

# Instructions for Filing Applications for Alien Employment Certification for Permanent Employment in the United States

**These instructions pertain only to requests for permanent labor certification; not to requests for temporary labor certification**

for completing Form ETA 750 “Application for Alien Employment Certification”.

## Part I. General Information

### A. Introduction

These instructions explain the application process for obtaining permanent labor certifications under the Immigration and Nationality Act. While applicants for temporary labor certifications may use Form ETA 750, these instructions do not apply to applications for temporary labor certifications.

Section 212(a)(14) of the Act provides that certain aliens may obtain a visa for entrance into the United States in order to engage in permanent employment if the Secretary of Labor has first certified:

1. There are not sufficient United States workers who are able, willing, qualified, and available for the employment, and
2. The employment of the alien will not adversely effect the wages and working conditions of U.S. workers similarly employed.

This certification is referred to as a “labor certification”. Labor certifications are granted and denied by certifying officers in the national and regional offices of the Employment and Training Administration of the Department of Labor.

The Department of Labor’s regulations on permanent labor certifications are published in part 656 of Title 20 of the Code of Federal Regulations. The regulations require that an Application for Alien Employment Certification be filed in every instance, to initiate this process. This

application form includes a Part A “Offer of Employment” and a Part B “Statement of Qualifications of Alien”. The regulations set forth, in detail, the application process for permanent labor certification.

### B. Who May File

#### 1. An employer who desires to

apply for a labor certification on behalf of an alien.

2. An alien who desires to apply for a labor certification for a Schedule A occupation. Schedule A is described below under “Occupational Schedules”.

### C. What To File

#### 1. An employer who applies for a

labor certification must file two copies each of the following;

- a. An Application for Alien Employment Certification (Form ETA 750) including Part A, “Offer of Employment and Part B “Statement of Qualifications of Alien” and
- b. Every applicable document described in Part II of these instructions (See Part II- Documentation to submit with Applications for Occupations not on Schedule A).

2. An alien who applies for a labor certification for a Schedule A occupation must file two copies each of the following:

- a. Two Copies of Form ETA 750, Application for Alien Employment Certification, as follows:
  1. Part B—Statement of Qualifications of Alien;
  2. Part A—Offer of Employment, if required by the Immigration and Naturalization Service.

**b. Documentary evidence which**

shows that the alien meets the requirements of the particular Schedule A occupational group under which the alien is applying for labor certification.

**D. Where to File**

1. An employer must file an application with the local State employment service office serving the area where the alien will be employed.
2. An alien applying for Schedule A labor Certification must file an application with a U.S. Consular Office if the alien is abroad or with an Immigration and Naturalization Service Office if the alien is in the United States, not with the Department of Labor or a State employment service.

**E. Occupational Schedules**

To facilitate the processing of requests for labor certifications, the United States Employment Service, Department of Labor has established schedules with predetermined findings for specific occupations:

1. Schedule A is a list of occupations for which the Administrator, United States Employment Service, has determined that there are not sufficient U.S. workers who are able, willing qualified, and available and that the wages and working conditions of U.S. workers similarly employed will not be adversely affected by the employment of aliens.
2. Schedule B is a list of occupations for which the Administrator, United States Employment Service, has determined that generally there are sufficient U.S. workers who are able, willing, qualified, and available and that the wages

and working conditions of U.S. workers similarly employed generally will be adversely affected by the employment of aliens.

3. Applications for Schedule A Labor certifications are granted or denied by the Immigration and Naturalization Service or the U.S. Consular office where the application is filed. General documentation requirements for Schedule A occupations are described in part IV of these instructions.
4. Application for alien Employment Certification forms and instructions and information on occupations listed on Schedules A and B may be obtained from State employment service offices, Immigration and Naturalization Service District Offices, and Consular offices abroad.

**F. Fraud, False Statements, and Perjury.**

Any employer or alien, or their agent or attorney, who, in the labor certification application process, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, is subject to prosecution and a fine of not more than \$10,000 or imprisonment of not more than five years, or both 18 U.S.C. 1001.

Whoever knowingly subscribes as true any false statement with respect to a material fact in any Application for Alien Employment Certification or knowingly presents any such application containing, any such false statement is subject to

prosecution and a fine of not more than \$2,000 or imprisonment of not more than 5 years or both. 18 U.S.C. 1546.

