer must send the certified application and complete Final Determination form to the employer, or, if appropriate, to the employer's agent or attorney, indicating the employer may file all the documents with the appropriate DHS office.

(e) If the labor certification is denied, the Final Determination form will:

(1) State the reasons for the determination;

(2) Quote the request for review procedures at § 656.26 (a) and (b);

(3) Advise that failure to request review within 30 days of the date of the determination, as specified in § 656.26(a), constitutes a failure to exhaust administrative remedies;

(4) Advise that, if a request for review is not made within 30 days of the date of the determination, the denial shall become the final determination of the Secretary;