



# Centralized Processing of Permanent Labor Certification Program Backlog

## Draft Training Manual

Prepared for

**U.S. Department of Labor  
Employment and Training Administration**

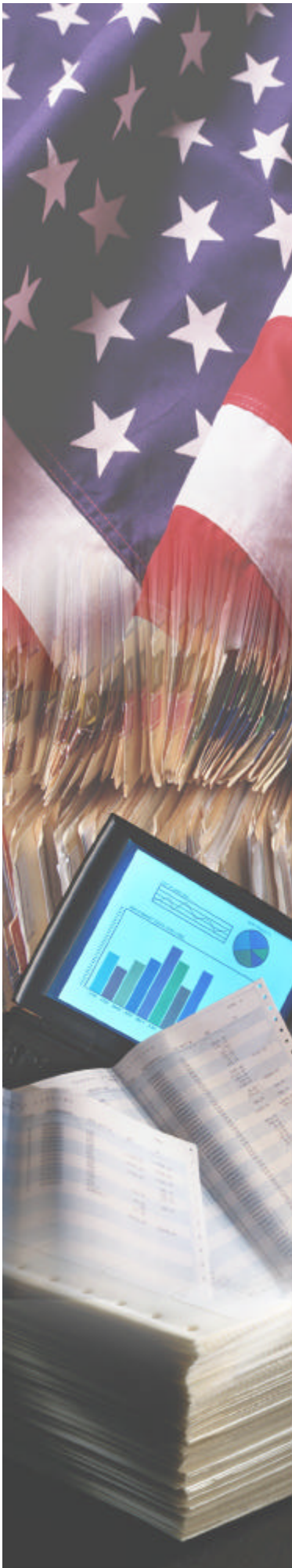
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Prepared by

***TMS***

**TECHNOLOGY & MANAGEMENT SERVICES, INC.**



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## **1.0 Introduction**

### **1.1 Background**

The U.S. Department of Labor's Employment and Training Administration (ETA) is responsible for approving or denying applications for Foreign Labor Certification (Form ETA 750). Applications are filed by employers who wish to offer permanent full-time employment to foreign workers seeking to immigrate to the United States. Employers must obtain a certification from the ETA indicating that qualified U.S. workers are not available for the job offered to the foreign worker, and that the wages and working conditions offered will not adversely impact domestic workers.

There is currently a backlog of nearly 300,000 unprocessed applications. There are a number of factors that have contributed to the accumulation of the backlog: (1) the requirements of the program have shaped a process in which each individual application is handled by a single analyst using a case management approach, making it difficult to take advantage of economies of scale; (2) the current process is fragmented, with the initial phase of the processing occurring at 54 State Workforce Agencies (SWAs) and the final certification or denial issued by the 10 ETA Regional Offices; and (3) the extension of provision 245(i) of the Immigration and Nationality Act that allowed foreign laborers already in the U.S. to apply for a visa while still in the country, if they applied for permanent status by April 30, 2001. This resulted in a large influx of applications that were often found to be of poor quality and requiring considerably more staff time to process. ETA plans to reduce that backlog by replacing the current state/regional office processing system with a streamlined, centralized system.

A high-level management review commissioned by the agency in 2001 recommended that ETA explore the option of contracting out and centralizing the processing of the backlogged cases at a single location. ETA contracted with Technology & Management Services, Inc. (TMS) to test the viability of this option by simulating the process on a small scale at a single site.

The simulation study performed by TMS entailed:

- Performing all stages in the processing of 1,540 applications from receipt to issuance of determination;
- Continuously improving case processing;
- Developing a training manual in preparation for full-scale implementation; and
- Integrating the SWA process with the ETA Regional process at a single location.

## **1.2 Purpose**

This training manual has been developed by TMS under contract with ETA (DCS-RFQ 02-42). ETA's national and regional offices have provided valuable input into the design and development of this training manual. TMS would like to acknowledge the contributions of the following individuals: Pat Stange and Tracie Czwartacki of ETA's national office; and, Stephen Stefanko, Barbara Shelly, and Minnie Holleran of ETA's Philadelphia Regional Office.

The development of the manual has been guided by TMS' real world experience in operating the simulation study for six months and processing more than 1,500 applications for permanent labor certification. The complexity of the process led to a steeper learning curve for TMS staff assigned to the project than initially anticipated. The knowledge gained during that learning experience has been distilled into this manual. The intent of the manual is to enable staff assigned to the full-scale backlog reduction effort to become productive as soon as possible after the initiation of that effort.

The manual is organized to reflect the structure of the Centralized Application Processing System (CAPS), the information system designed by TMS to facilitate the tracking and processing of the applications. The learning gained through the ETA-provided instructions and through operational experience has also been embedded into CAPS. The following section of the manual provides an operational description of CAPS.

## **2.0 Centralized Application Processing System (CAPS)**

This section of the manual provides background on the development of CAPS and describes the design of the system. It is important for staff assigned to the backlog effort to have a working knowledge of CAPS because the system is central to the effective processing of the backlog. Section 2.1 is a brief overview of the development of CAPS, and 2.2 is description of the high-speed, high-volume application processing model supported by CAPS.

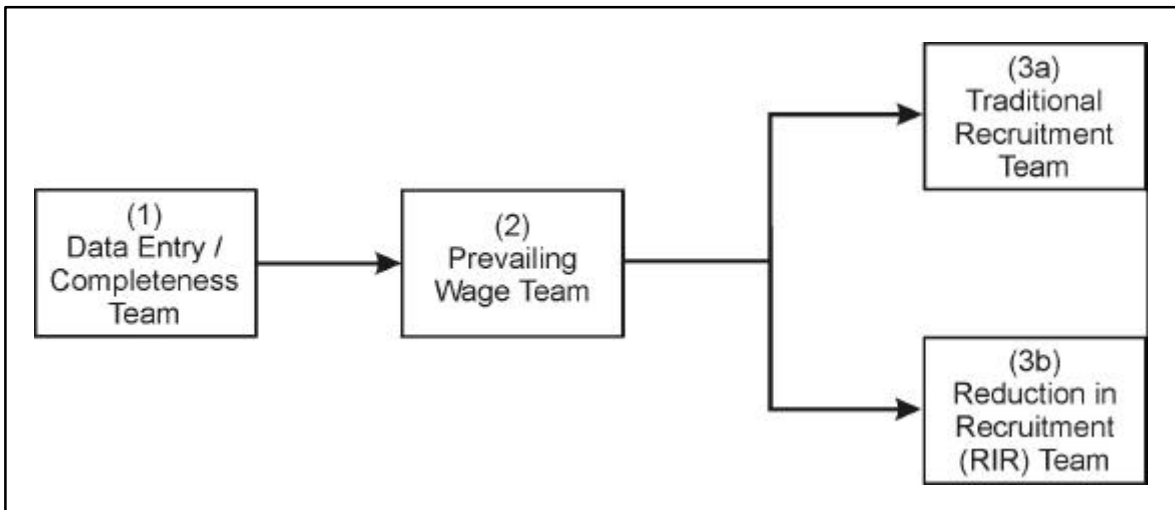
### **2.1 Overview of CAPS**

CAPS is a state-of-the-art, fully automated tracking and processing system designed to support the effective handling of high volumes of permanent labor certification applications. The system was designed by TMS as the platform for processing the sample batch of 1,540 applications; however, the major objective in the design and enhancement of CAPS has been to create a system fully capable of processing the high volumes that would be required under a full-scale backlog reduction effort. CAPS has evolved into a high-speed, high-volume, fully-automated application processing system completely capable of serving as the platform for a full-scale backlog reduction effort.

The system is web-based enabling remote data entry as well as remote access for designated officials managing or monitoring the backlog reduction effort. Designated regional and state officials may also be provided access to allow them to check on the status of specific applications. The web-based feature enables the integration of application processing conducted at multiple physical sites.

### **2.2 The High-Speed, High-Volume Model**

The high-speed, high-volume application processing system is built around a team-based approach for handling cases. Exhibit 1 lists the four basic components of the team-based model.

**Exhibit 1. Team-Based Application Processing Model**

This team-based model was pioneered by the California State Workforce Agency, and recommended as the most effective approach for eliminating the backlog in a high-level management review conducted for ETA by PricewaterhouseCoopers. TMS verified the effectiveness of this model in the simulation test. As demonstrated in Exhibit 2, on page 7, TMS has built upon the basic model depicted in Exhibit 1 to fully automate the entire application processing system enabling it to operate effectively at the high-speed, high-volume level required for backlog elimination.

**Team 1** has been expanded in Exhibit 2 to include three sub-units. **Team 1(a)** is responsible for entering the data on the application (ETA 750) into the CAPS system, reviewing the application for completeness, and scanning the application into CAPS. If an application is determined to be incomplete, CAPS will automatically generate a letter to the applying employer and attorney giving the employer 45 days to furnish the missing information (45-day letter). When the employers and attorneys respond to letters, the incoming responses are processed by **Team 1(b)**, which is responsible for entering new and changed data in CAPS. **Team 1(c)**, the quality control unit, is randomly assigned cases for which Team 1(a) has already entered data, and is responsible for reviewing the data entry for accuracy and tracking team and individual performance on accuracy of data entry.

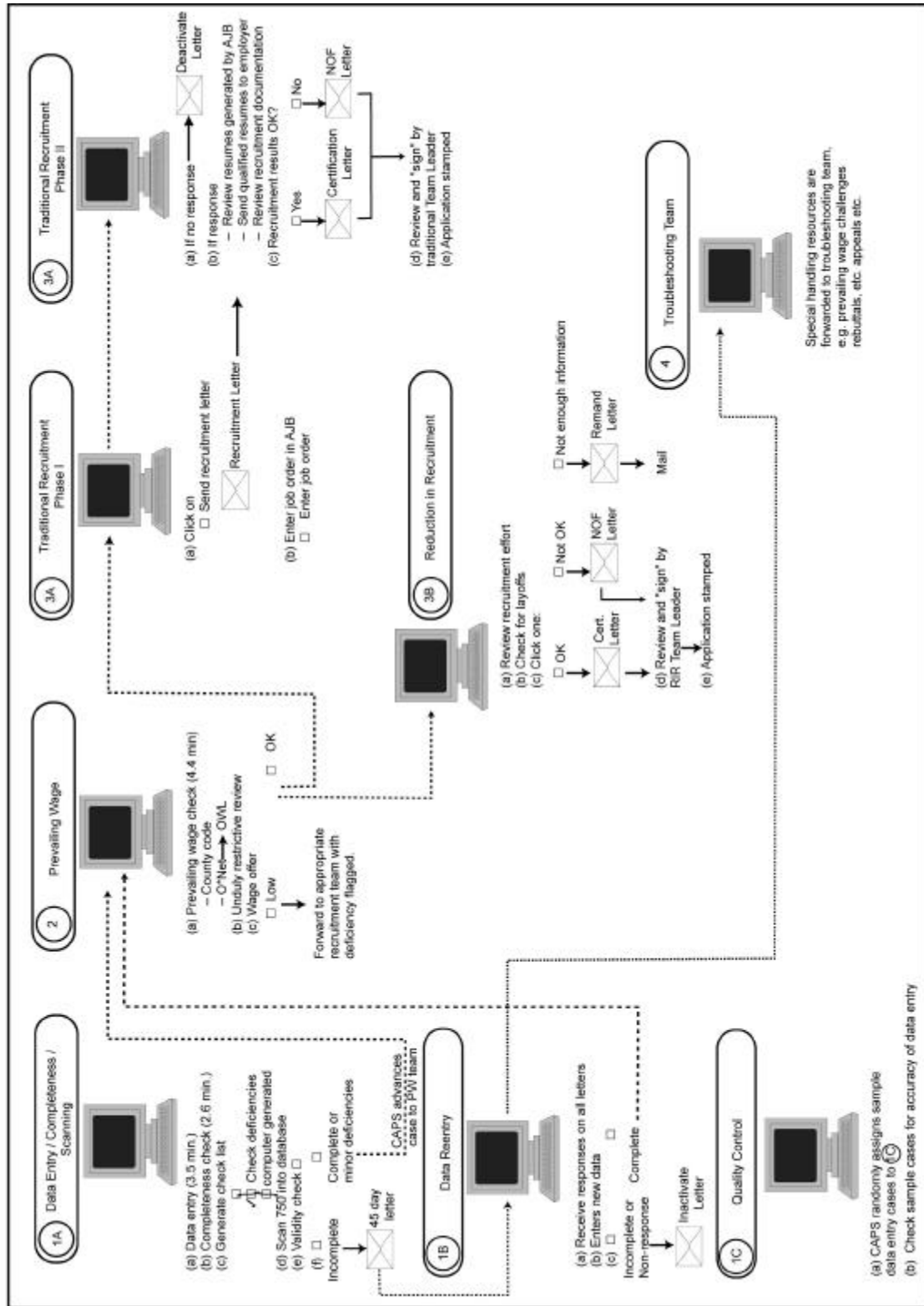
**Team 2** is the prevailing wage unit responsible for reviewing the applications for the adequacy of the wage offered to the alien, and to ensure that there is no unduly restrictive requirement for the position being offered, e.g., an unwarranted foreign language requirement. After this screening, the application is automatically forwarded to either the traditional recruitment team (3a) or the reduction-in-recruitment Team (3b) depending on the nature of the application. If the wage offered to the alien is too low, and/or there are unduly restrictive requirements, these deficiencies are flagged, and the application is forwarded to the appropriate recruitment team.

