

§ 655.212

§ 655.212 Administrative-judicial reviews.

(a) Whenever an employer has requested an administrative-judicial review of a denial of an application or a petition in accordance with §§ 655.204(d), 655.205(d), 655.206(c), or 655.211, the Chief Administrative Law Judge shall immediately assign an Administrative Law Judge to review the record for legal sufficiency, and the OFLC Administrator shall send a certified copy of the case file to the Chief Administrative Law Judge by means normally assuring next day delivery. The Administrative Law Judge shall not have authority to remand the case and shall not receive additional evidence. Any countervailing evidence advanced after decision by the OFLC Administrator shall be subject to provisions of 8 CFR 214.2(h)(3)(i).

(b) The Administrative Law Judge, within five working days after receipt of the case file shall, on the basis of the written record and due consideration of any written memorandums of law submitted, either affirm, reverse or modify the OFLC Administrator's denial by written decision. The decision of the Administrative Law Judge shall specify the reasons for the action taken and shall be immediately provided to the employer, OFLC Administrator, and DHS by means normally assuring next-day delivery. The Administrative Law Judge's decision shall be the final decision of the Department of Labor and no further review shall be given to the temporary labor certification determination by any Department of Labor official.

§ 655.215 Territory of Guam.

Subpart C of this part does not apply to temporary employment in the Territory of Guam, and the Department of Labor does not certify to the United States Citizenship and Immigration Services of the Department of Homeland Security (DHS) the temporary employment of nonimmigrant aliens under H-2B visas in the Territory of Guam. Pursuant to DHS regulations, that function is performed by the Governor of Guam, or the Governor's designated representative within the Territorial Government.

20 CFR Ch. V (4-1-12 Edition)

Subpart D—Attestations by Facilities Using Nonimmigrant Aliens as Registered Nurses

SOURCE: 59 FR 882, 897, Jan. 6, 1994, unless otherwise noted.

§ 655.300 Purpose and scope of subparts D and E.

(a) *Purpose.* The Immigration and Nationality Act (INA) establishes the H-1A program to provide relief for the nursing shortage crisis. Subpart D of this part sets forth the procedure by which health care facilities seeking to use nonimmigrant registered nurses may submit attestations to the Department of Labor relating to the effects of the nursing shortage on their operations, their efforts to recruit and retain United States workers as registered nurses and certain information on wages and working conditions for nurses at the facility. Subpart E of this part sets forth complaint, investigation, and penalty provisions with respect to such attestations.

(b) *Procedure.* The INA establishes a procedure for health care facilities to follow in seeking admission to the United States for, or use of, nonimmigrant nurses under H-1A visas. The procedure is designed to reduce reliance on nonimmigrant nurses in the future, and calls of the health care facility to attest, and be able to demonstrate, that, e.g., there would be substantial disruption to health services without the nonimmigrant nurses and that it is taking timely and significant steps to develop, recruit, and retain U.S. nurses. Subparts D and E of this part set forth the specific requirements for those procedures.

(c) *Applicability.* (1) Subparts D and E of this part apply to all facilities that seek the temporary admission or use of nonimmigrants as registered nurses.

(2) During the period that the provisions of appendix 1603.D.4 of Annex 1603 of the North American Free Trade Agreement (NAFTA) apply, subparts D and E of this part shall apply to the entry of a nonimmigrant who is a citizen of Mexico under and pursuant to the provisions of section D of Annex 1603 of NAFTA.