

(x) Any other agreement or conditions not specified on the *Application for Permanent Employment Certification* form.

(3) Documentation of the alien's paid experience in the form of statements from past or present employers setting forth the dates (month and year) employment started and ended, hours of work per day, number of days worked per week, place where the alien worked, detailed statement of duties performed on the job, equipment and appliances used, and the amount of wages paid per week or month. The total paid experience must be equal to one full year's employment on a full-time basis. For example, two year's experience working half-days is the equivalent of one year's full time experience. Time spent in a household domestic service training course can not be included in the required one year of paid experience. Each statement must contain the name and address of the person who signed it and show the date on which the statement was signed. A statement not in English shall be accompanied by a written translation into English certified by the translator as to the accuracy of the translation, and as to the translator's competency to translate.

**§ 656.20 Audit procedures.**

(a) Review of the labor certification application may lead to an audit of the application. Additionally, certain applications may be selected randomly for audit and quality control purposes. If an application is selected for audit, the Certifying Officer shall issue an audit letter. The audit letter will:

- (1) State the documentation that must be submitted by the employer;
- (2) Specify a date, 30 days from the date of the audit letter, by which the required documentation must be submitted; and
- (3) Advise that if the required documentation has not been sent by the date specified the application will be denied.

(i) Failure to provide documentation in a timely manner constitutes a refusal to exhaust available administrative remedies; and

(ii) The administrative-judicial review procedure provided in § 656.26 is not available.

(b) A substantial failure by the employer to provide required documentation will result in that application being denied under § 656.24 and may result in a determination by the Certifying Officer pursuant to § 656.24 to require the employer to conduct supervised recruitment under § 656.21 in future filings of labor certification applications for up to 2 years.

(c) The Certifying Officer may in his or her discretion provide one extension, of up to 30 days, to the 30 days specified in paragraph (a)(2) of this section.

(d) Before making a final determination in accordance with the standards in § 656.24, whether in course of an audit or otherwise, the Certifying Officer may:

- (1) Request supplemental information and/or documentation; or
- (2) Require the employer to conduct supervised recruitment under § 656.21.

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

**§ 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

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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 accordance 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 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