**Team 3(a)**, the traditional recruitment team, supervises the recruitment effort for traditional applications. A traditional application is one in which the employer has not yet attempted to ascertain whether qualified U.S. workers are available for the position being offered to the alien. When the analyst initiates the supervised recruitment, CAPS automatically generates a recruitment letter to the applying employer detailing the required steps for ensuring that there are no qualified U.S. workers available. The analyst also enters a job order in America's Job Bank (AJB) or the state job bank if arrangements have been made with the state of origin for the application. After receiving the recruitment results from the employer, the analyst determines if the effort is acceptable. If acceptable, CAPS generates a certification letter. If unacceptable, a Notice of Findings (NOF) is generated advising the employer of the steps required to correct the deficiencies in the recruitment effort.

**Team 3(b)** reviews the recruitment effort for reduction-in-recruitment applications. Reduction-in-recruitment (RIR) applications are ones in which the employer has conducted and documented a recruitment effort prior to submitting the application. The analyst reviews the documentation of the recruitment effort to ascertain whether it meets program requirements. The analyst also checks for recent layoffs at the firms. If the recruitment effort is acceptable, and there have been no recent layoffs, CAPS generates a certification letter. If there is a deficiency, a NOF letter is generated. If additional information is required, a remand letter is generated.

**Team 4** is the troubleshooting team responsible for handling special situations. When Team 1(b) receives input from applicants that require special handling, e.g., prevailing wage challenges, appeals, and rebuttals, they are forwarded to the troubleshooting team for special treatment.

Exhibit 2. Centralized Application Processing System (CAPS)



The preceding description of the Centralized Application Processing System provides the framework for the structure of the next sections of the manual. In these ensuing sections, the manual presents more detail on the work to be performed by each of the teams. Section 3.0 describes the work of the data entry, reentry and quality control teams, i.e., Teams 1(a), 1(b), and 1(c). Section 4.0 details the responsibilities of the prevailing wage team (Team 2). Section 5.0 addresses the work of the traditional and RIR recruitment teams [Teams 3(a) and 3(b)]. Section 6.0 describes the work performed by the troubleshooting team (Team 4), and Section 7.0 describes the determinations that can be made by the Centralized Processing Group (CPG). The CPG is the generic name being given to the entity or entities that become involved in the full-scale backlog reduction effort.

### **3.0 Data Entry, Reentry, and Quality Control**

After the application folders are received from the states at the Centralized Process Group (CPG), they need to be unpackaged, sorted and filed by state and alphabetically by employer. When this is accomplished, the application processing begins with the initial entry of data from the application into CAPS. Concurrently with the data entry, the applications are screened for completeness, and each application is scanned into CAPS. This work is performed by Team 1(a), the data entry and completeness team, and is described in Section 3.1. Team 1(b) is the data reentry team responsible for inputting new or changed data received from employers. Its work is detailed in Section 3.2. Team 1(c), the quality control unit, is responsible for randomly checking the data entry performed by the data entry and completeness team, and its activities are described in Section 3.3.

#### **3.1 Data Entry and Completeness – Team 1(a)**

The primary work of the data entry staff is to accurately and quickly transfer data from the application to the CAPS system. The performance of the work is guided by the processing system. After a case is assigned, the individual logs on to CAPS and clicks on the *Add a New Case* button. This will bring up the data entry screen that has been designed to reflect the structure of the application for permanent labor certification (ETA 750). The data entry screen is organized into nine sections:

Section 1 – Case and Worker

Section 2 – Employer

Section 3 – Employer Contact

Section 4 – Wage and Union

Section 5 – Attorney

Section 6 – Agent

Section 7 – Case Letters

Section 8 – NOF and Remand

Section 9 – Case Disposition

The data entry team is responsible for entering data into sections one through six (except for the prevailing wage determinations included in section four). The first section of the screen asks for tracking information on the application, the alien’s name, and the name of the individual entering the data.

Save Changes		Section 1 - Case and Worker		Save Changes	
ETA Case Nbr:	44000001	State Tracking Nbr:	200103995003	State:	NY
Case Status:	5=NOF/RemandLetterDone	Acceptance Processing Date:	4/30/2001	Type of Application:	Traditional
Case Priority Date:	4/30/2001	Case Worker:	Wujkowski, Britt	Case Batch Number:	1
Case Entry Date:	12/9/2002	Alien First Name:	Tomasz	Alien Middle Name:	
Alien Family Name:	Luszczyna				
Alien Maiden Name:					

The case priority date is the date the application was received by the state, and is found in the lower right hand corner of the ETA 750. The type of application prompt asks whether the application is traditional or reduction-in-recruitment (RIR). Traditional applications are ones in which recruitment efforts have not yet been made by the employer, while RIR case are applications in which the employer has attempted to recruit U.S. workers before filing the application. The application is designated as RIR if there is a written request from the employer and/or attorney indicating a desire to have the application processed as RIR, and supporting documentation indicating recruitment efforts of U.S. workers has been provided. All other cases should be designated as traditional.

Save Changes		Section 2 - Employer		Save Changes	
Employer (Firm) Name:	Leonard Conway	Employer Verified ?:	Yes		
Employer Addr_1:	66 Seafield Lane				
Employer Addr_2:	Post Office Box 744				
Employer City:	Westhampton Beach	Employer State:	NY	Employer Zip:	11978
Employer Phone:	(631) 288-492	Employer Phone Ext:		Employer ID Nbr:	
Nature of Emp Business:	11 Agriculture, Forestry, Fishing and Hunting				
SOC Job Occupation Code:	35-1011	DOT Job Occupation Code:		Job Order Nbr:	
Job Title:	Assistant House Manager			Is Job Temporary?:	
Month Alien Hired:		Year Alien Hired:			
Required Years of Experience:		Evaluation of Alien Job Experience:			
Work Place Addr_1:	66 Seafield Lane			Work Place County:	
Work Place Addr_2:	Post Office Box 744			Work Place Zip Code:	11978
Work Place City:	Westhampton Beach	Work Place State:	NY		

Save Changes		Section 3 - Employer Contact		Save Changes	
Contact First Name:	Leonard	Contact Last Name:	Conway (President)	Contact Phone:	(631) 288-492
Contact Ext:		Contact Fax:		Contact Email:	

All the information required to enter the data into Sections 2 and 3 of CAPS should be found on the ETA 750, and the information being requested is self-explanatory.

Save Changes		Section 4 - Wage and Union			Save Changes	
Basic Rate - Hourly:	\$12.00	Basic Rate - Daily:	\$96.00	Basic Rate - Weekly:	\$480.00	
Basic Rate - Monthly:	\$2,080.00	Basic Rate - Yearly:	\$24,960.00			
Prevailing - Hourly:	\$13.49	Prevailing - Daily:	\$107.92	Prevailing - Weekly:	\$607.05	
Prevailing - Monthly:	\$2,338.27	Prevailing - Yearly:	\$28,059.20			
Basic/Prevailing %:	88.95%	Prevailing Rate Source:	OES			
Basic/Prev % Requirement:	<input type="checkbox"/>	Basic/Prev % Satisfies Requirement:	0	OES Wage Level:		
Job Union ?:	No	Local Union Number:		Local Union Name:		
Local Union City:		Local Union State:				

The data entry and completeness team is responsible for entering all the information required in Section 4 except the prevailing rates. These will be added by the prevailing wage team after a review of prevailing wage information for the occupational category and geographical location.

Save Changes		Section 5 - Attorney			Save Changes	
Atty Prefix:	Ms.	Atty First Name:	Ewa	Atty Last Name:	Bogdan	
Atty Firm Name:	Ewa Bogdan, Attorney at Law			Atty Title:		
Atty Address 1:	120 Fourth Avenue					
Atty Address 2:						
Atty City:	Bay Shore	Atty State:	NY	Atty Zip Code:	11706	
Atty Country:		Atty Phone:	(631) 665-7900	Atty Ph Ext:		
Atty E-Mail:				Atty Fax:		

Save Changes		Section 6 - Agent			Save Changes	
Agent Prefix:		Agent First Name:		Agent Last Name:		
Agent Firm Name:						
Agent Address 1:						
Agent Address 2:						
Agent City:		Agent State:		Agent Zip Code:		
Agent Country:		Agent Phone:		Agent Ph Ext:		
Agent E-Mail:				Agent Fax:		

Sections 5 and 6 request information on any attorney or agent representing the alien or the employer.

If the application is determined to be incomplete, CAPS will generate a 45-day letter and a completeness checklist that identifies the deficiencies. The completeness checklist lists all items from Part A and Part B of Form ETA 750 and the documentation requirements for

RIR applications. Missing items are checked off. The following additional items are also listed on the completeness checklist:

- Part A and Part B of application must be each on one page, front to back;
- Two copies of application with original signatures; and
- Completed G-28 Form if an attorney is to be used.

The employer and attorney must also be sent a copy of the application. This copy can be generated by CAPS using the scanned version of the ETA 750.

### **3.2 Data Reentry – Team 1(b)**

The data reentry team will handle responses from employers and attorneys. Data entry specialists on the team will receive the incoming response letters, access the appropriate files in the database, and enter the new data using the CAPS screens described and depicted in Section 3.1. If the response is timely and complete, CAPS will automatically forward the file to the appropriate team, e.g., the prevailing wage team, or one of the recruitment teams. If a completeness response is not received within 45 days (plus a 10-day grace period to allow for mail delivery after the postmark date), CAPS will alert the data reentry team, and the data entry specialist will initiate the automatic generation of an inactivation letter. Inactivation of the applications means that no further processing of the subject application will take place, but that the applicant may re-file the application and it will be assigned a new priority date.

### **3.3 Quality Control – Team 1(c)**

CAPS will randomly assign applications for which initial data entry has already been accomplished by the data entry team for duplicate data entry. The purpose of the double entry of data is to assure the accuracy of data entry through random review. The data entry specialist on the quality control team will receive the hard copy of the case file, and enter the data using the screens described and depicted in Section 3.1. Discrepancies between the original data entry and the quality control check will be flagged by CAPS. The data entry specialist on the quality control team will reconcile the disparities, and, if the original data entry was inaccurate, the inaccuracy will be noted by CAPS along with the name of the data entry specialist who made the error. This data will be monitored monthly by the

manager of the data entry section, along with the metrics on speed of data entry, for corrective action. The quality control team will also research illogical relationships among data in CAPS that could be indicators of data entry errors.

### 4.0 Prevailing Wage Review (Team 2)

Applications that are determined to be complete by either the data entry team or the data reentry team are automatically forwarded to the prevailing wage team. The prevailing wage rate is defined as the average wage paid to similarly employed workers in the requested occupation in the area of intended employment. The Immigration and Nationality Act (INA) requires that the hiring of a foreign worker will not adversely affect the wages and working conditions of U.S. workers working in the occupation in the area of intended employment. Wage analysts on the prevailing wage team are responsible for determining the appropriate prevailing wage. Wage analysts on the team use CAPS Section 4 to record the results of their review. Following is a depiction of Section 4.

Save Changes	Section 4 - Wage and Union		Save Changes
Basic Rate - Hourly: \$12.00	Basic Rate - Daily: \$96.00	Basic Rate - Weekly: \$480.00	
Basic Rate - Monthly: \$2,080.00	Basic Rate - Yearly: \$24,960.00		
Prevailing - Hourly: \$13.49	Prevailing - Daily: \$107.92	Prevailing - Weekly: \$607.05	
Prevailing - Monthly: \$2,338.27	Prevailing - Yearly: \$28,059.20		
Basic/Prevailing %: 88.95%	Prevailing Rate Source: OES		
Basic/Prev % Requirement: <input type="checkbox"/>	Basic/Prev % Satisfies Requirement: 0	OES Wage Level: <input type="checkbox"/>	
Job Union?: No	Local Union Number: <input type="text"/>	Local Union Name: <input type="text"/>	
Local Union City: <input type="text"/>	Local Union State: <input type="text"/>		

When the wage analyst is assigned the application, the wages to be offered to the alien should already be recorded in Section 4 of CAPS. For traditional applications, the appropriate prevailing wage is the current year’s prevailing wage. For RIR applications, the wage analyst should check for the prevailing wage in effect in the year of the priority date.

#### 4.1 Determining the Prevailing Wage

To determine the prevailing wage, the analyst must first identify the county of the intended employment. The following Web sites provide a county lookup by state and city:

- [http://www.abcreports.com/states/cross\\_reference.htm](http://www.abcreports.com/states/cross_reference.htm); and
- <http://www.zipinfo.com/search/zipcode.htm>.

After the county is identified, the analyst must determine the appropriate occupational code number for the position being offered to the alien.

