

DEPARTMENT OF LABOR

Employment and Training
Administration

[General Administrative Letter No. 1-97,
Change 1]

Measures for Increasing Efficiency in
the Permanent Labor Certification
Program

AGENCY: Employment and Training
Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is publishing for public comment General Administrative Letter (GAL) No. 1-97, Change 1, Subject: *Measures for Increasing Efficiency in the Permanent Labor Certification Process*, which it issued as a result of the settlement agreement reached in *Lauretta V. Herman* (No. 98-56061, (9th Cir. March 5, 1999)). GAL 1-97 was originally issued on October 1, 1996. GAL 1-97, Change 1, published below differs from the October 1, 1996, issuance primarily in that the efficiency measure of having unduly restrictive job requirements adjudicated prior to allowing advertisements to be published has been removed.

DATES: Interested persons are invited to submit written comments on GAL 1-97, Change 1 on or before July 6, 1999.

ADDRESSES: Submit written comments to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-4456, Washington, DC 20210, Attention: John R. Beverly, III, Director, U.S. Employment Service.

FOR FURTHER INFORMATION CONTACT: Mr. Denis Gruskin, Senior Specialist, Division of Foreign Labor Certifications, Employment and Training Administration, 200 Constitution Avenue NW., Room N-4456, Washington, DC 20210. Telephone (202) 219-4369 (this is not a toll-free number).

(Authority: 8 U.S.C. 1182(a)(5)(A); 29 U.S.C. et seq.; section 122, Pub. L. 101-649, 109 Stat. 4978.)

Signed at Washington, DC, this 24 day of April, 1999.

John R. Beverly III,

Director, Employment Service.

Directive: General Administrative
Letter No. 1-97, Change 1.

To: All Regional Administrators

From: David Henson, Director, Office
of Regional Management.

Subject: Measures for Increasing
Efficiency in the Permanent Labor
Certification Process.

1. *Purpose.* To modify previously provided procedural guidance for increasing efficiency in the permanent labor certification process under current regulations in order to handle increasing workloads with declining staff resources.

2. *References.* 20 CFR Part 656, *Technical Assistance guide (TAG) No. 656 Labor Certifications*, and General Administration Letter (GAL) No. 15-95.

3. *Background.* GAL 1-97 was originally issued in October 1996. The goal of GAL 1-97 was to increase efficiency in the permanent labor certification process. To accomplish this goal, the GAL promulgated several measures which were intended to allow speedier, more efficient processing of permanent cases within current regulations. In the more than two years of experience under GAL 1-97 the evidence indicates that, in general, the measures put forth in the GAL have been effective. In the past two years, in spite of declining staff, the States and Regional Offices have completed action on more cases than in past years when more staff were available. However, as a result of the settlement agreement in *Lauretta V. Herman*, March 5, 1999, the efficiency measure of having unduly restrictive job requirements adjudicated prior to allowing advertisements to be published is being removed. This change to GAL 1-97 is to remove that requirement and reemphasize the other measures stated in that GAL.

This GAL should be interpreted in a manner consistent with the labor certification provisions of the Immigration and Nationality Act, Department of Labor regulations promulgated thereunder, and Board of Alien Labor Certification Appeals (BALCA) case law. No Notice of Findings (NOF) shall be issued and no labor certification denied based solely upon this GAL, as this GAL is not intended to substantively change the Department's regulations or BALCA case law for the adjudication of applications for labor certification.

4. *Action Required.* Administrators are requested to:

A. Provide the attached policy and procedural guidance to appropriate staff.

B. Instruct alien labor certification staff to implement the measures for increasing efficiency and follow the procedures in processing permanent labor certification applications.

C. Apply these procedures to applications when processing begins on or after the effective date of this GAL.

5. *Inquiries.* Direct questions to the appropriate Regional Certifying Officer.

6. *Attachment.* Increasing Efficiency in the Permanent Labor Certification Process.

Expiration Date: June 30, 2001.