Whoever, in an Application for Alien Employment Certification willfully subscribes as true any material which he or she does not believe to be true is subject to prosecution for perjury and a fine of not more than \$2,000 or imprisonment of not more than five years, or both 18 U.S.C. 162(2). This penalty applies whether the statement or subscription is made within or outside the United States.

**G. Other Information**

1. Employers and aliens may have agents apply for labor certification on their behalf. Each party (employer and/or alien) represented by an agent must sign a statement designating the agent and taking full responsibility for the accuracy of any representations made by the agent. The authorization statements are in Parts A and B of the Application for Alien Employment Certification Form. Since employers and aliens must take full responsibility for the accuracy of their agents' representations, they are advised not to sign blank application forms.
2. Employers and aliens may have attorneys represent them. Each attorney must file a Notice of Appearance on Immigration and Naturalization Service Form G—28, naming the attorney's client(s).
3. The Department of Labor will notify the employer in writing, with a copy to the alien, of determinations on the employer's Application for Alien Employment Certification.

**Part II  
Documentation to Submit  
With Applications for  
Occupations  
Not on Schedule A.**

4. **Labor certifications, unless** invalidated by the Immigration and Naturalization Service or by a **Consul of the United States** Department of State, are valid indefinitely. Invalidations are made in cases of fraud or willful misrepresentation of a material fact involving the labor certification application.
5. If a labor certification application has been denied, the employer may file a new application for the same occupation at any time after 6 months from the date of the denial of certification. However, if the denial was solely because the wage offered was too low, the employer may reapply immediately.
6. Refusal to complete any item on the application form or to submit documentation required by regulations is grounds for denying the application.
7. Documents not in the English language must be accompanied by a translation, certified by the translator as to the accuracy of the translation and his or her competency to translate.
8. The Department of Labor's regulations for the permanent labor certification process require the employer to submit documentation which shows clearly that the job, the job offer, and recruitment of U.S. workers for the job are all in compliance with the regulations. This Part describes the

documentation required by the regulations. The documentation requirements described in this Part do not apply to applications for Schedule A occupations. Documentation for Schedule A occupations is described in Part IV of these instructions. The employer must submit the required general documentation, as well as the specific documentation, which may be required for the particular occupation.

**A. General Documentation Requirements**

Failure of the employer to comply with any of the eight certifications in Item 23 of Part A, Form ETA 750 may result in denial of the Application. The certifying officer may require the employer to submit additional documentation, as appropriate, to document clearly compliance with any of the eight certifications.

As attachments to the Application for Alien Employment Certification form, the employer must submit the following documentation, to show clearly that the employer has been attempting to recruit U.S. workers for the job as required by the Department of Labor's regulations. (For job offers involving Shepherders, See Section H below):

- I. The employer has been attempting to recruit U.S. workers for the job opportunity at the prevailing wage and at prevailing working conditions through the labor referral and recruitment sources normal to the occupation, without success, and

employer must document the results of recruitment by naming the applicants and the lawful job-related reason for not hiring each applicant and submit copies of resumes and job application forms supporting the reasons for not hiring each applicant.

2. The job offer, as shown on Part A of the Application for Alien Employment Certification form and in advertisements, notices, and other recruitment methods used by the employer may not describe the job with unduly restrictive job requirements. Unduly restrictive job requirements are requirements not normal to the occupation, unless the employer adequately documents that the requirements arise from business necessity. "Business necessity" is not employer or customer preference or convenience. It is a requirement which, if absent, would actually undermine the employer's business. The employer must always document the business necessity for a language other than English.

If the job involves a combination of duties, e.g. engineer-pilot, the employer must document one or more of the following:

- a. The employer has normally employed persons for that combination of duties; and/or

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- b. Workers customarily perform that combination of duties in the geographic area; and/or
  - c. The combination of duties is based on a business necessity.
3. The employer must describe on the forms the job and recruitment methods using the actual minimum requirements needed to perform the job. The employer must state whether it has hired workers with less training or experience for similar jobs, and, if so, the employer must explain why it is not feasible to do so for the job offered to the alien.
4. If unions are customarily used as a recruitment source in the area or industry, the employer must document such recruitment, clearly showing that they were unable to refer U.S. workers.