***Prevailing Wages for Construction-Related Occupations:*** If an occupation is construction related, the Davis-Bacon Web site will be used to determine if there is an appropriate wage. The Web site is located at:

- <http://www.access.gpo.gov/davisbacon/>

Once the Web site has been accessed, the analyst will search Davis-Bacon determinations by state. Once accessing the appropriate state, the analyst can scroll down to the appropriate county. If there is more than one county of intended employment, the county in which the majority of the work is to be performed will be used to make the wage determination. Using the information provided on Form ETA 750, the analyst will determine if the construction job is building, highway, heavy, or residential. The analyst will then select the appropriate category, and all the construction jobs that fall under that category for that particular county will be listed along with their appropriate wages. If the construction job is not listed for the county of intended employment, the prevailing wage determinations will be made using the OES online wage library..

***Prevailing Wages for Non-Construction Occupations:*** For non-construction occupations, after the county is identified, the analyst uses the O\*NET Code Connector Web site to determine the correct occupational code for the job. To access a specific occupation, the analyst types in a key word that will aid in determining the correct occupational group, or the analyst can select an appropriate group from the start page. Once an appropriate occupational group is determined, the analyst will be able to search under specific occupational titles to identify the appropriate occupation.

Each occupation provides the analyst with the O\*Net-SOC description, a list of O\*Net-SOC tasks, information on related occupations, occupation family (other, similar O\*Net codes), and work content statements. This information enables the analyst to identify the appropriate job occupational title. The Web site is located at:

- [www.onetcodeconnector.org/](http://www.onetcodeconnector.org/)

Once the county and occupational code have been determined, the *Online Wage Library* database is used to search for prevailing wages by state, county and occupational code. The *Online Wage Library* is an online database of current OES-ALC wages with a crosswalk to Service Contract Act occupations that might apply. ETA maintains a prevailing wage database located at:

- <http://workforcesecurity.doleta.gov/foreign/wageinfo.asp>

Select the *Online Wage Library* to search the database for prevailing wages by state, county and occupation category. If the prevailing wage information is not accessible from this site, the appropriate State Workforce Agency (SWA) should be contacted. The prevailing wages are divided into Level I and Level II categories in the database by annual salary and hourly wages. The following are general guidelines to determine the appropriate wage level:

**Level I Prevailing Wage:** Level I represents beginning level employees. The applicant has little or no experience related to the position applied for and/or education related to the position. These employees work under close supervision and receive specific instruction on tasks and results expected. They are closely monitored and reviewed for accuracy.

**Level II Prevailing Wage:** Level II represents fully competent employees or those whose jobs require advanced degrees above the norm for the occupation. The applicant has several years of experience related to the position applied for, has extensive training and/or an advanced degree. They may supervise or provide direction to staff performing tasks requiring skills equivalent to a Level I. These employees only receive technical guidance and their work is reviewed for application of sound judgment and effectiveness in meeting the organization's procedures and expectations.

**Rules for Determining Prevailing Wages:**

- The job description provided on the application (ETA 750) should be used in classifying an occupation. If a Service Contract Act (SCA) occupation is identified, the majority of the tasks must be included in the job description. If not, another occupational classification should be used.
- Generally, the SCA prevailing wage determination should not be used for a computer occupation.

The proposed wage on the application (Item 12) must be at least 95 percent of the prevailing wage standard in order to be processed. However, if the wage was obtained by the Service Contract Act (SCA), Davis-Bacon Act (DBA) or a union agreement, the proposed wage on the application must be 100 percent of the prevailing wage standard.

**4.2 Unduly Restrictive Requirements Review**

The employer's offer of employment must contain a complete description of the job to be performed and the minimum education, training and experience required for a worker to satisfactorily perform the job. The job duties and requirements should be consistent with those defined for the job in the Standard Occupation Codes (SOC) and those normally required for the job in the United States. SOCs can be referenced at:

- <http://www.bls.gov/soc>

Requirements are unduly restrictive if they demand skills, knowledge, abilities and conditions of employment that are not normally required to satisfactorily perform work in the occupation. Such job requirements shall be considered unduly restrictive unless adequately documented as arising from a *business necessity*. Two tests of whether job requirements are unduly restrictive or arising from business necessity are:

- First, whether requirements are reasonably related to tasks to be performed, and
- Second, whether the absence of the requirement would undermine the essence of the business operation.

Examples of requirements that have been found in some cases to be unduly restrictive are:

- Proficiency in a foreign language.

- Years of experience required to perform the job in excess of those specified by the Specific Vocational Preparation (SVP) supplement to the DOT.
- College degrees required for jobs where technical school or on-the-job training is all that has previously been required by the employer or in the industry.
- A requirement that household domestic service workers live on the employer's premises.
- Combining jobs that are normally performed by more than one worker into one.
- Knowledge or skills required that cannot be obtained in the United States.
- Training or experience not normally required for a particular job.

A letter will be issued to the employer and attorney, if appropriate, advising that their job description contains unduly restrictive requirements. The employer will have the opportunity to either amend the requirements or provide documentation to support the business necessity for the restrictive requirements.

## **5.0 Recruitment (Teams 3a and 3b)**

An application for permanent labor certification can be approved only if the applicant can demonstrate that there are no qualified U.S. workers available to fill the position being offered to the alien. The employer has two choices for documenting attempts to recruit U.S. workers for the position. Traditional applications are ones in which the employer does not conduct a concerted recruitment effort prior to filing the application. The recruitment effort is undertaken later under the supervision of a recruitment analyst. The second option is for the employer to conduct and document a recruitment effort prior to filing the application. This is called a reduction-in-recruitment (RIR) application. Section 5.1 describes the work of analysts on the traditional recruitment team. Section 5.2 presents a summary of the work performed by the RIR team.

### **5.1 Traditional Recruitment (Team 3a)**

After the prevailing wage review is completed, traditional applications are forwarded to the traditional recruitment team. If there is a prevailing wage deficiency, it is flagged for the attention of the recruitment analyst. The analyst initiates the supervised recruitment effort by generating a recruitment instruction letter to the employer using CAPS, and registering a job order with America's Job Bank (AJB). If a prevailing wage deficiency has been flagged, the instructions include notification to the employer of the appropriate wage to be offered

#### **5.1 (a) Supervised Recruitment Instructions.**

The recruitment analyst initiates the supervised recruitment by accessing section seven of CAPS – Case Letters. In response to the query, “Recruitment Ltr Req’d?”, the analyst clicks on “Yes” to generate the recruitment instructions letter. The automatically-generated letter instructs the employer to draft a newspaper ad for the position offered to the alien and get the draft ad to the CPG within seven days of receipt of the letter. The content of the draft and the ad must include the same requirements listed on Part A of the Form ETA 750:

- Item 9 - Job Title

- Item 11 – Work Schedule
- Item 12 – Rate of Pay
- Item 13 – Job Description
- Item 14 – Education, Training and Experience
- Item 15 – Special Requirements, if applicable
- Job Order Number; and
- Instructions to send duplicate copies of resumes by fax or mail to the CPG.

Once the draft has been approved, the employer must advertise the job opportunity for three consecutive days in a newspaper of general circulation in the area of intended employment, and it is recommended that one of the days be a Sunday. All advertising must be completed within the 30-day recruitment period. Failure to advertise during the recruitment period will lead to a cancellation of the case.

#### **5.1 (b) Placing a Job Order with America’s Job Bank**

After generating the recruitment letter, the analyst places a job order with America’s Job Bank (AJB). AJB is a national job placement Web site sponsored by ETA and located at [www.ajb.org](http://www.ajb.org). The analyst will follow the AJB on-line instructions for posting a job. The login user name is *tms-hq* and the password is *orioles*.

The analyst should select the *Job Manager* button from the left menu bar, and next select the *Create a New Job* button. Contact information is entered in the first screen. The methods of contact to select are address, fax and e-mail. Centralized Processing Group should be entered in the contact name field, and the name of the employer on the ETA 750 should be entered in the company field. Fields with an asterisk are required fields. As each screen is completed, the analyst should use the *Proceed to Next Step* button to continue.

The job title and occupational category should be entered in the second screen. The occupational category is used to assist job applicants in locating the job posting. Additionally, the location of the employer, including the city, state and zip code, the

number of positions, the number of hours per week, and the salary information from the ETA 750 should be entered in the second screen.

In the third screen, the job description from the ETA 750 should be entered. The required education and experience level should be entered in the fourth screen. The fifth screen is a summary of the job order information. The analyst may then either select the *Submit Job* button or the *Save to Finish Later* button. If the job is submitted, a job order number will be assigned and referenced on the screen. The job order number should be entered in CAPS in the appropriate case record. If the job is saved to finish later, it can be accessed by selecting the *Job Manager* button from the left menu bar, and then selecting the *Incomplete* tab.

A job order will have a status in the AJB of active, incomplete, queued for approval, suspended or archived. The status of any of the job orders can be changed by selecting the checkbox next to the job order and clicking the appropriate button. Active job orders are those that have been approved and will be listed on the AJB for 45 days. Job orders queued for approval have been submitted for approval by AJB. Once they are approved by AJB, they will automatically appear in the list of active job orders. Incomplete job orders are those that have been partially or completely entered, but have not been submitted for approval. Suspending a job will deactivate it. If not reactivated within 45 days, suspended jobs will be purged from the account. Archiving a job will deactivate it indefinitely.

### **5.1(c) Resumes Submitted to Employer**

The recruitment analyst forwards the resumes of all qualified applicants received as the result of the newspaper ad and the AJB job order to the employer. The analyst must determine which resumes are qualified for the applicable job position. The employer is expected to contact and interview each applicant within two weeks of receipt of these resumes and include the results in the recruitment report. If the employer hires a U.S. worker for the job, the process will end and the application will be denied. If the employer has more than one job opening, the application may continue to be processed.

A cover letter to be sent with the resumes to the employer can be generated in CAPS by selecting 'Yes' in the *Resume Letter Required* field. Next, the analyst should select the Admin tab and select the *Create Applicant Referral Letter* button. Follow steps 1 through 3 on the screen to print out the letters and update the case records automatically in CAPS.

### **5.1 (d) Notice of Filing**

The employer must notify the collective bargaining representative of the filing of an application for permanent labor certification. If there is no bargaining representative, the employer must notify employees by posted notice.

The posted notification must contain the following:

- A complete description of the job, consistent with the details on Part A of Form ETA 750. The description must include job title, duties, requirements, a prevailing rate of pay, hours of work and any training which may be offered;
- Directions for applicants to report to the employer;
- A statement that the notice is being provided as a result of the filing of an application for permanent alien labor certification; and
- A statement that any person may provide documentary evidence bearing on the application to the CPG

A posted notice must be displayed for at least 10 consecutive days, and must be clearly visible to employees for the entire posting period.

### **5.1(e) Recruitment Report Submitted by Employer**

At the conclusion of the 30-day recruitment period, the employer must provide the CPG with a written report of all recruitment efforts and their results. Failure to provide the recruitment report within 45 days of the conclusion of the recruitment period will result in a cancellation of the filing date.

The report must include the following documentation:

- One advertisement tear sheet for each day the ad ran (circle ad to identify);
- Copies of resume(s) received;

- A statement signed and dated by the employer's hiring authority giving the lawful job-related reasons for any rejections;
- Notice of Filing with a signed and dated statement of the dates posted;
- A statement signed and dated by the employer's hiring authority documenting the results of the Notice of Filing and giving the specific job-related reasons for any rejections;
- The number of workers responding to the recruitment;
- The names, addresses, telephone numbers, and resumes and/or job applications of all workers interviewed; and
- If hired, the date worker(s) will start work.

The traditional recruitment team will review the employer's recruitment efforts and the employer's evaluation of the U.S. applicants to determine if the recruitment reports are acceptable.

## **5.2 Reduction-in-Recruitment (Team 3b)**

Reduction-in-recruitment (RIR) applications are forwarded to the RIR team. The recruitment analyst reviews the application for the following documentation:

- Written request from employer and/or attorney for RIR filing;
- Description of recruitment efforts within the 6-month period before the priority date and no fewer than 30 days before the priority date.
  - Minimum of one print ad in a newspaper of general circulation or a relevant journal;
  - At least two other actions indicating a pattern of recruitment. These actions may include a job order with the State Workforce Agency; internal company recruitment activities; company and commercial internet Web page ads; community, college or other job fairs; use of a private employment agency; additional print advertisements (use of more than two additional print ads);
- Recruitment report
  - Number of applicants;
  - Lawful, job-related reasons for not hiring U.S. applicants; and/or
- Other documentation for special occupation if required.

- The occupation is not on “Schedule B” (List in Technical Assistance Guide pages 21 – 29).

If, after evaluating the RIR documentation, the analyst believes that the employer has not made a good-faith effort to recruit U.S. workers, a RIR denial letter should be generated through CAPS. The application is then forwarded to the traditional team for a supervised recruitment. The priority date of the application remains the same, but the date of acceptance for processing becomes the date that the denial letter is issued.

