

Employment and Training Administration, Labor

§ 656.12

(ii) State any person may provide documentary evidence bearing on the application to the Certifying Officer of the Department of Labor;

(iii) Provide the address of the appropriate Certifying Officer; and

(iv) Be provided between 30 and 180 days before filing the application.

(4) If an application is filed under § 656.17, the notice must contain the information required for advertisements by § 656.17(f), must state the rate of pay (which must equal or exceed the prevailing wage entered by the SWA on the prevailing wage request form), and must contain the information required by paragraph (d)(3) of this section.

(5) If an application is filed on behalf of a college and university teacher selected in a competitive selection and recruitment process, as provided by § 656.18, the notice must include the information required for advertisements by § 656.18(b)(3), and must include the information required by paragraph (d)(3) of this section.

(6) If an application is filed under the *Schedule A* procedures at § 656.15, or the procedures for shepherders at § 656.16, the notice must contain a description of the job and rate of pay, and must meet the requirements of this section.

(e)(1)(i) *Submission of evidence.* Any person may submit to the Certifying Officer documentary evidence bearing on an application for permanent alien labor certification filed under the basic labor certification process at § 656.17 or an application involving a college and university teacher selected in a competitive recruitment and selection process under § 656.18.

(ii) Documentary evidence submitted under paragraph (e)(1)(i) of this section may include information on available workers, information on wages and working conditions, and information on the employer's failure to meet the terms and conditions for the employment of alien workers and co-workers. The Certifying Officer must consider this information in making his or her determination.

(2)(i) Any person may submit to the appropriate DHS office documentary evidence of fraud or willful misrepresentation in a *Schedule A* application filed under § 656.15 or a shepherd application filed under § 656.16.

(ii) Documentary evidence submitted under paragraph (e)(2) of this section is limited to information relating to possible fraud or willful misrepresentation. The DHS may consider this information under § 656.31.

(f) *Retention of documents.* Copies of applications for permanent employment certification filed with the Department of Labor and all supporting documentation must be retained by the employer for 5 years from the date of filing the *Application for Permanent Employment Certification*.

[69 FR 77386, Dec. 27, 2004, as amended at 71 FR 35523, June 21, 2006]

§ 656.11 Substitutions and modifications to applications.

(a) Substitution or change to the identity of an alien beneficiary on any application for permanent labor certification, whether filed under this part or 20 CFR part 656 in effect prior to March 28, 2005, and on any resulting certification, is prohibited for any request to substitute submitted after July 16, 2007.

(b) Requests for modifications to an application will not be accepted for applications submitted after July 16, 2007.

[72 FR 27944, May 17, 2007]

§ 656.12 Improper commerce and payment.

The following provision applies to applications filed under both this part and 20 CFR part 656 in effect prior to March 28, 2005, and to any certification resulting from those applications:

(a) Applications for permanent labor certification and approved labor certifications are not articles of commerce. They shall not be offered for sale, barter or purchase by individuals or entities. Any evidence that an application for permanent labor certification or an approved labor certification has been sold, bartered, or purchased shall be grounds for investigation under this part and may be grounds for denial under § 656.24, revocation under § 656.32, debarment under § 656.31(f), or any combination thereof.

(b) An employer must not seek or receive payment of any kind for any activity related to obtaining permanent labor certification, including payment

of the employer's attorneys' fees, whether as an incentive or inducement to filing, or as a reimbursement for costs incurred in preparing or filing a permanent labor certification application, except when work to be performed by the alien in connection with the job opportunity would benefit or accrue to the person or entity making the payment, based on that person's or entity's established business relationship with the employer. An alien may pay his or her own costs in connection with a labor certification, including attorneys' fees for representation of the alien, except that where the same attorney represents both the alien and the employer, such costs shall be borne by the employer. For purposes of this paragraph (b), payment includes, but is not limited to, monetary payments; wage concessions, including deductions from wages, salary, or benefits; kickbacks, bribes, or tributes; in kind payments; and free labor.

(c) Evidence that an employer has sought or received payment from any source in connection with an application for permanent labor certification or an approved labor certification, except for a third party to whose benefit work to be performed in connection with the job opportunity would accrue, based on that person's or entity's established business relationship with the employer, shall be grounds for investigation under this part or any appropriate Government agency's procedures, and may be grounds for denial under § 656.32, revocation under § 656.32, debarment under § 656.31(f), or any combination thereof.

[72 FR 27945, May 17, 2007]

§ 656.15 Applications for labor certification for *Schedule A* occupations.

(a) *Filing application.* An employer must apply for a labor certification for a *Schedule A* occupation by filing an application with the appropriate DHS office, and not with an ETA application processing center.

(b) *General documentation requirements.* A *Schedule A* application must include:

(1) An *Application for Permanent Employment Certification* form, which includes a prevailing wage determination in accordance with §§ 656.40 and 656.41.

(2) Evidence that notice of filing the *Application for Permanent Employment Certification* was provided to the bargaining representative or the employer's employees as prescribed in § 656.10(d).

(c) *Group I documentation.* An employer seeking labor certification under Group I of *Schedule A* must file with DHS, 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 (§ 656.5(a)(1)) must 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 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 under this § 656.15 and not under § 656.17.

(2) An employer seeking a *Schedule A* labor certification for an alien to be employed as a professional nurse (§ 656.5(a)(2)) must file as part of its labor certification application documentation that the alien has received a Certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS); that the alien holds a full and unrestricted (permanent) license to practice nursing in the state of intended employment; or that the alien has passed the National Council Licensure Examination for Registered Nurses (NCLEX-RN). Application for certification of employment as a professional nurse may be made only under this § 656.15(c) and not under § 656.17.

(d) *Group II documentation.* An employer seeking a *Schedule A* labor certification under Group II of *Schedule A* must file with DHS, as part of its labor certification application, documentary evidence of the following:

(1) An employer seeking labor certification on behalf of an alien to be employed as an alien of exceptional ability in the sciences or arts (excluding those in the performing arts) must file documentary evidence showing the widespread acclaim and international