Increasing Efficiency in the Permanent
Labor Certification Process

A. Introduction

In order to increase efficiency, the measures below shall be implemented under current regulations at 20 CFR 656 by Regions and State Employment Security Agencies (SESAs) on May 1, 1999. These measures are designed to significantly reduce U.S. worker referrals on jobs where their background and experience indicate they are not fully qualified for the job's stated requirements, to reduce SESA and Regional Office backlogs, and to allow Regions and SESAs to handle increasing workloads in a timely manner with fewer staff.

To promote consistency among Regions and SESAs, operating procedures have been provided for handling applications involving unduly restrictive job requirements, reduction in recruitment, and limited review processing. Depending on local situations, other efficiency measures may be implemented by the Regional Certifying Officer.

B. Measures to Increase Efficiency

1. Unduly Restrictive Job Requirements

As stated in the regulations and Technical Assistance Guide, the job opportunity's requirements shall be those normally required for the job in the United States, unless adequately documented as arising from business necessity. Normal requirements for the occupation in which the job opportunity is included may be found in the *Dictionary of Occupational Titles*.

2. Reduction in Recruitment Requests
(RIRs)

Regions and SESAs will encourage reduction in recruitment requests on applications:

- For occupations for which there is little or no availability;
- Which have no restrictive requirements;
- Which meet prevailing wage; and
- For which the employer can show adequate recruitment through sources normal to the occupation and industry within the previous 6 months

RIR requests will be given expedited processing by SESAs and Regional Offices.

3. Notice of Findings (NOF) Extensions

After issuing a NOF, Certifying Officers will grant only one extension of time beyond the initial 35 days in which the employer can file a rebuttal. The extension may be granted up to 35 days. Further extensions will not be granted.

4. Harmless Error

Certifying Officers will have the discretion to excuse a harmless error on the part of the employer to fully comply with the regulations if the Certifying Officer determines that the labor market was sufficiently tested to warrant a finding that qualified U.S. workers are not available for the job opportunity and employment of the alien will not adversely affect wages and working conditions of U.S. workers similarly employed. A finding of harmless error will be made by the Certifying Officer on a case-by-case basis and shall not set a precedent for another case.

5. Limited Review Processing

Certifying Officers may work with their SESAs to set up a system to identify and flag applications that are ready for transmittal to the Region and apparently have no processing problems. Such applications may not have special job requirements, unusual job duties, applicant availability, or wage issues. Based on the recommendation of the SESA, such cases will generally be approved as they are received in the Region with minimal review. For quality control purposes, a small number of cases in various occupations will be randomly selected for a more extensive review.

6. Résumé Screening

SESA staff shall screen resumés of U.S. workers against the employer's job requirements regardless of whether or not they are considered by the SESA to be unduly restrictive. Only those resumés of fully qualified applicants, based on the employer's final stated requirements, shall be sent to the employer and to the Regional Office. Recruitment on the job order will cease when it is forwarded to the Regional Office. Late resumés may be sent to employers having similar job offers or returned to applicants. After the labor certification has been issued, resumés will be discarded. Regions shall retain resumés of qualified applicants when a NOF or Final Determination has been issued.

7. Standardized Recruitment

When the Certifying Officer requires the employer, through an NOF, to recruit again because of deficiencies in the first recruitment, the employer shall

be instructed to place a 1-day Sunday advertisement in an appropriate newspaper of general circulation. The ad must run in conjunction with a 10-day job order placed with the SESA. This reduced level of recruitment may not be used by employers who have never recruited for the position, or when the Certifying Officer has determined that a trade or professional journal is the most appropriate advertising medium.

8. Advertisements

Because the SESA will not have sufficient time to review a draft ad once a job order has been placed, SESAs are only required to assist in drafting the text or reviewing a draft ad for accuracy if the ad is submitted with an initial or resubmitted application.

9. Applicant Questionnaires

Because of budgetary constraints at the SESAs and Regional Offices, SESAs should no longer send questionnaires to U.S. workers who were interviewed as the result of the labor certification process.