### **5.2 (b) Review of Recent Layoffs**

In determining whether a Reduction in Recruitment should be permitted, the analyst should assess the availability of U.S. workers. In making that assessment, the analyst shall obtain information on layoffs occurring in the labor market. State agencies may be contacted to obtain information on the labor market. In addition, the Web addresses may be referenced to obtain layoff information for the following states:

- New Jersey: <http://www.state.nj.us/labor/warn/warnindex.html>
- New York:  
[http://www.workforcenewyork.com/site\\_search.asp?search=layoffs+and+closings](http://www.workforcenewyork.com/site_search.asp?search=layoffs+and+closings)
- Maryland: <http://www.dllr.state.md.us/employment/jtpa.html>
- Virginia:  
[http://www.vec.state.va.us/index\\_es.cfm?loc=employer&info=employer\\_services](http://www.vec.state.va.us/index_es.cfm?loc=employer&info=employer_services)

If information cannot be obtained regarding layoffs at the time the test of the labor market occurred for the Reduction in Recruitment, then the analyst must verify if there has been a layoff in the last six months.

If there is reason to believe that the employer has had a layoff, then a Notice of Findings should be issued asking if the layoff included workers in the requested occupation in the area of intended employment.

- If the answer is no, proceed with approval.

- If the answer is yes, then the employer must provide information identifying the laid off workers (may be in summary) and provide the lawful reason(s) why they were not hired for the requested position. If the employer fails to adequately provide such information, the application is rejected.

The analyst may conclude that there is a likelihood of available U.S. workers, if other employers in the area of intended employment have laid off U.S. workers in the same occupation subsequent to the reduction-in-recruitment's test of the labor market, even if there is no information indicating the employer has had a layoff. Then:

- A letter should be sent to the employer giving them the option of:
  - Publishing an additional advertisement, or;
  - Requesting the application be remanded for traditional case processing.

If the employer chooses to run the advertisement, then two weeks after the advertisement is run the results of the advertisement should be submitted to the analyst. If no qualified U.S. workers applied, or if those who applied were lawfully rejected, the application may be approved.

The employer may be allowed to withdraw a reduction-in-recruitment request if there has not yet been issued a Notice of Findings on the case when the request to withdraw is received.

## **6.0 Troubleshooting (Team 4)**

The troubleshooting team handles the most challenging applications processed by the centralized processing group. Individuals on the troubleshooting team will require more extensive training than the members of the other application processing teams. Because of the nature of their work, these individuals will need a comprehensive, in-depth knowledge of the rules and regulations that guide the operation of the permanent labor certification program. The comprehensive training manual for the troubleshooting team will be prepared as a supplement to this operational training manual.

Some examples of the scenarios that would warrant transferring the application to the troubleshooting team are:

- The employer or attorney challenges the prevailing wage determination.
- The employer or attorney questions an interpretation of the federal regulations guiding the program.
- Members of the other teams require guidance or advice on complex issues raised by the application.
- Members of the other teams suspect that the application may be fraudulent.
- There is some question on the validity of the employer.
- Rebuttals to NOF letters have been received.
- There are difficulties with recruitment issues or in determining what are unduly restrictive requirements.

## 7.0 Determinations

The Centralized Processing Group can issue any of the following determinations depending on the facts ascertained in the processing of the applications. After the ETA 750 applications have been processed they will undergo one of the determinations outlined in the steps below:

- 7.1 Cancellation of Application
- 7.2 Inactivation of Application
- 7.3 Notice of Findings
- 7.4 Certification
- 7.5 Denial

The circumstances under which each determination would be issued are presented below along with the identification of the case processing team most likely to issue the determination.

### 7.1 Cancellation of the Application

A cancellation of an application is most likely to be issued by the data reentry team, and the reason for the cancellation is usually a withdrawal of the application by the employer or attorney. The employer or attorney can withdraw the application by completing the withdrawal form sent to the applicants as part of the 45-day completion package, or by some other written notification. Rationales for withdrawals can include a wide variety of situations, e.g., the alien has returned to his or her native country, the alien is no longer interested in the position, the employer has gone out of business, or other reasons. To issue a cancellation, the data entry specialist accesses Section 9 of CAPS and under Case Disposition Decision, clicks on 4=Withdrawn. This automatically generates a cancellation letter. The CAPS screen for Section 9-Case Disposition is depicted below.

Save Changes		<b>Section 9 - Case Disposition</b>		Save Changes	
Case Disposition Decision:	0=InProgress	Disposition Ltr Issue Date:		Disposition Ltr Resp Date:	
Disposition Ltr Remarks:					
Case Completion Date:		Minutes For Data Entry:	4	Minutes For Prev Wage:	4
Minutes For Compl Check:	0	Days To Process Folder:			

## 7.2 Inactivation of Application

An application is inactivated if the employer and attorney are not responsive to formal requests for information or documentation issued by the CPG. For example, the completeness letter issued by the data entry team stipulates that the employer and attorney have 45 days to submit information omitted from the original application. The requirement is that the applicant's response must be postmarked within 45 days of the date of the completeness letter. CAPS will automatically track this time requirement (actually CAPS is set up with a 55-day time limit to allow a "grace period" for postmarking), and alert the data reentry team when the limit has expired. The data entry specialist on the team then generates the inactivation letter by accessing Section 9 of CAPS, and under Case Disposition, clicking on 3=Inactivation.

## 7.3 Notice of Findings

A Notice of Findings (NOF) letter will be issued to employers when any of the following situations occur:

- Insufficient response to the Letter of Incompleteness.
- Insufficient response to the Non-Compliant Prevailing Wage Letter.
- Insufficient response to Recruitment Report instructions.

A Notice of Finding (NOF) letter will be sent to the employer and attorney indicating the CPG's *intent to deny* the application. The NOF letter will identify all reasons for the intended denial.

If the employer responds in time to the NOF letter, the additional information will be reviewed by the appropriate team to determine if the reason(s) for denial were addressed adequately.

- If the additional information is adequate, the team forwards the application to the Certifying Officer for certification.
- If the NOF letter is not responded to in the allowed time period or the rebuttal did not refute the reason(s), the case will be denied.

Section 8 of CAPS is used to generate NOF letters.

### 7.4 Certifications

Applications are *certified* when the following situation occurs:

- The Centralized Processing Group has made a preliminary determination that the application complies with all regulatory requirements.

Applications, which are recommended for certification, are forwarded to the appropriate Certifying Officer, U.S. Department of Labor (US DOL) for official ratification (*Appendix M*).

### 7.5 Denials

Applications are *denied* when one of the following situations occurs:

- The employer responds in time to the NOF letter, but the requested information is inadequate;
- The employer has an untimely response to the NOF letter; or
- A U.S. worker is found to fill the position.

The appropriate team will submit a Letter of Denial to be sent to the employer and attorney. The employer has the right to appeal the Final Determination to the Board of Alien Certification Appeals (BALCA). Instructions for appealing a denial are attached to the letter sent to the employer and attorney.

## APPENDIX

The Appendix contains:	<u>Page</u>
A1 Checklists.....	A1-1
A2 Samples of Letters.....	A2-1
A3 Agent Guidelines/Form G-28.....	A3-1
A4 Rejection of U.S. Workers.....	A4-1
A5 Special Occupations.....	A5-1

## **APPENDIX A1**

### *Checklists*

## **Completeness Checklist**

The **omitted** items on the ETA 750 application are indicated below. The application cannot be processed until this information is supplied.

### **Part A. - Offer of Employment**

- A1. Name of Alien
- A2. Address of Alien
- A3. Type of Visa
- A4. Name of Employer
- A5. Phone #
- A6. Address
- A7. Address Where Alien Will Work
- A8. Nature of Employer's Business
- A9. Job Title
- A10. Total Hours per Week
- A11. Work Schedule (am & pm)
- A12. Rate of Pay
- A13. Description of Job to be Performed
- A14. Minimum Education, Training, and Experience Required
- A15. Other Special Requirements
- A16. Title of Alien's Supervisor
- A17. Number of People Alien will Supervise
- \*\* Item A18 is N/A for Permanent Certification
- A19. If Job is Unionized
- A20. Statement for Live at Work Job Offers
- A21. Sufficient Efforts Used to Recruit US Workers and the Documented Results
  
- \*\* Item A22 and A23 is N/A to Checklist
- A24. Declarations

## Completeness Checklist (continued)

The **omitted** items on the ETA 750 application are indicated below.

### **Part B. - Statement of Qualifications of Alien**

- B1. Name of Alien
- B2. Present Address
- B3. Type of Visa
- B4. Alien's Birth date
- B5. Birthplace
- B6. Present Nationality
- B7. Address in US Where Alien will Reside
- B8. Name & Address of Prospective Employer
- B9. Occupation in Which Alien is Seeking Work
- B10. Status of Alien
- B11. Names & Addresses of Schools, Colleges, and Universities Attended
- B12. Additional Qualifications and Skills Alien Possesses
- B13. Licenses
- B14. Documents Submitted as Evidence of Education, Training, Experience
- B15. Work Experience
- B16. Declarations

### **Additional Checklist Items:**

- C1. Part A and Part B of Application Must Be Front-to-Back, Not on Individual Pages
- C2. Two Copies of Application Enclosed With Original Signatures
- C3. Completed G-28 Form if an Attorney is to be Used
- C4. Menu if for a Cook position
- C5. Need Evidence of Existence, Unable to Verify Employer
- C6. For Construction Occupations, Need County % and Type of Construction
- C7. For Domestic Household Service Workers, Additional Documentation Required
- C8. For Physicians, Additional Documentation Required
- C9. For Exceptional Ability in the Performing Arts Occupations, Additional Documentation Required
- C10. For College and University Teachers, Additional Documentation is Required

***The missing information must be supplied to the Centralized Processing Group, Foreign Labor Certification, U.S. Department of Labor within 45 days of the date of the letter transmitting this checklist.***

**Comments:**

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## **APPENDIX A2**

### ***Samples of Letters***

A2-1	Completeness Deficiency Letter
A2-4	Remand Letter
A2-7	Recruitment Instructions Letter
A2-11	Applicant Referral Letter
A2-12	Reduction in Recruitment Denial Letter
A2-13	Notice of Findings – Cover Letter
A2-15	Adverse Effect – OES
A2-17	Adverse Effect – DBA
A2-18	Adverse Effect – SCA
A2-19	Employment – Full Time Work
A2-20	Employment – Landscape Gardener
A2-22	Minimum Job Requirements
A2-24	Layoffs
A2-25	Notice of Filing
A2-26	Prior Recruitment Efforts
A2-27	Unduly Restrictive Requirements – Foreign Specialty Cook
A2-30	Unduly Restrictive Requirements – Job Requirements
A2-31	Unduly Restrictive Requirements – Language Requirement
A2-33	Unduly Restrictive Requirements – SVP
A2-35	Final Determination – Notice of Withdrawal
A2-36	Final Determination – Notice of Inactivation
A2-37	Final Determination – Denial Due to Insufficient Rebuttal
A2-38	Final Determination – Denial Due to Untimely Rebuttal
A2-39	Final Determination – Certification

## **COMPLETENESS DEFICIENCY LETTER**

Today's Date:

Attorney Name  
Attorney Address

Employer:

State Case Identification Number:  
ETA Case Identification Number:  
Alien's Name:  
Alien's Occupation:  
Date of acceptance for processing:  
Job Order Number:

In order to continue the processing of your application for permanent labor certification (ETA 750) referred to above, we will need the information specified on the attached checklist. The application will be considered as incomplete until this information is provided. For your convenience, a copy of the original application has been enclosed.

You must supply the missing information within 45 days of the date of this letter, i.e., February 20, 2003. Your mailed response must be postmarked by that date. If a response is not received within the 45-day time limit, the application will be inactivated and returned to you. You are permitted to re-file, however the receipt date of the re-filed application will become the new priority date.

**If you are no longer interested in pursuing this application, please mail or FAX (301-963-7551) your intention to withdraw. Be sure to include the case number and your company name in your mailed response, or simply check the withdrawal box on the second page of this letter and FAX or mail that page to us.**

If you wish to continue with this application, make sure that you respond to each of the missing items on the enclosed checklist. Partial responses will be considered as incomplete. For items other than the "Reduction in Recruitment" information (Items R-1 through R-9 on the checklist), enter the missing information on the enclosed copy of the original application and initial those additions. The "Reduction in Recruitment" information may require attachments to the copy of the application. Mail the corrected application and attachments back to the Centralized Processing Group.

Although not required on the ETA 750, we request that you provide the following additional information which will expedite the processing of this application: The company's Federal Employer Identification Number (FEIN), if applicable, and a FAX number and email address for the company contact. This additional information can either be written in on the attached copy of the ETA 750 or added as an attachment.

If you have any questions, contact the Central Processing Group by ordinary mail, FAX, or email at [cpgflc@hotmail.com](mailto:cpgflc@hotmail.com).

Sincerely,

Centralized Processing Group

cc: Employer

**TO:** Centralized Processing Group  
Foreign Labor Certification  
FAX No. (301) 963-7551  
PO BOX 86249  
Gaithersburg, MD 20886-6249

**FROM:**

**CASE #:**

**I wish to withdraw this application. (*Check the box and sign below.*)**

**Reason for  
Withdrawal  
(optional)**

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\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

### REMAND LETTER

Today's Date:

Attorney Name  
Attorney Address

Employer:

State Case Identification Number:  
ETA Case Identification Number:  
Alien's Name:  
Alien's Occupation:  
Date of Acceptance for Processing:

Your Application for Alien Employment Certification on behalf of @ as a @ is returned for the following reasons (**indicated by an "X"**):

- 1. \_\_\_ To determine the **correct prevailing wage** and **proper jurisdiction** for this application, please indicate the percentage of time the alien will work in each location.

