

§ 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;

(5) Advise that if an application for a labor certification is denied, and a request for review is not made in accordance with the procedures at § 656.26(a) and (b), a new application may be filed at any time; and

(6) Advise that a new application in the same occupation for the same alien can not be filed while a request for review is pending with the Board of Alien Labor Certification Appeals.

(f) If the Certifying Officer determines the employer substantially failed to produce required documentation, or the documentation was inadequate, or determines a material misrepresentation was made with respect to the application, or if the Certifying Officer determines it is appropriate for other reasons, the employer may be required to conduct supervised recruitment pursuant to § 656.21 in future filings of labor certification applications for up to two years from the date of the Final Determination.

(g)(1) The employer may request reconsideration within 30 days from the date of issuance of the denial.

(2) For applications submitted after July 16, 2007, a request for reconsideration may include only:

(i) Documentation that the Department actually received from the employer in response to a request from the Certifying Officer to the employer; or

(ii) Documentation that the employer did not have an opportunity to present previously to the Certifying Officer, but that existed at the time the Application for Permanent Labor Certification was filed, and was maintained by the employer to support the application for permanent labor certification in compliance with the requirements of § 656.10(f).

(3) Paragraphs (g)(1) and (2) of this section notwithstanding, the Certifying Officer will not grant any request for reconsideration where the deficiency that caused denial resulted from the applicant's disregard of a system prompt or other direct instruction.

(4) The Certifying Officer may, in his or her discretion, reconsider the determination or treat it as a request for review under § 656.26(a).

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