#### B. Job Offers for Household Domestic Service Workers

If the job is for a household domestic service worker, and the employer additionally requires the worker to live on the employer's premises, the employer must submit, in addition to the documentation described above in the section on "General Documentation Requirements," all of the following documentation:

1. A complete statement for live at work job offers on Form ETA 750, Part A.
2. Two copies of an employment contract between the employer and the alien, each signed and dated by both. (not by their agents). The employment contract must clearly state:
  - a. The wages to be paid on an hourly and weekly basis;
  - b. Total hours of employment per week, and the exact daily work schedule;

- c. That the alien is free to leave the employer's premises during all nonwork hours except that the alien may work overtime if paid for the overtime at no less than the legally required hourly rate;
  - d. That the alien will reside on the employer's premises;
  - e. Complete details of the duties to be performed by the alien;
  - f. The total amount of any money to be advanced by the employer with details of specific items, and the terms of repayment by the alien of any such advance by the employer;
  - g. That in no event shall the alien be required to give more than 2 weeks' notice of intent to leave the employment contracted for and that the employer must give the alien at least 2 weeks' notice before terminating employment;
  - h. That a duplicate contract has been furnished to the alien;
  - i. That room and board will be provided at no cost to the worker; and
  - j. Any other agreements or conditions not specified on the Application for Alien 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 1 full

year's employment on a fulltime basis; e.g. 2 years' experience working half-days is equal to one year's full-time experience. However, six months' experience working 16-hour days is not equal to 1 year's experience. Time spent in a household domestic service training course cannot be included in the required one year of paid experience. Each statement documenting the alien's paid experience must be signed and 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 the English language must be accompanied by a translation certified by the translator as to the accuracy of the translation, and as to the translator's competency to translate.

#### c. Job Offers for Schedule B Occupations

An employer filing an application for a Schedule B occupation, must petition the Department of Labor's regional certifying officer through the State employment service for a Schedule B waiver.

A petition for a waiver of Schedule B must include all of the following:

1. All documentation described above in the section on "General Documentation Requirements" including a fully completed Application for Alien Employment Certification form ETA 750.
2. Documentary verification, which the employer has obtained from the local employment service office serving the area of proposed employment, that the employer has had a job order for the same job on file

with the same local office for a period of 30 calendar days and that the local office and the employer, using the job order, were not able to obtain a qualified U.S. worker.

3. All recruitment documentation described in Part III of these instructions.

#### **D. Job Offers for Physicians or Surgeons**

If an Application for Alien Employment Certification involves a job offer as a physician or surgeon, not on schedule A, the employer must submit, in addition to the documentation described above in the section on "General Documentation Requirements," one of the following three types of documentation:

1. Evidence that the alien has passed Parts I and II of the National Board of Medical Examiners Examination; or
2. Evidence that the alien has passed the Visa Qualifying Examination (VQE) offered by the National Board of Medical Examiners and is competent in oral and written English; or
3. Evidence that the alien on January 9, 1977: (a) was a doctor of medicine fully and permanently licensed to practice medicine in a State, (b) held a valid specialty certificate issued by a constituent board of the American Board of Medical Specialties, and (c) was practicing medicine in a State: or
4. Evidence that the alien is a graduate of a school of medicine accredited by a body or bodies approved for that purpose by the United States Commissioner of Education.

#### **E. Job Offers for College or University Teachers**

The Immigration and Nationality Act

provides distinct tests for job offers as college and university teachers. The statute permits the employer to reject applications for the job from qualified U.S. workers who are less qualified than the alien. Not all faculty-level or professorial rank jobs are considered teachers. Faculty members who do not teach are excluded from this provision. The employer must show that the alien was selected for the job pursuant to a competitive recruitment and selection process through which the alien was found to be more qualified than any of the U.S. workers who applied for the job. As long as the employer submits adequate documentation of such a competitive recruitment and selection process, the employer need not make the recruitment efforts described below in Part III of these instructions.