STATE: \_\_\_\_\_

County/City of \_\_\_\_\_ %  
County/City of \_\_\_\_\_ %  
County/City of \_\_\_\_\_ %  
County/City of \_\_\_\_\_ %  
County/City of \_\_\_\_\_ %

STATE: \_\_\_\_\_

County/City of \_\_\_\_\_ %  
County/City of \_\_\_\_\_ %  
County/City of \_\_\_\_\_ %  
County/City of \_\_\_\_\_ %  
County/City of \_\_\_\_\_ %

2. \_\_\_ To determine the **correct prevailing wage** for this application, please indicate every type of construction the employer is engaged in, i.e.:

- \_\_\_ Residential
- \_\_\_ Commercial Building
- \_\_\_ Both Residential and Commercial Building
- \_\_\_ Dredging
- \_\_\_ Highway
- \_\_\_ Sewer and Water Line

3. \_\_\_ **Other:**

**Amendments to ETA -750.** Changes, additions or deletions to the Application for Alien Employment Certification must be signed or initialed by the employer (on the Part A form), and/or alien (on the Part B form). It is unacceptable for the attorney representing the employer and/or alien to make amendments to Form ETA 750.

**The action required above must be completed and all forms and documents returned to this office with 45 calendar days from the date of this letter. If the requested information is not received on or before @, processing of this application will be canceled, and the application with supporting documentation returned to you. No extensions will be granted. If subsequently resubmitted, the application will be treated as a new application and will receive a new Local Office Receipt Date.**

**If you have any questions regarding the issues addressed in this letter, please communicate directly with the CPG via e-mail at [cpgflc@hotmail.com](mailto:cpgflc@hotmail.com) or by fax at (301) 963-7551. DO NOT CONTACT THE STATE EMPLOYMENT SERVICE OFFICE.**

**If you are no longer interested in pursuing this application, please mail or FAX (301-963-7551) your intention to withdraw. Be sure to include the case number and your company name in your mailed response, or simply check the withdrawal box on the last page of this letter and FAX or mail that page to us.**

Sincerely,

CENTRALIZED PROCESSING GROUP

cc: Employer

Attachment(s): ETA 750A, ETA 750B

**TO:** Centralized Processing Group  
Foreign Labor Certification  
FAX No. (301) 963-7551  
PO BOX 86249  
Gaithersburg, MD 20886-6249

**FROM:**

**CASE #:**

**I wish to withdraw this application. (*Check the box and sign below.*)**

**Reason for  
Withdrawal  
(optional)**

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\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## **RECRUITMENT INSTRUCTIONS LETTER**

Today's Date:

Attorney Name  
Attorney Address

Employer:

State Case Identification Number:  
ETA Case Identification Number:  
Alien's Name:  
Alien's Occupation:  
Date of acceptance for processing:  
Job Order Number:

Federal regulations require an employer to make a good faith effort to recruit U.S. resident workers before an application for alien labor certification can be approved. Your application is now ready for the start of the 30-day recruitment effort required. The required minimum recruitment period begins with the date of this letter, however, if the employer fails to maintain this job opportunity open to U.S. workers, the job order will be suspended and the recruitment process will be terminated.

A **job order** has been written in connection with your application for alien labor certification. Any resumes received by the Centralized Processing Group (CPG) in conjunction with the job order will be forwarded to the employer. The employer is expected to contact and interview each applicant within two weeks of receipt of these resumes and include the results in the recruitment report.

### **I. ADVERTISING REQUIREMENTS**

**Draft an ad**, which accurately describes the job and submit to the CPG within the next seven days. To save time, you may e-mail the draft to [cpgflc@hotmail.com](mailto:cpgflc@hotmail.com) or fax to (301) 963-7551. **Do not place the ad prior to approval.** If you do not receive approval of the draft within five business days of submittal, it is your responsibility to follow up with the CPG.

**The content of the draft and the ad must include the same requirements which are listed on Part A of the Form ETA 750:**

- Item 9 - Job Title
- Item 11 – Work Schedule
- Item 12 – Rate of Pay
- Item 13 – Job Description
- Item 14 – Education, Training and Experience
- Item 15 – Special Requirements, if applicable

- Job Order Number; and
- Instructions to send duplicate copies of resumes by fax to (301) 963-7551 or by mail to:

Centralized Processing Group  
P.O. Box 86249  
Gaithersburg, MD 20886-6249

Once the draft has been approved, the employer **must** advertise the job opportunity for three consecutive days in a newspaper of general circulation in the area of intended employment, and it is recommended that one of the days be a Sunday. All advertising must be completed within the 30-day recruitment period. Failure to advertise during the recruitment period will lead to a cancellation of your case.

## II. NOTIFICATION OF FILING

The employer must notify the collective bargaining representative of the filing of an application for permanent labor certification. If there is no bargaining representative, the employer must notify employees by **posted notice**.

**The posted notification must contain the following:**

- A complete description of the job consistent with the details on Part A of Form ETA 750. The description must include job title, duties, requirements, a prevailing rate of pay, hours of work and any training which may be offered;
- Directions for applicants to report to the employer;
- A statement that the notice is being provided as a result of the filing of an application for permanent alien labor certification; and
- A statement that any person may provide documentary evidence bearing on the application to:

Centralized Processing Group  
P.O. Box 86249  
Gaithersburg, MD 20886-6249

A posted notice **must** be displayed for at least 10 consecutive days, and must be clearly visible to employees for the entire posting period.

## III. RECRUITMENT REPORT

At the conclusion of the 30-day recruitment period, the **employer must** provide this office with a **written report** of all recruitment efforts and their results. To expedite the processing of the application, you should provide this report as soon as possible after the conclusion of the recruitment period. Failure to provide this report within 45 days of the conclusion of the recruitment period will result in a cancellation of your filing date.

**The report must include the following documentation:**

- One advertisement tear sheet for each day the ad ran (circle ad to identify);

- Copies of resume(s) received;
- A statement signed and dated by the employer's hiring authority giving the lawful job-related reasons for any rejections;
- Notice of Filing with a signed and dated statement of the dates posted;
- A statement signed and dated by the employer's hiring authority documenting the results of the Notice of Filing and giving the specific job related reasons for any rejections;
- The number of workers responding to the recruitment;
- The names, addresses, telephone numbers, and resumes and/or job applications of all workers interviewed; and
- If hired, please provide date worker(s) will start work.

**If you have any questions regarding the issues addressed in this letter, please communicate directly with the CPG via e-mail at [cpgflc@hotmail.com](mailto:cpgflc@hotmail.com) or by fax at (301) 963-7551. DO NOT CONTACT THE STATE EMPLOYMENT SERVICE OFFICE.**

**If you are no longer interested in pursuing this application, please mail or FAX (301-963-7551) your intention to withdraw. Be sure to include the case number and your company name in your mailed response, or simply check the withdrawal box on the fourth page of this letter and FAX or mail that page to us.**

Sincerely,

Centralized Processing Group

cc: Employer

**TO:** Centralized Processing Group  
Foreign Labor Certification  
FAX No. (301) 963-7551  
PO BOX 86249  
Gaithersburg, MD 20886-6249

**FROM:**

**CASE #:**

**I wish to withdraw this application. (*Check the box and sign below.*)**

**Reason for  
Withdrawal  
(optional)**

---

---

---

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**APPLICANT REFERRAL LETTER**

Today's Date:

Attorney Name  
Attorney Address

Employer:

State Case Identification Number:  
ETA Case Identification Number:  
Alien's Name:  
Alien's Occupation:  
Date of Acceptance for Processing:

Please find enclosed @ resumes for applicants whom have expressed an interest in the position of @. The employer is expected to contact and interview each applicant within two weeks of receipt of these resumes and include the results in the Recruitment Report. Please refer to the Recruitment Instructions Letter issued on @ for information pertaining to the Recruitment Report.

Sincerely,

Centralized Processing Group

Enclosure: Resumes

## **REDUCTION IN RECRUITMENT DENIAL LETTER**

Today's Date:

Attorney Name  
Attorney Address

Employer:

State Case Identification Number:  
ETA Case Identification Number:  
Alien's Name:  
Alien's Occupation:  
Date of Acceptance for Processing:

Your request for a reduction in recruitment is **denied**. Federal regulations require an employer to make a good faith effort to recruit U.S. resident workers before an application for alien labor certification can be approved. Pursuant to GAL I-97, we are processing this application as a traditional case according to the date of this letter. You will be contacted by this office with instructions pertaining to supervised recruitment.

If you have any questions regarding the issues addressed in this letter, please communicate directly with the CPG via e-mail at [cpgflc@hotmail.com](mailto:cpgflc@hotmail.com) or by fax at (301) 963-7551. **DO NOT CONTACT THE STATE EMPLOYMENT SERVICE OFFICE.**

Sincerely,

Dale M. Ziegler  
Certifying Officer

Cc: Employer

## NOTICE OF FINDINGS – COVER LETTER

Today's Date:

Attorney Name  
Attorney Address

Employer:

State Case Identification Number:  
ETA Case Identification Number:  
Alien's Name:  
Alien's Occupation:  
Date of Acceptance for Processing:

The Department has considered your Application for Alien Employment Certification. This Notice of Findings is the Department's statement of its intention to deny the application. The regulations, issued pursuant to Section 212(a)(14) of the Immigration and Nationality Act, as amended, are designed to assure that employers adequately test the United States labor market for U.S. workers before a labor certification is issued.

A certification cannot be issued as required by the Act, on the basis of information available, for the reasons detailed on the attached pages. This Notice of Findings is issued in accordance with Title 20, Code of Federal Regulations, Section 656.25(c). You have until @ to rebut the findings or to remedy the defects outlined in the attachment. This response must be sent to the Certifying Officer - not to the local Job Service - by certified mail on or before the date specified above to Centralized Processing Group, P.O. Box 86249, Gaithersburg, Maryland 20886-6249. A rebuttal may be submitted by the employer and by the alien, but only if the employer has submitted a rebuttal. Rebuttal evidence may consist of documentary evidence and/or written arguments. If appropriate, evidence that the noted defects have been remedied may also be submitted.

Failure to file a timely rebuttal shall mean that you have declined to exhaust administrative remedies available to you. All findings in the Notice of Findings shall be deemed admitted unless they are rebutted. Withdrawal of the application is not an available remedy. If the rebuttal is not mailed by certified mail on or before @ this Notice of Findings automatically becomes the final decision of the Secretary denying labor certification, and a new application in the same occupation may not be filed for six months, except that if the certification is denied solely because the wage or salary was below the prevailing wage, the employer may reapply immediately.

Please indicate the rebuttal due date and the case identification number appearing in the upper left hand corner on any correspondence concerning the Notice of Findings, and return the Notice of Findings and attached Form ETA 750 with your rebuttal to this office.

**If you have any questions regarding the issues addressed in this letter, please communicate directly with the CPG via e-mail at [cpgflc@hotmail.com](mailto:cpgflc@hotmail.com) or by fax at (301) 963-7551. DO NOT CONTACT THE STATE EMPLOYMENT SERVICE OFFICE.**

Sincerely,

Dale M. Ziegler  
Certifying Officer

cc: Employer

Attachments: Form ETA 750, Parts A & B

## ADVERSE EFFECT - OES

This Notice of Findings is issued because you have failed to comply with Federal regulations governing the labor certification process for the permanent employment of aliens in the U.S. at Title 20 CFR 656.

### FINDINGS

**ADVERSE EFFECT.** Your wage offer of \$@/hour is below the prevailing wage of \$@/hour. The prevailing rate of pay was determined by the **Occupational Employment Statistics (OES) Wage Survey for a Level @ in @ County**. Offering a salary that is below the prevailing rate of pay is a violation of Sections 656.20©(2), 656.20(g), 656.21(g)(4), and 656.40 of the Regulations.

#### **Corrective Action Required:**

(1) You may increase the salary offer to equal or exceed the prevailing rate and offer to advertise the job opportunity at the increased rate. If this option is selected, you must take the following steps: The wage offer must be amended on the Application for Alien Employment Certification form. The change must be signed and dated by the employer, and not by a representative. A notice must be posted at your place of business for at least ten (10) consecutive business days. A copy of the posting notice and a written report of the responses, including copies of job applications and resumes, must accompany your rebuttal evidence. *If further recruitment is required, you will be contacted by your local Job Service Office. Do not advertise on your own.*

#### **-OR-**

(2) You may submit alternative wage data, i.e., wage data contained in a published wage survey or wage data contained in a survey that you have conducted or funded. If alternative wage data is submitted, you must show that the survey or other wage data meets the following criteria:

- (A) The data upon which the survey was based must have been collected within 24 months of the publication date of the survey or, if the employer conducted the survey, within 24 months of the date the employer files the rebuttal.
- (B) If the alternative wage data is a published survey, it must have been published within the last 24 months and must be the most current edition of the survey.
- © The survey or other wage data must reflect the area of intended employment.
- (D) The job description applicable to your survey or other wage data must be an adequate match with the job description contained in your application for alien employment certification.
- (E) The wage data must have been collected across industries that employ workers in the occupation.
- (F) The survey or other wage data must provide an arithmetic mean (weighted average) of wages for workers in the appropriate occupational classification in the area of intended employment.
- (G) The methodology used for the survey must be indicated and shown to be reasonable and consistent with recognized statistical standards and principles in producing a prevailing wage (*e.g., contains a representative sample*), including

its adherence to these standards for the acceptability of employer-provided wage data.

