B350AAM–22–008, B470AAM–22–013, and B470ABM–22–012, each dated September 29, 1999, as additional sources of service information for accomplishing the replacement required by this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in French airworthiness directive 2000–137–305(B), dated March 22, 2000.

Issued in Renton, Washington, on August 21, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

RIN 1205–AB

Labor Certification Process for the Permanent Employment of Aliens in the United States

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of guidelines.

SUMMARY: The Employment and Training Administration (ETA) is in the process of reengineering the permanent alien labor certification process. ETA's goals are to make fundamental changes and refinements that will: Streamline the process; save resources; improve the effectiveness of the program; and better serve the Department of Labor's (Department's) customers. This document will set forth the general principles which will guide the development of proposed regulations to effectuate the redesign.

FOR FURTHER INFORMATION CONTACT: Dale M. Ziegler, Chief Division of Foreign Labor Certifications, Office of Workforce Security, Employment and Training Administration, Department of Labor, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Permanent Alien Labor Certification Process

Generally, an individual labor certification from the Department of Labor (Department) is required for employers wishing to employ an alien on a permanent basis in the U.S. Before the Department of State (DOS) and the Immigration and Naturalization Service (INS) may issue visas and admit certain immigrant aliens to work permanently in the U.S., the Secretary of Labor must first certify to the Secretary of State and the Attorney General that:

(a) There are not sufficient U.S. workers who are able, willing, qualified and available at the time of the application for a visa and admission into the U.S. and at the place where the alien is to perform the work; and

(b) The employment of such aliens will not adversely affect the wages and working conditions of similarly employed U.S. workers. 8 U.S.C. 1182(a)(5)(A).

In brief, the current process for obtaining a labor certification requires employers to actively recruit U.S. workers in good faith for a period of at least thirty days for the job openings for which aliens are sought. The employer's job requirements must conform to the regulatory standards (*e.g.*, those truly necessary), and employers must offer prevailing wages and working conditions for the occupation in the area in which the job is located. Further, employers may not favor aliens or tailor the job requirements to any particular alien's qualifications.

During the thirty-day recruitment period, employers are required to place a three-day help-wanted advertisement in a newspaper of general circulation, or a one-day advertisement in a professional, trade, or business journal, or in an appropriate ethnic publication. Employers are also required to place a thirty-day job order with the local office of the state employment service in the state in which the employer seeks to employ the alien. Alternatively, if employers believe they have already conducted adequate recruitment efforts seeking qualified U.S. workers at prevailing wages and working conditions through sources normal to the occupation and industry, they may request the Department to waive the otherwise mandatory thirty-day recruitment efforts as prescribed by the Department's regulations governing the program. This waiver process is generally referred to as involving ''Reduction in Recruitment'' (RIR) applications. If the employer does not request RIR processing or if the request is denied, the help-wanted advertisements which are placed in conjunction with the mandatory thirty-day recruitment effort direct job applicants to either report in person to the employment service office or to submit resumes to the employment service.

Job applicants are either referred directly to the employer or their resumes are sent to the employer. The employer then has forty-five days to report to the employment service the lawful, job-related reasons for not hiring any U.S. worker referred. If the employer hires a U.S. worker for the job opening, the process stops at that point, unless the employer has more than one opening, in which case the application may continue to be processed. If, however, the employer believes that able, willing and qualified U.S. workers are not available to take the job, the application together with the documentation of the recruitment results and prevailing wage information are sent to one of ten regional offices of the Department. There, it is reviewed and a determination is made as to whether or not to issue the labor certification based upon the employer's compliance with the Department's regulations governing the program. If the Department determines that there are no able, willing, qualified and available U.S. workers, and that the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers, the Department so certifies to the INS and the DOS, by issuing a permanent labor certification. See 30 CFR part 656; see also section 212(a)(5)(A) of the Immigration and Nationality Act, as amended (INA)

B. Problems With the Current System

The labor certification process described above has been criticized as being complicated, costly and time consuming. Due to increases in the volume of applications received and a lack of adequate resources, it can take up to two years or more to complete the process for applications that are filed under the basic process and do not utilize the more streamlined RIR

process. The process also requires substantial state and federal resources to administer and is reportedly costly and burdensome to employers as well. Cuts in federal funding for both this immigration program and for the Employment Service have made it difficult for state and federal administrators to keep up with the process. ETA, therefore, is taking steps to improve the effectiveness of the various regulatory requirements and the application processing procedures, with a view to achieving considerable savings in resources both for the government and employers, without diminishing significant protections now afforded U.S. workers by the current regulatory and administrative requirements.