To document a competitive recruitment and selection process, the employee must submit the following:

1. A statement, signed by an official with actual hiring authority, outlining, in detail, the complete recruitment procedure. This statement must also include:
  - a. The total number of applicants responding.
  - b. The number of all U.S. workers given serious consideration for the job offered the alien.
  - c. The specific reasons why the alien is more qualified than all the U.S. workers who applied for the job; and
  - d. A final report of the faculty, student, and/or administrative body making the recommendation or selection at the completion of the competitive recruitment and selection process.
2. A copy of at least one advertisement for the job, placed in a national professional journal, giving the name and the

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date(s) of publication; the job title, duties, and requirements. Evidence of all other recruitment sources utilized; stating the results of such recruitment, must also be submitted.

3. A written statement attesting to the degree of the alien's educational or professional qualifications and academic achievements.

#### **F. Job Offers for Aliens of Exceptional Ability in the Performing Arts**

The Immigration and Nationality Act provides distinct tests for job offers to aliens of exceptional ability in the performing arts. The statute permits the employer to reject applications for the job from qualified U.S. workers who are less qualified than the alien. As long as the employer submits adequate documentation that the alien is of exceptional ability in the performing arts and of recruitment through advertising and appropriate unions the employer need not perform the recruitment activities described below in Part III of these instructions. The employer must submit the following:

1. Documentation to show the alien's exceptional ability, such as
  - a. Documents testifying to the current widespread acclaim and international recognition accorded to the alien; receipt of internationally recognized prizes or awards for excellence;
  - b. Documents showing the alien's work experience during the past year did, and the alien's intended work in the United State will, require exceptional ability;
  - c. Published material by or about the alien, such as criti

cal reviews in major newspapers, periodicals and trade journals (the titles, date and author of such material must be indicated);

- d. Documentary evidence of earnings commensurate with the claimed level of ability;
  - e. Playbills and star billings;
  - f. Documents attesting to the outstanding reputation of theaters, concert halls, nightclubs and other establishments in which the alien has appeared or is scheduled to appear, and/or
  - g. Documents attesting to the outstanding reputation or repertory companies, ballet groups, orchestras or other organizations with which the alien has performed in the past years in a leading or starring capacity.
2. A copy of at least one advertisement placed in a national publication appropriate to the occupation and the results. The advertisement shall:
- a. Identify the employer's name, address and the location of the employment if other than the employer's location;
  - b. Describe the job opportunity with particularity;
  - c. State the rate of pay, which shall not be below the prevailing wage for the occupation;
  - d. Offer prevailing working conditions;
  - e. State the employer's minimum job requirements;
  - f. Offer wages, terms, and conditions of employment which are no less favorable than those offered to the alien.
3. Documentation that unions, if customarily used as a recruitment source in the

area or industry, were unable to refer equally qualified U.S. workers.

### G. Job Offers for Shepherders

If an Application for Alien Employment Certification involves a job offer as a shepherder, the employer need *not* submit the documentation described above in the section on "General Documentation Requirements". Instead, the employer must submit all of the following documentation;

1. A completed Application for Alien Employment Certification form. (Form ETA 750), including the job offer for alien employment, and a statement of qualifications of the alien.
2. A signed letter or letters from all U.S. employers who have employed the alien as a shepherder during the immediately preceding 36 months attesting that the alien has been employed in the United States lawfully and continuously as shepherder, for at least 33 of the immediately preceding 36 months.

Job offers for shepherders should be filed directly with a District Office of the Immigration and Naturalization Service or a consular office of the Department of State for processing and not with a local office of the State Employment Service or an office of the Department of Labor.

**Part III  
Recruitment Efforts  
After Submission of an  
Application  
for Alien Employment**

This Part of the instructions details the recruitment for the job, which must be conducted after submission of the Application for Alien Employment Certification, including the fully-completed application form and all necessary documentation described in Part II of these instructions, to the local employment service office.

Employers seeking labor certifications for jobs as college or university teachers or on behalf of aliens of exceptional ability in the performing arts and aliens applying for labor certifications in occupations listed on Schedule A need not make the recruitment efforts described in this Part.

**A. Job Order**

Upon receipt of a completed application (except in the situations described in the above paragraph) the local office of the State employment service will make additional efforts to assist the employer in finding able, willing, and qualified United States workers who are available for the job. The State employment service office will examine the application and from it will prepare and process a job order through the regular employment service recruitment system for 30 calendar days. The employment service may refer U.S. workers to the employer. The employer must cooperate in this attempt to recruit U.S. workers.