- (H) Your wage offer must be consistent with the prevailing wage established by your alternative wage data.

## **ADVERSE EFFECT - DBA**

This Notice of Findings is issued because you have failed to comply with Federal regulations governing the labor certification process for the permanent employment of aliens in the U.S. at Title 20 CFR 656.

### FINDINGS

**ADVERSE EFFECT.** Your wage offer of \$@/hour is below the prevailing wage of \$@/hour. The prevailing rate of pay was determined by the **Davis-Bacon Act (DBA)**. Offering a salary which is below the prevailing rate of pay is a violation of Sections 656.20(c)(2), 656.20(g) and 656.21(g)(4) of the Regulations.

As stated in 20 CFR 656.40, if a **DBA** wage determination exists for the **occupation** in the area of intended employment, that wage determination is considered to be the prevailing wage. The employer need not be a Federal contractor for these statutory rates to apply.

You may rebut this finding by (1) submitting countervailing evidence that the occupation is not subject to a wage determination under this Act or (2) increasing the salary offer to the level required by statute. The "five percent rule" does not apply to a prevailing wage determination made pursuant to the **DBA**.

If you increase the salary offer to the level required by the statute, you must take the following steps. The wage offer must be amended on the Application for Alien Employment Certification form. The change must be signed and dated by the employer and not by a representative. The amended application must be returned to this office by the specified due date. **If further recruitment is required, you will be contacted by your local Job Service Office. Do not advertise on your own.**

A notice must be posted at your place of business for at least ten (10) consecutive business days. A copy of the posting notice and a written report of the responses, including copies of job applications and resumes, must accompany your rebuttal evidence.

## ADVERSE EFFECT - SCA

This Notice of Findings is issued because you have failed to comply with Federal regulations governing the labor certification process for the permanent employment of aliens in the U.S. at Title 20 CFR 656.

### FINDINGS

**ADVERSE EFFECT.** Your wage offer of \$@/hour is below the prevailing wage of \$@/hour. The prevailing rate of pay was determined by the **McNamara-O'Hara Service Contract Act (SCA)**. Offering a salary which is below the prevailing rate of pay is a violation of Sections 656.20(c)(2), 656.20(g) and 656.21(g)(4) of the Regulations.

As stated in 20 CFR 656.40, if a **SCA** wage determination exists for the **occupation** in the area of intended employment, that wage determination is considered to be the prevailing wage. The employer need not be a Federal contractor for these statutory rates to apply.

You may rebut this finding by (1) submitting countervailing evidence that the occupation is not subject to a wage determination under this Act or (2) increasing the salary offer to the level required by statute. The "five percent rule" does not apply to a prevailing wage determination made pursuant to the **SCA**.

If you increase the salary offer to the level required by the statute, you must take the following steps. The wage offer must be amended on the Application for Alien Employment Certification form. The change must be signed and dated by the employer and not by a representative. The amended application must be returned to this office by the specified due date. **If further recruitment is required, you will be contacted by your local Job Service Office. Do not advertise on your own.**

A notice must be posted at your place of business for at least ten (10) consecutive business days. A copy of the posting notice and a written report of the responses, including copies of job applications and resumes, must accompany your rebuttal evidence.

## EMPLOYMENT – FULL TIME WORK

This Notice of Findings is issued because you have failed to comply with Federal regulations governing the labor certification process for the permanent employment of aliens in the U.S. at Title 20 CFR 656.

### FINDINGS

1. **EMPLOYMENT.** Federal regulations at 20 CFR 656.3 (Subpart A) define "employment" as *permanent full-time work* by an employee for an employer other than oneself.

The position for which you are filing is that of a @ requiring @ years of experience. The nature of your business is @. The Form ETA 750, Part A, Item 11 reflects a work schedule of @ a.m. to @ p.m. However, @ stores do not generally employ a @ on a full-time year round basis.

***You must establish that the position is permanent full-time or a labor certification cannot be granted.*** Although you stated that the alien will be employed full-time as a @, there is insufficient information to enable us to determine whether the alien will in fact perform the duties of a @ on a full-time year round basis.

**Documentation Required.** You must submit a complete staffing chart. You must also submit your payroll records for the last three years for all workers employed in this or similar positions. ***The weekly payroll records must show each employee by name, the number of hours worked, and gross wages. W-2 Forms are not acceptable.***

The records must establish that the job duties are performed on a continuing basis; that the job is career oriented and one for which the applicant has demonstrated a commitment; and that, historically, occupants of the position have remained year after year and are not financially dependent on obtaining other employment or unemployment compensation during intermittent breaks in the year.

Your responses, documentary evidence, and all other relevant factors, will be evaluated to determine whether the position of @ is actually a full-time year round position. Merely answering all the questions does not insure approval of the application

1. List the number of @ that have been sold in the last 12 months.
2. Provide a description of the length of time it takes to @.
3. Provide a description of the @ that you offer.

A permanent labor certification cannot be issued for a temporary job.

## EMPLOYMENT – LANDSCAPE GARDENER

This Notice of Findings is issued because you have failed to comply with Federal regulations governing the labor certification process for the permanent employment of aliens in the U.S. at Title 20 CFR 656.

### FINDINGS

**EMPLOYMENT.** Federal regulations at 20 CFR 656.3 (Subpart A) define “employment” as *permanent full-time work* by an employee for an employer other than oneself.

According to the **Dictionary of Occupational Titles (DOT)**, a Landscape Gardener performs the following duties:

Plans and executes small scale landscaping operations and maintains grounds and landscape of private and business residences: Participates with Laborer, Landscape (agriculture) in preparing and grading terrain, applying fertilizers, seeding and sodding lawns, and transplanting shrubs and plants, using manual and power-operated equipment. Plans lawns, and plants and cultivates them, using gardening implements and power-operated equipment. Plants new and repairs established lawns, using seed mixtures and fertilizers recommended for particular soil type and lawn location. Locates and plants shrubs, trees, and flowers selected by property owner of those recommended for particular landscape effects. Mows and trims lawns, using hand mower or power mower. Trims shrubs and cultivates gardens. Cleans grounds, using rakes, brooms, and hose. Sprays trees and shrubs, and applies supplemental liquid and dry nutrients to lawn and trees. May dig trenches and install drain tiles. May make repairs to concrete and asphalt walks and driveways.

***You must establish that the position is permanent full-time or a labor certification cannot be granted.*** Although you stated that the alien will be employed full-time as a Landscape Gardener, there is insufficient information to enable us to determine whether the alien will in fact perform the duties of a Landscape Gardener on a full-time year round basis. The work of a Landscape Gardener is generally performed at certain seasons or periods of the year and not at other times. Absent additional information, this job cannot be considered permanent employment because the work is not generally performed during the winter months. In addition, the need for landscaping services is traditionally tied to a season of the year and is of a recurring nature. There is no evidence that this job opportunity involves full-time work for the entire year.

**Documentation Required.** You must submit your payroll records for the last three years for all workers employed in this or similar positions. ***The weekly payroll records must show each employee by name, the number of hours worked, and gross wages. W-2 Forms are not acceptable.***

The records must establish that the job duties are performed on a continuing basis; that the job is career oriented and one for which the applicant has demonstrated a commitment; and that, historically, occupants of the position have remained year after year and are not financially dependent on obtaining other employment or unemployment compensation during intermittent breaks in the year.

A permanent labor certification cannot be issued for a temporary job.

## MINIMUM JOB REQUIREMENTS

This Notice of Findings is issued because you have failed to comply with Federal regulations governing the labor certification process for the permanent employment of aliens in the U.S. at Title 20 CFR 656.

### FINDINGS

**MINIMUM JOB REQUIREMENTS.** Federal regulations at 20 CFR 656.21(b)(5) require that the employer document that the requirements for the job opportunity are the minimum necessary for the performance of the job, and that the employer has neither hired nor finds it feasible to hire workers with less training and/or experience.

Your job requirements are stated as @ years of experience as a @. The case file indicates that @.

You may rebut this Finding by:

**A. Submitting evidence that clearly shows that the alien at the time of hire had the qualifications now required.** Rebuttal evidence must include documentation which reflects that the alien possessed @ years of experience as a @ at the time of hire by @ in @.

**-OR-**

**B. Submitting evidence that the alien gained the required experience working for the employer in jobs which were not similar to the job for which labor certification is sought.** Specifically, it must be established that the position of Assistant @ is not similar to the position of @. At a minimum, the evidence you submit must consist of:

1. The relative job duties for each position, e.g., the official company job descriptions for the positions.
2. The amount or percentage of time spent performing each duty in each job.
3. The job requirements for each position and the date(s) the requirements were established.
4. Information indicating where the two positions fall within the employer's hierarchy.
5. Information indicating whether and by whom the jobs have been filled previously.
6. The job salaries.

**-OR-**

**C. Submitting evidence that it is not presently feasible due to business necessity to hire a worker with less than the qualifications presently required for the job opportunity.** To demonstrate business necessity, an employer must prove that the job requirements bear a reasonable relationship to the occupation in the context of the

employer's business and are essential to perform, in a reasonable manner, the job duties as described by the employer. Rebuttal evidence must include:

## LAYOFFS

This Notice of Findings is issued because you have failed to comply with Federal regulations governing the labor certification process for the permanent employment of aliens in the U.S. at Title 20 CFR 656.

### FINDINGS

**Available U.S. Workers.** According to Department of Labor regulations, before granting or denying a labor certification, the Certifying Officer must determine whether or not there are able, willing, qualified and available U.S. workers to perform the specific job opportunity. 20 CFR 656.24(b). The regulations provide that the Certifying Officer shall determine if there are other appropriate sources of workers where the employer should have recruited or might be able recruit of U.S. workers (20 CFR 656.24(b)(2)(i)). The regulations further provide that the Certifying Officer shall consider as available U.S. workers living and working in the area of intended employment, and may also consider U.S. workers who are willing to move from elsewhere to take the job at their own expense, or (if the prevailing practice among employers employing workers in the occupation in the area of intended employment is to pay such relocation expenses) at the employer's expense. (20 CFR 656.24(b)(iv)).

It has come to our attention that within the last 6 months that @ may have laid off workers that qualify for employment in the occupation for which the employer is seeking labor certification. Before we can make a final determination on your application, we need the documentation requested below:

1. Within the last 6 months has @ laid off any workers anywhere in the United States in the occupation of @, OES Code?
2. If the employer has laid off any @, OES Code @, provide the number of workers that were laid off. \_\_\_\_
3. Provide documentation, by geographic area and worker, of the consideration given to the laid off workers for the position for which certification is sought. If any U.S. workers were rejected for this position, the employer must provide the lawful job-related reasons for each worker rejected. (20 CFR 656.21 (b)(6)).

The burden of proof is on the employer to show that U.S. workers are not able, willing, qualified or available for this job opportunity. Failure to provide lawful job-related reasons for rejection of otherwise qualified U.S. workers is a violation of Federal regulations.

## NOTICE OF FILING

This Notice of Findings is issued because you have failed to comply with Federal regulations governing the labor certification process for the permanent employment of aliens in the U.S. at Title 20 CFR 656.

### FINDINGS

**1. NOTICE OF FILING.** Section 656.20(g)(3), requires that you post at your place of business a notice containing the following information:

- (1) A statement that the notice is posted as a result of the filing of an application for permanent alien employment certification for the posted job opportunity; and
- (2) A description of the job opportunity including prevailing working conditions and requirements; the prevailing rate of pay; offering training if the job opportunity is the type for which you customarily provide training; and offering wages, terms and conditions of employment which are no less favorable than those offered to the alien; and
- (3) A statement that any person may provide documentary evidence bearing on the application to the local Employment Service office and/or the Regional Certifying Officer of the U.S. Department of Labor. **(The addresses of both offices must be stated in the notice).**

The notice must be posted for ten (10) consecutive days at conspicuous locations at the worksite. Examples of appropriate locations for posting notices are locations in the immediate vicinity of the Wage and Hour notices or Occupational Safety and Health notices. The posting notice must be clearly visible and unobstructed while posted.

The Notice of Filing which you submitted with the subject labor certification application is unacceptable because it lacks the required information **(indicated by an "X")**:

\_\_\_\_\_ A statement that the notice is posted as a result of the filing of an application for permanent employment certification for the posted job opportunity;

\_\_\_\_\_ A statement that any person may provide documentary evidence bearing on the application to the local Employment Service office and/or the Regional Certifying Officer of the U.S. Department of Labor; and

\_\_\_\_\_ The addresses of both the local Employment Service office and the Regional Certifying Officer of the U.S. Department of Labor.