C. Developing a Streamlined Process

The permanent foreign labor certification process for employment-based immigration in the U.S. has been a two-tiered system involving both State Employment Security Agencies (SESA) and the U.S. Department of Labor for more than 30 years. By its very nature there is an element of redundancy in case processing under this system. As previously noted, the current system has been criticized for being costly, burdensome, and inefficient. The redesigned process envisioned by the Department will require employers to submit their applications directly to ETA processing centers. The new process will take full advantage of state-of-the-art technology and the use of policy-driven standards to minimize manual intervention, and to increase the speed of case processing at a reduced cost to employers and the government alike. It is important to note that the description of the redesigned process in this notice represents the Department's current thinking. This process may be subject to modifications in response to comments received on future rulemaking efforts.

The new process under consideration for processing permanent applications will streamline the role of SESAs in the labor certification process to include only the prevailing wage determinations. Employers will no longer be required to conduct a 30-day job recruitment through the Employment Service. In the current system, prevailing wage determinations are made by SESAs as part of the normal process of reviewing an application and informing the employer of any deficiencies therein. In the new process, the employer will still be required to obtain a prevailing wage determination from the SESA. Although the timing of the prevailing wage determination request will change from a post-filing action to a pre-filing action, this step is vital in order for the Department to meet its responsibility to make the statutorily required certification that the employment of the alien will not have an adverse effect on the wages and working conditions of similarly employed U.S. workers.

We envision that the new system for processing permanent alien labor certification applications will be considerably streamlined but will not materially diminish any of the protections now afforded U.S. workers by the current regulatory and administrative requirements. The employer will be required to contact the SESA to obtain the prevailing wage determination for the occupation in the area of intended employment. It is envisioned that this procedure will operate in much the same manner as the one currently being utilized for processing prevailing wage requests under the H–1B program for nonimmigrant professionals in specialty occupations. See 20 CFR part 655, subpart H; see also section 212(n) of the INA. As part of our efforts to take advantage of technological innovations that will increase efficiencies in the program, however, we are proposing that the form upon which such a request is made will be standardized and will be machine-readable to eliminate the need for data entry by the ETA processing centers when an application is first received.

Upon receipt of a request for a prevailing wage determination under the new system, the SESA will evaluate the particulars of the employer's job offer, such as the job duties and requirements for the position, and the geographic area in which the job is located. If the job opportunity is unionized, the wage rate set forth in the collective bargaining agreement that applies to the position shall be considered to be the applicable prevailing wage. If the job opportunity is not unionized, however, as is most often the case, then the SESA will determine the occupational classification for the job using an appropriate occupational classification taxonomy such as the Department's O'Net occupational classification structure. The SESA will also then determine the area of intended employment for the job opportunity. As a result of this analysis, the SESA will normally assign the prevailing wage rate and appropriate skill level for the job opportunity from the wage component of the Occupational Employment Statistics (OES) survey, unless a wage determination has been issued pursuant to the Davis-Bacon Act, 40 U.S.C. 276a *et seq.* (DBA), or the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 *et seq.* (SCA), in which case that determination shall form the basis for the prevailing wage for that job opportunity.

In the absence of a prevailing wage rate derived from the SCA, the DBA, or an applicable wage rate from a collective bargaining agreement covering the position, the employer also has the option of submitting an alternative source of prevailing wage information such as a published wage survey or other wage data obtained from a survey that has been conducted or funded by the employer. If the employer chooses to submit an alternative source of wage data, the SESA will evaluate such other information (*e.g.,* a published wage survey) and will determine if it is in compliance with the Department's standards governing the acceptability of employer-provided wage data such as the validity of the statistical methodology employed. If the employer-provided wage data is found to be acceptable, the specific wage rate derived from that source that applies to the employer's job opportunity, taking into consideration such factors as the appropriate occupational classification, geographic area, and level of skill, will be considered to be the prevailing wage rate for purposes of that particular job opportunity. If the employer-provided wage data is not accepted, the SESA will inform the employer of the reasons why the survey is unacceptable. The Department is contemplating the establishment of a process to review employer appeals of determinations made by SESAs, such as a determination that an employer-provided wage survey is unacceptable.

The SESA's response to the employer's request will be in writing on the same standardized form through which the request was initially made. The response will indicate the prevailing wage rate for the job opportunity, the source of such information, and the appropriate occupational classification and level of skill applied in the determination to arrive at that rate.