**B. Employment Service Advertisement.**

In conjunction with the employment service job order, the employer must advertise the job opportunity for at least three consecutive days, in a newspaper of general circulation or a professional or ethnic publication as appropriate for the occupation and which is most likely to bring responses. The advertisement shall:

1. Direct applicants to report to the local State employment service office for referral to the employer.
2. Include a local office name or identification number and the complete address or telephone number of the local office.
3. Describe the job opportunity with particularity:
  - a. Offer at least the prevailing wage for the occupation.
  - b. State the rate of pay and offer at least prevailing working conditions.
  - c. State the job's actual minimum requirements.
  - d. Offer training if the job opportunity is the type for which the employer customarily provides training and;
  - e. Offer wages, terms and conditions of employment which are no less favorable than those offered the alien.

The employer shall supply the local office with at least one copy of the advertisement, with the name of the newspaper or publication and dates of publication.

**C. Recruitment Within Employer's Organization.**

As part of the recruitment process, the employer must post a notice of the job opportunity in bold letters in a conspicuous place within its organization. The notice must contain the same information required for the employment service advertisement, including the wage offer and other terms and conditions. The notice must be posted for at least ten consecutive business days where notices to employees, such as wage and hour and occupational safety and health notices, are normally posted.

The requirement of posting does not apply to private households.

The employer must submit the notice posted, stating where and for how long the notice was posted, and whether it remained unobstructed for the entire period of posting.

**D. Other Recruitment.**

If the employer has not used other recruitment sources normal to the occupation or otherwise required by the Department of Labor's regulations, the employment service local office or the certifying officer may require such recruitment after submission of the application.

**E. Results of Recruitment.**

The employer must report to the local employment service office the results of its recruitment through the employment service job order, the employment service advertisement, the notice posted within the employer's organization, and other post-application recruitment. Documentation of the results must include all of the following:

1. The number of U.S. workers responding to the recruitment;
2. The names, and the addresses, phone numbers, and resumes of all U.S. workers interviewed; and
3. The lawful' job-related reason for not hiring each applicant.

**F. Employment Service Findings.**

After the required recruitment period, the State employment service will forward the application and all other documentation, along with its findings, to the appropriate Department of Labor regional certifying officer for a determination. If the certifying officer denies the application, the employer and the alien will be informed of their rebuttal and appeal rights.

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### Documentation Required for Occupations on Part IV Schedule A

The Schedule A list of precertified occupations is subject to revision from time to time, based on U.S. labor market conditions. Therefore, current information on specific occupational groups and qualification standards included in Schedule A should be obtained from State employment service offices, the U.S. Department of State's Consular Offices abroad, and District Offices of the Immigration and Naturalization Service. Documentary requirements for individual eligibility may vary and specific information can be obtained from the above agencies and the regulations at 20 CFR 656.22.

A determination on a Schedule A application is based on whether the alien meets the qualification standards of the group under which the alien is applying for labor certification. The alien may have to show evidence of prearranged employment. The Schedule A determination of the Immigration and Naturalization Service or U.S. Department of State is conclusive and final.

General documentation requirements, which may apply to any Schedule A group, are:

- A. Original documents may be submitted, not necessarily in duplicate;
- B. If return of the original is desired, it may be accompanied by a photostatic or typewritten copy, provided such copies are permitted by law (Do not make copies of a certificate of naturalization or citizenship);
- C. Photostatic copies without the original may be submitted, if they are certified by an immigration or consular officer as identical to the original;
- A. Affidavits or published material are recommended as evidence of the alien's technical training or specialized experience; and

- E. Affidavits must be signed and dated by someone familiar with the alien's work such as former employers or recognized experts and must fully identify the applicant showing the capacity in which the applicant is testifying.

#### Reminders

- Read instructions carefully before completing forms and preparing documentation.
- Applications for Alien Employment certification must be submitted in duplicate.
- Date and sign all copies of forms in original signature.
- Employers must file their application with the State Employment Service Office *servicing the area of intended employment*.
- Schedule A applications filed by aliens must be filed with District Offices of the Immigration and Naturalization Service in the United **States or with u.s. consular** offices abroad.
- The employer and the alien will be notified, in writing, when a determination is made on their application.
- Questions on procedures for filing for a labor certification should be directed to State Employment Service Offices.