**Your rebuttal evidence must consist of a copy of the new Notice of Filing, the dates it was posted, and a description of the responses, including copies of job applications and/or resumes.**

## **PRIOR RECRUITMENT EFFORTS**

This Notice of Findings is issued because you have failed to comply with Federal regulations governing the labor certification process for the permanent employment of aliens in the U.S. at Title 20 CFR 656.

### FINDINGS

**PRIOR RECRUITMENT EFFORTS.** Federal regulations at 656.21(b)(1) require that the **employer** provide the local office a written report of the results of all the employer's recruitment efforts prior to filing the application for certification. The recruitment report must:

- a. Identify each recruitment source by name.
- b. State the number of U.S. workers responding to employer's recruitment.
- c. State names, addresses and provide resumes/job applications of U.S. applicants for the job opportunity and job titles of person who interviewed each worker.
- d. Explain specifically the lawful job-related reasons for not hiring each U.S. applicant.

Your application does not include the names, addresses, resumes/job applications of U.S. workers who applied for the job opportunity, and the specific lawful job-related reasons for not hiring each worker.

## UNDULY RESTRICTIVE REQUIREMENTS – FOREIGN SPECIALTY COOK

This Notice of Findings is issued because you have failed to comply with Federal regulations governing the labor certification process for the permanent employment of aliens in the U.S. at Title 20 CFR 656.

### FINDINGS

**UNDULY RESTRICTIVE JOB REQUIREMENTS.** Federal Regulations at 20 CFR 656.21(b)(2) provide that the employer must document that the requirements for the job opportunity, unless adequately documented as arising from business necessity, are those normally required for the performance of the job in the United States.

Based on a review of your **menu**, the **Dictionary of Occupational Titles (DOT)** Code should not be a Cook, Specialty, Foreign Food 313.361-030 (SVP 7 - 2 to 4 years), but a Cook, Specialty 313.361-026 (SVP 5 - 6 months to 1 year) or a combination of a Cook, Specialty and the other lesser skilled cooking occupations listed below. Therefore, your requirement for @ years of experience exceeds the DOT standard and is unduly restrictive. The normal requirement is **6 months to 1 year** of combined education, training and/or experience or less as indicated below.

The foods which are listed on your menu do not require extensive training in cooking in order to prepare and cook. The preparation of these food items does not correspond with the job duties of a Cook, Specialty, Foreign Food - 313.361-030 which is a highly skilled occupation.

**Cook, Specialty, Foreign Food - DOT Code 313.361-030 - SVP = 7** (2 years up to and including 4 years of combined education, training and experience). Plans menus and cooks foreign-style dishes, dinners, desserts, and other foods, according to recipes; Prepares meats, soups, sauces, vegetables and other foods prior to cooking. Seasons and cooks food according to prescribed methods. Portions and garnishes food. Serves food to waiters on order. Estimates food consumption and requisitions or purchases supplies. Usually employed in restaurant specializing in foreign cuisine, such as French, Scandinavian, Hungarian, and Cantonese. May be designated according to type of food specialty prepared as Cook, Chinese-Style Food (hotel & rest.); Cook, Italian-Style Food (hotel & rest.); Cook, Kosher-Style Food (hotel & rest.); Cook, Spanish-Style Food (hotel & rest.).

The cook in your restaurant does not prepare soups, salads, gravies, desserts, sauces, and casseroles; the cook does not bake, roast, broil, and steam meats, fish, and vegetables -- these are all duties that are encompassed in the 313.361-026 Cook, Specialty, Foreign Food description. Your position appears to be a combination of duties, encompassed in the DOT definitions for

(1) Cook, Specialty, (2) Baker, Pizza, or (3) Sandwich Maker -- occupations which have an SVP of 5 or less.

Cook, Specialty - DOT Code 313.361-026 - SVP = 5 (6 months up to and including 1 year of combined education, training and experience). Prepares specialty foods, such as fish and chips, tacos, and pasties (Cornish meat pies) according to recipe and specific methods applicable to type of cookery. May serve customers at window or counter. May prepare and serve beverages, such as coffee, clam nectar, and fountain drinks. May be required to exercise showmanship in preparation of food, such as flipping pancakes in air to turn or tossing pizza dough in air to lighten texture. May be designated according to food item prepared as Cook, Fish and Chips.

Baker, Pizza - DOT Code 313.381-014 - SVP = 5 (6 months up to and including 1 year of combined education, training and experience). Prepares and bakes pizza pies; Measures ingredients, such as flour, water, and yeast, using measuring cup, spoon, and scale. Dumps specified ingredients into pan or bowl of mixing machine preparatory to mixing. Starts machine and observes operation until ingredients are mixed to desired consistency. Stops machine and dumps dough into proof box to allow dough to rise. Kneads fermented dough. Cuts out and weighs amount of dough required to produce pizza pies of desired thickness. Shapes dough sections into balls or mounds and sprinkles each section with flour to prevent crust forming until used. Greases pan. Stretches or spreads dough mixture to size of pan. Places dough in pan and adds olive oil and tomato puree, tomato sauce, mozzarella cheese, meat or other garnish on surface of dough, according to kind of pizza ordered. Set thermostatic controls and inserts pizza into heated oven to bake for specified time. Removes product from oven and observe color to determine when pizza is done.

Sandwich Maker - DOT Code 317.644-010; SVP = 2 (anything beyond short demonstration up to and including 1 month of combined education, training and experience). Prepares sandwiches to individual order of customers; Receives sandwich orders from customers. Slices cold meats and cheese by hand or machine. Selects and cuts bread, such as white, whole wheat or rye, and toasts or grills bread, according to order. Places meat or filling and garnish, such as chopped or sliced onion and lettuce between bread slices. Prepares garnishes for sandwiches, such as sliced tomatoes and pickles. May fry hamburgers, bacon, steaks, and eggs for hot sandwiches. May butter bread slices, using knife.

Taking into consideration these DOT definitions, your menu (food items with limited preparation time and limited skill in preparation), and the duties performed as stated on Form ETA 750, Part A, item #13, it is determined that your requirement of @ years of experience **exceeds** the DOT norm for this position. Therefore, the application is cited for an **UNDULY RESTRICTIVE REQUIREMENTS** violation.

You may rebut this finding by:

A. **Submitting evidence that your requirement arises from a business necessity.** To establish business necessity, an employer must demonstrate that the job requirement bears a reasonable relationship to the occupation in the context of the employer's business and are essential to perform, in a reasonable manner, the job duties as described by the employer. In proving business necessity, you must demonstrate that the job requirements bear a reasonable relationship to the occupation in the context of the employer's business and are essential to perform, in a reasonable manner, the job duties as described by the employer. Rebuttal evidence must establish that your business establishment requires the services of a Cook, Specialty, Foreign Food as defined in the DOT;

-OR-

**B. Reducing the requirements to the DOT standard.** You must amend the Application for Alien Employment Certification and return the amended application to this office by the due date specified on the cover sheet. All changes must be signed and dated by the employer, and not by a representative. **If further recruitment is required, you will be contacted by your local Job Service Office. Do not readvertise on your own.**

## UNDULY RESTRICTIVE REQUIREMENTS – JOB REQUIREMENTS

This Notice of Findings is issued because you have failed to comply with Federal regulations governing the labor certification process for the permanent employment of aliens in the U.S. at Title 20 CFR 656.

### FINDINGS

**UNDULY RESTRICTIVE JOB REQUIREMENTS.** Federal Regulations at 20 CFR 656.21(b)(2) provide that the employer must document that the requirements for the job opportunity, unless adequately documented as arising from business necessity, are those normally required for the performance of the job in the United States.

Your requirements for @ are determined to be unduly restrictive because @. You may rebut this finding by:

**A. Submitting evidence that the requirements arise from a business necessity.** In proving business necessity, you must demonstrate that:

1. The job requirements bear a reasonable relationship to the occupation in the context of the employer's business and are essential to perform, in a reasonable manner, the job duties as described by the employer. Rebuttal evidence must include @

-AND-

2. The job as currently described **existed before the alien was hired.** Your rebuttal must prove that the job existed and was previously filled with the same job duties and requirements before the alien was hired. Documentation must include, but is not limited to, position descriptions, organizational charts, payroll records, resumes of former incumbents, etc. that establish that the position and its present requirements existed before the alien was hired. If the job/requirements did not exist prior to the hiring of the alien, then you must document that a **major change in your business operation** caused the job to be created after the alien was hired.

-OR-

**B. Deleting the requirements.** You must amend the Application for Alien Employment Certification and return the amended application to this office by the specified due date. All changes must be signed and dated by the employer, and not by a representative. **If further recruitment is required, you will be contacted by your local Job Service Office. Do not readvertise on your own.**

## UNDULY RESTRICTIVE REQUIREMENT – LANGUAGE REQUIREMENT

This Notice of Findings is issued because you have failed to comply with Federal regulations governing the labor certification process for the permanent employment of aliens in the U.S. at Title 20 CFR 656.

### FINDINGS

#### **UNDULY RESTRICTIVE REQUIREMENT – FOREIGN LANGUAGE ABILITY.**

The job opportunity contains a foreign language requirement that has not been supported by evidence of business necessity as required by Section 656.21(b)(2).

You may rebut this finding by submitting evidence that your requirement for @ language ability arises from a **business necessity rather than employer convenience**. In order to prove business necessity, your evidence must establish that:

5. A significant share of your business is conducted in the foreign language. For example, the foreign language is spoken or preferred by a significant portion of your clientele; or the foreign language is required by business expansion plans; or the foreign language is required because it is the principal language of your other employees.
2. The absence of the foreign language would put the business at a competitive disadvantage.
3. The employee's duties require him or her to communicate or read in the foreign language.
5. The need for foreign language skills cannot be met by other methods, such as using translation services or the language skills of another employee.

At a minimum, your rebuttal must include answers to the following questions:

1. The total number of clients/workforce/suppliers served, and the percentage of those people who cannot communicate in English.
2. The percentage of business that is dependent upon the language.
3. The percentage of time the worker would use the language.
4. How employer has dealt with non-English speaking clients/workforce/suppliers in the past and/or is currently handling this segment of business.
5. If you are claiming that the foreign language is required by business expansion plans, you must provide evidence that your company had a market research study and business expansion plan in place at the time of filing the application. The plan must clearly demonstrate the factual basis upon which your business expansion plan is based.

**-OR-**

**Deleting the foreign language requirement.** If you delete the requirement, you must amend the Application for Alien Employment Certification and return the amended application to this office by the specified due date. All changes must be signed and dated by the employer, and not by a representative. If further recruitment is required, you will be contacted by your local Job Service Office. Do not re-advertise on your own.

## UNDULY RESTRICTIVE REQUIREMENTS - SVP

This Notice of Findings is issued because you have failed to comply with Federal regulations governing the labor certification process for the permanent employment of aliens in the U.S. at Title 20 CFR 656.

### FINDINGS

**UNDULY RESTRICTIVE JOB REQUIREMENTS.** Federal Regulations at 20 CFR 656.21(b)(2) provide that the employer must document that the requirements for the job opportunity, unless adequately documented as arising from business necessity, are those normally required for the performance of the job in the United States.

Based on a review of your **menu**, the Standard Occupational Code (SOC) should not be a @, but a @ which has a SVP of @. Therefore, your requirement for @ of experience exceeds the SOC standard and is unduly restrictive.

Your business establishment appears to be primarily a @. The foods which are listed (e.g., @) do not require extensive training in cooking in order to prepare and cook. The preparation of these food items does not correspond with the job duties of a @ @, which is a highly skilled occupation.

**A. Submitting evidence that the requirements arise from a business necessity.** In proving business necessity, you must demonstrate that:

1. The job requirements bear a reasonable relationship to the occupation in the context of the employer's business and are essential to perform, in a reasonable manner, the job duties as described by the employer. Rebuttal evidence must include must include documentation which clearly shows that your position requires of the services of a @ as defined in the SOC;

**-AND-**

2. The job as currently described **existed before the alien was hired**. Your rebuttal must prove that the job existed and was previously filled with the same job duties and requirements before the alien was hired. Documentation must include, but is not limited to, position descriptions, organizational charts, payroll records, resumes of former incumbents, etc. that establish that the position and its present requirements existed before the alien was hired. If the job/requirements did not exist prior to the hiring of the alien, then you must document that a **major change in your business operation** caused the job to be created after the alien was hired.

**-OR-**

**B. Deleting the requirements.** You must amend the Application for Alien Employment Certification and return the amended application to this office by the specified due date.

All changes must be signed and dated by the employer, and not by a representative. **If further recruitment is required, you will be contacted by your local Job Service Office. Do not re-advertise on your own.**

**FINAL DETERMINATION - NOTICE OF WITHDRAWAL**

Today's Date:

Attorney Name  
Attorney Address

Employer:

State Case Identification Number:  
ETA Case Identification Number:  
Alien's Name:  
Alien's Occupation:  
Date of acceptance for processing:

The Department of Labor has received your request that the application for alien labor certification referenced above be **withdrawn**.