The employer will also be required to conduct an adequate test of the labor market for qualified U.S. applicants at prevailing wages and working conditions through sources normal to the occupation and industry during the 6-month period preceding the filing of the application. We currently foresee that the recruitment efforts will consist of both mandatory steps and alternative steps chosen by the employer from a listing of additional recruitment steps that will be specifically prescribed by

the regulations. We intend to outline the specific recruitment steps required, including those that will be considered acceptable as alternative steps. The required recruiting efforts will be similar to the RIR process under the existing system in that all recruitment will be conducted prior to the employer filing the application. This up-front recruitment system will be required of all applicants under the new system. Regardless of the steps chosen by the employer to fulfill its obligation to conduct an adequate test of the labor market, the employer will be required to maintain documentation of the recruitment efforts it has undertaken and the results thereof, such as the lawful, job-related reasons for not hiring U.S. applicants for the position.

After the recruitment period has ended and the employer has assembled the requisite documentation in support of the application, the employer then submits the application directly to an ETA processing center. In developing the application form to be used in the new system, as with the proposed prevailing wage request form, we intend to take every advantage of technological innovations that will increase efficiencies in the program. Therefore, it is expected that the labor certification application will also be machine-readable or directly completed in a web-based environment to eliminate the need for time-consuming data entry by ETA processing centers. Applications will be received by facsimile transmission, by mail, or via internet and will be subject to an initial acceptability check to ensure that the application can be processed. The purpose of this test is to ensure that the form can be recognized by an automatic scanning/data selection process. The acceptability test will consist of ensuring that a completed application form has been received, including the prevailing wage determination form issued by a SESA. Further, this initial test will determine whether the application is readable or scannable depending on the method of submission. For instance, if the application is submitted by mail it will not be acceptable if it is too crumpled, stained or damaged to be scanned into the system. The application will also be unacceptable if it cannot be read by the computer system due to transmission errors on facsimile transmissions or other reasons such as illegible writing. As noted above, the Department is also contemplating the future use of advanced technologies to allow applications to be submitted and processed under a web-based system.

After an application has been determined to be acceptable for filing, a computer system will review it based upon various selection criteria or ''flags'' that will allow more problematic applications to be identified for an in-depth review or audit. In addition, it is anticipated that some applications will be randomly selected for an audit without regard to the results of the computer analysis as a quality control measure. If no request for an audit has been triggered by the information provided on the application nor via random selection, the application will be immediately certified and returned to the employer, who may then submit the certified application to the INS in support of an employment-based I–140 petition. It is anticipated that if an application is not selected for an audit, an employer will have a computer-generated certification decision within seven to twenty-one working days of the date the application was initially submitted.

If an application has been flagged for an audit, the employer will be notified and required to submit in a timely manner documentation verifying the information stated in or attested to on the application. Upon timely receipt of an employer's audit documentation, the scanned application would be electronically distributed to an ETA regional office where a case analyst would conduct an audit, as determined by the regional certifying officer.

After an audit has been completed, we currently envision three potential actions the certifying officer can take on the application: Certification; denial; or supervised recruitment. If the audit documentation is complete and consistent with the employer's statements and attestations contained in the application, the application will be certified and returned to the employer. If the audit documentation is not complete, is inconsistent with the employer's statements and/or attestations contained in the application, or is otherwise deficient in some material respect, the application will be denied and a notification of denial with the reasons therefor will be issued to the employer. We anticipate that if an application is denied by the regional certifying officer, the employer will have an opportunity for an administrative review of the decision. Lastly, on any application selected for an audit regardless of the reason for such selection, the regional certifying officer will have the authority to conduct supervised recruitment for the employer's job opportunity in any case where serious questions arise regarding the adequacy of the employer's test of the labor market.

Where supervised recruitment is required by the regional certifying officer, we expect that the procedure will operate much like the current non-RIR regulatory recruitment scheme under the basic process, except that the recruitment efforts would be directed by the regional certifying officer and would not be directed by the SESA, as is the case under the current system. See § 656.24(g) for detailed information concerning the recruitment efforts required under the existing basic alien labor certification process. At the completion of the supervised recruitment efforts, the employer will be required to document that such efforts were unsuccessful, including the lawful, job-related reasons for not hiring any U.S. workers who applied for the position. After a review of the employer's documentation, the regional certifying officer will either certify or deny the application. In all instances in which an application is denied, the denial notification will set forth the deficiencies upon which the denial is based.

Upon the implementation of the new system outlined in this document and subject to public comment in future rulemaking, the Department believes that a number of key criticisms of the current program, such as its cost, timeliness, and complexity, will have been resolved or mitigated to the extent practicable. The Department is continuing to monitor operating procedures at all levels to determine whether further efficiencies can be made that would improve the balance between meeting employers' legitimate needs for foreign workers with our obligation to both protect jobs for U.S. workers and protect against adverse effects on the U.S. labor force.

Signed at Washington, DC, this 17th day of August, 2000.

Ray Bramucci,

Assistant Secretary for Employment and Training.

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