If you have any questions regarding the issues addressed in this letter, please communicate directly with the CPG via e-mail at [cpgflc@hotmail.com](mailto:cpgflc@hotmail.com) or by fax at (301) 963-7551. **DO NOT CONTACT THE STATE EMPLOYMENT SERVICE OFFICE.**

Sincerely,

Centralized Processing Group

cc: Employer

**FINAL DETERMINATION - NOTICE OF INACTIVATION**

Today's Date:

Attorney Name  
Attorney Address

Employer:

State Case Identification Number:  
ETA Case Identification Number:  
Alien's Name:  
Alien's Occupation:  
Date of Acceptance for Processing:

Our communication to you dated @ stated that your complete response was to be postmarked no later than @. You did not respond by the required date, and/or your response was incomplete. In accordance with Federal Regulations 20 CFR 656.21(H), we are returning your Form ETA 750 and all supporting documents.

You may at any time resubmit this alien labor certification request as a new application. A new filing date will then be established.

If you have any questions regarding the issues addressed in this letter, please communicate directly with the CPG via e-mail at [cpgflc@hotmail.com](mailto:cpgflc@hotmail.com) or by fax at (301) 963-7551. **DO NOT CONTACT THE STATE EMPLOYMENT SERVICE OFFICE.**

Sincerely,

Centralized Processing Group

cc: Employer

**FINAL DETERMINATION – DENIAL DUE TO INSUFFICIENT  
REBUTTAL**

Today's Date:

Attorney Name  
Attorney Address

Employer:

State Case Identification Number:  
ETA Case Identification Number:  
Alien's Name:  
Alien's Occupation:  
Date of Acceptance for Processing:

Your rebuttal evidence to the Notice of Findings (NOF) issued on @, has been reviewed. Labor certification is denied because you have not complied with Federal regulations governing the labor certification process for the permanent employment of aliens in the U.S. at Title 20 CFR 656.

The application submitted on behalf of @ remains in violation of Federal regulations and certification is **denied** accordingly.

If you have any questions regarding the issues addressed in this letter, please communicate directly with the CPG via e-mail at [cpgflc@hotmail.com](mailto:cpgflc@hotmail.com) or by fax at (301) 963-7551. **DO NOT CONTACT THE STATE EMPLOYMENT SERVICE OFFICE.**

Sincerely,

Centralized Processing Group

cc: Employer

**FINAL DETERMINATION – DENIAL DUE TO UNTIMELY  
REBUTTAL**

Today's Date:

Attorney Name  
Attorney Address

Employer:

State Case Identification Number:  
ETA Case Identification Number:  
Alien's Name:  
Alien's Occupation:  
Date of Acceptance for Processing:

You have not filed a timely rebuttal to the Notice of Findings issued on @. Pursuant to Federal regulations at Title 20, Section 656.25, the Notice of Findings is automatically the final determination of the Secretary of Labor in this matter.

The above application is **denied** labor certification.

If you have any questions regarding the issues addressed in this letter, please communicate directly with the CPG via e-mail at [cpgflc@hotmail.com](mailto:cpgflc@hotmail.com) or by fax at (301) 963-7551. DO NOT CONTACT THE STATE EMPLOYMENT SERVICE OFFICE.

Sincerely,

Centralized Processing Group

cc: Employer

**FINAL DETERMINATION – CERTIFICATION**

Today's Date:

Attorney Name  
Attorney Address

Employer:

State Case Identification Number:  
ETA Case Identification Number:  
Alien's Name:  
Alien's Occupation:  
Date of acceptance for processing:

The Department of Labor has made a final determination on your Application for Employment Certification pursuant to Title 20, Code of Federal Regulations, Part 656 and as required by the Immigration and Nationality Act, as amended.

Form ETA 750 **has been certified** and is enclosed. This certification must be attached to the I-140 petition and filed with the Immigration and Naturalization Service.

Sincerely,

Dale M. Ziegler  
Certifying Officer

cc: State ES Agency  
Employer

**APPENDIX A3**

***Agent Guidelines / Form G-28***

## **Agent Guidelines / Form G-28**

Employers and aliens may have agents apply for labor certifications on their behalf. For these regulations, an agent means a person who is not an employee of the employer. The ETA 750 application form incorporates an **Agent Authorization Statement** on both the Offer of Employment and the Statement of Qualifications of the alien which the employer and/or the alien must sign if represented by an agent.

Employers and aliens may be represented by attorneys. A notice of appearance on the attorney's letterhead is not acceptable. Immigration and Naturalization **Form G-28**, naming the attorney's client(s), must be filed with the application for an attorney to be recognized as the employer's and/or alien's representative. Employers and aliens are not required to sign Form G-28 along with the attorney.

When an attorney or an agent represents the employer and/or alien, any notice or document required to be sent will be sent to **both** the employer and attorney/agent. This includes, but is not limited to, request for additional information, return of forms for completion, and determinations on the application.

**APPENDIX A4**

***Rejection of U.S. Workers***

## Rejection of U.S. Workers

U.S. workers may not be rejected for a job opportunity offered to an alien except for lawful, job-related reasons. The employer must state specific reasons for rejecting each U.S. worker who applies in response to newspaper advertising, posted notice, job order or other sources of recruitment. Resumes of applicants, if available, should be submitted with the application for certification to support the employer's statement.

The employer should screen applicants against the stated requirements in the job offer and should not impose additional requirements during interviews with U.S. workers. U.S. workers must make it known during interviews or on their resumes that they meet the employer's stated requirements to be considered qualified for the job. It is not acceptable for an employer to reject U.S. workers who may be 'over-qualified,' but are willing to accept the job at the wage and conditions offered.

Examples of **job-related types of reasons** for which U.S. workers can be rejected for a job opportunity are:

- The applicant does not have the training and experience required by the employer;
- Factors that may adversely affect the applicant's ability to satisfactorily perform the job, i.e., bad work references, poor health, and lack of proficiency in the English language.

Examples of **types of reasons** which are **not job-related** for rejecting U.S. workers are:

- Personal situations, such as an applicant's marital status and religious affiliations;
- Factors which can only be determined from actual job performance, i.e., initiative and interest in the work;
- The alien is more qualified than the applicant, unless the application is for a college or university teacher, or for an alien of exceptional ability in the performing arts.

The employer must state the *specific* reason each U.S. worker was not hired, i.e., applicant A's 2-year technical school training does not meet the job's requirement for B.S. degree in civil engineering. The mere statement of general reasons such as those listed above is not sufficient.

**APPENDIX A5**

*Special Occupations*

## Special Occupations

### I. Live-Out Household Domestic Service Workers

Household domestic workers who do **not** live in the employer's private home **must** submit verification of employment documenting **one year** of prior or present experience as a household domestic service worker. Verification can be from an employer or a third party who has knowledge of the employment experience.

Household domestic service workers who cannot document one year's experience are on Schedule B. The prior experience is the factor that removes the occupation from Schedule B. Occupations listed on Schedule B are, in general, those for which there were sufficient, available, able, willing and qualified U.S. workers in most areas of the United States over the years.

Household domestic service workers perform a variety of tasks in private households, such as cleaning, dusting, washing, ironing, making beds, maintaining clothes, marketing, cooking, serving food, and caring for children or disabled persons. This definition does **not** include household workers who primarily provide health or instructional services.

### II. Live-in Household Domestic Service Workers

An application for Alien Employment Certification for a household domestic service worker who is required to live in the employer's private home **must** be supported by the following documentation:

- A statement describing the household living accommodations. Completion of Item 20 on Part A of ETA 750 satisfies this requirement;
- Two copies of the employment contract, each signed and dated by both the employer and the alien (not their attorneys or agents); **and**
- Documentation of at least one year of the alien's paid work experience in duties required by the employer.

#### **a) Employment Contract**

The contractual agreement between the employer and the alien is developed by the employer and must clearly state the following:

- The wages to be paid on an hourly and weekly basis;
- Total hours of employment per week and exact hours of daily employment. A statement that "the alien will work 8 hours daily" is not acceptable. Examples

of acceptable work schedules are: 9 a.m. to 6 p.m.; 7:30 a.m. to 11:30 a.m. and 2 p.m. to 6 p.m.;

- That the alien is free to leave the employer's premises during all non-work hours, except that the alien may work overtime at no less than the legally required hourly rate;
- That the alien will reside on the employer's premises;
- Complete details of the duties to be performed by the alien;
- 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;
- That in no event shall the alien be required to give more than two weeks' notice of intent to leave the employment contracted for, and that the employer must give the alien at least two weeks' notice before terminating employment;
- That a duplicate contract has been furnished to the alien;
- That a private room and board will be provided at no cost to the worker; **and**
- Any other agreement or conditions not specified on the ETA 750 Form.

Deductions for room and board from wages paid to an alien live-in household domestic service worker are **not** permitted for labor certification purposes, although such deductions from wages of U.S. workers are allowed under Federal and some State laws.

Deductions from the alien's wages for advances to the alien for items such as transportation, medical examination, visa and passport charges are permitted, as well as deductions for employee social security taxes.

#### **b) Documentation of Paid Experience:**

The documentation **must** show that the employment was equal to **one full year** of employment on a full-time basis of at least 40 hours per week. Part-time employment may be considered in computing a full year of employment. For instance, two years' experience working four hours per working day equals one full year of full-time employment. Job duties may have been performed on a live-in or live-out basis.

Unless justified by circumstances such as death or unknown relocation of an employer, proof of the alien's paid experience provided by a party other than a past or present employer is not acceptable as documentation. In such circumstances, documentation may from a person (1) who can attest the employer's death or that

the employer moved to a distant location and left no address, and (2) who personally knows the alien's work experience and period of employment. The documentation shall include:

- Name and address of the person signing the document;
- Name and address of the employer;
- Reason the employer is not available to furnish proof;
- Description of the alien's employment;
- Period of the alien's employment; and
- How the person signing the statement knows of the alien's employment. The person signing the statement may not be a member of the alien's family.

Documentation of one year's paid experience in the duties to be performed is to assure that the alien knows the demands unique to household domestic service work, has some attachment to the occupation, and will likely continue working in such occupation after arrival. This requirement does not relate to the minimum training and/or experience required to perform the duties of a household domestic service and should not be shown by the employer as a requirement for the job opportunity on the ETA 750 Form.

### **III. Physicians**

If the application involves labor certification as a physician or surgeon, the labor certification application **must** include the following documentation:

- Documentation which shows clearly that the alien has passed Parts I and II of the National Board of Medical Examiners Examination (NBMEE), or the Visa Qualifying Examination (VQE) offered by the Educational Commission for Foreign Medical Graduates (ECFMG); **or**
- Documentation which shows clearly that:
  - The alien was on January 9, 1977 a doctor of medicine fully and permanently licensed to practice medicine in a State with the United States;
  - The alien held on January 9, 1977 a valid specialty certificate issued by a constituent board of the American Board of American Specialties; **and**
  - The alien was on January 9, 1977 practicing medicine in a State within the United States; **or**

- The alien is a graduate of a school of medicine accredited by a body or bodies approved for the purpose by the Secretary of Education or that Secretary's designee, regardless of whether such school of medicine is in the United States.

For labor certifications, the above requirements **only** apply if the physicians or surgeons will be involved to any extent in patient care. A physician or surgeon who will work strictly in research or teaching with no patient care, or a physician who will be employed in another occupation are **exempt** from this requirement.

#### V. Exceptional Ability in the Performing Arts

The employer **must** submit documentation in support of an application for an alien claimed to be of exceptional ability in the performing art, such as:

- Documents attesting to the current widespread acclaim and international recognition accorded to the alien, and receipt of internationally recognized prizes or awards of excellence;
- Published material by or about the alien, such as critical reviews or articles in major newspapers, periodicals, and/or trade journals (the title, date and author of such material must be indicated);
- Documentary evidence of earnings commensurate with the claimed level of ability;
- Playbills and starbillings;
- Documents attesting to the outstanding reputation of theaters, concert halls, night clubs and other establishments in which the alien has appeared, or is scheduled to appear; **and/or**
- Documents attesting to the outstanding reputation of repertory companies, ballet troupes, orchestras or other organizations in which the alien has performed during the past year in a leading or starring capacity.

An alien represented to have exceptional ability in the performing arts does **not** need to document all of the items above. However, documentation must be submitted which shows that the alien's work experience during the **past year** did require and the alien's intended work in the United States will require exceptional ability. Documentation from earlier periods is acceptable to show sustained performance of exceptional ability.

The performing arts includes professional occupations in dramatics, dancing and music. Examples of occupations in dramatics include dramatic coach, drama teacher, actor, stage director and narrator. Examples of occupations in dancing include choreographer, dancing instructor and dancer. Examples of occupations in music include music teacher, instrumental musician, choral director, orchestra conductor, music director, singer, arranger, composer, cue selector, orchestrator, copyist and prompter.

#### **IV. College and University Teachers**

An employer shall apply for a labor certification to employ an alien as a college or university teacher by submitting the following either on the ETA 750 Form or in attachments to the application:

- Statement of the qualifications of the alien, signed by the alien; **and**
- Full description of the job offer for the alien employment.

College and University Teachers include **only** those college or university positions which involve some actual classroom teaching. Non-teaching positions, such as researchers, librarians, and other administrative staff should be processed under the basic labor certification process.