C. Operating Procedures

1. Unduly Restrictive Job Requirements

a. The SESA will review each permanent labor certification application to consider whether there may be any unduly restrictive requirements.

b. The SESA will notify the employer of any potential unduly restrictive requirements and request the employer to either remove those requirement(s) or provide a business necessity justification for the requirement(s) in question within 45 days of the date of the request. If complete information is not received within 45 days, the application will be returned to the employer. If it is refilled, it will be treated as a new application with the original date of receipt deleted and replaced with the refiling date.

c. The SESA will also request, as part of the business necessity documentation, that the employer provide documentation to show that the job existed and was previously filled at the same requirements before the alien was hired. The employer may submit documentation including but not limited to position descriptions, organizational charts and payroll records, etc. Jobs which did not exist before the alien was hired will be considered jobs that are not truly open to U.S. workers, unless the employer can clearly demonstrate that a major change in the business operation caused the position to be created after the alien was hired.

d. After the employer responds to the State's request for further information regarding the requirements for the job opportunity, the State will then proceed to complete the processing of the application, including the necessary advertisement(s) and SESArch of the SESA applicant files.

2. Reduction in Recruitment Requests (RIRs)

a. An employer may file a reduction in recruitment request for any occupation, except those listed on Schedule B, if the employer can show that an adequate test of the labor market has occurred at prevailing wages and working conditions through sources normal to the occupation and industry within the previous 6 months.

b. SESAs and Certifying Officers will encourage requests for reduction in recruitment in occupations with little or no availability and in circumstances as determined by individual Certifying Officers.

c. Upon receiving an employer's written request for a reduction in recruitment, the SESA shall review the application for completeness and determine the appropriate prevailing wage.

d. The SESA shall return the application to the employer for correction and/or additional information if there are deficiencies in the application, such as an inadequate wage offer or restrictive job requirements.

e. When there are deficiencies in the application that would have affected the recruitment, the SESA should advise the employer that it is unlikely that the Certifying Officer will approve an RIR and suggest that the employer recruit through the regular process. However, the SESA may not discourage the use of RIR nor refuse to transmit a written request for an RIR to the Certifying Officer.

f. When transmitting the RIR to the Certifying Officer, the SESA should include a recommendation, based on its knowledge of the labor market, for or against granting the request.

g. The RIR will be given expedited processing at the Region if it contains no deficiencies. Those with deficiencies identified by the SESA shall be processed in the order that they are received along with other applications.

h. Among the factors to be considered by the Certifying Officer in making determinations on RIRs pursuant to section 20 CFR 656.24 are the following:

- Adequacy of the recruitment conducted by the employer applicant, e.g., newspaper advertising, job fairs, internet.

- Documentation of normal recruitment practices in the industry and occupation furnished by the employer.

- Availability of U.S. workers for the occupation involved in the employer's application for which recruitment has been conducted through the SESA in the past, as shown by ES referrals to job orders.

- SESA recommendations/comments.
- Certifying Officer's knowledge of the local labor market.

If RIR is denied because the recruitment is not acceptable, the application shall be returned to the SESA for regular processing in the order in which it is received along with other applications.

i. If the RIR request contains deficiencies, such as inadequate wage offer or restrictive job requirements, the Certifying Officer shall issue an NOF denying the RIR and citing the deficiencies.

3. Limited Review Processing

a. At his or her discretion, the Certifying Officer, may establish a process for making expedited determinations on applications based on the recommendations of the SESA. Such SESA recommendations must be in accordance with guidelines established in advance by the Certifying Officer.

b. Limited review processing shall apply to applications which offer the prevailing wage, have no special requirements or job duties, do not exceed the Specific Vocational Preparation level assigned to the job, and have no applicant availability or a few applicants who clearly do not meet the job's requirements.

c. Applications may be designated for limited review processing only after completion of recruitment. The SESA will assemble an application package for regional processing as follows and affix a limited review code ("LR") to the file:

- One copy of the ETA 7147—State Agency Transmittal.

- One copy of the G-28—Notice of Appearance of Attorney.

- Two sets of the ETA 750, Parts A & B, Application for Alien Employment Certification and one backup copy of Part B.

- One copy of correspondence and other documentation.

- One copy of the SESA Job Order.

- One copy of the Internal Job Posting.

- One copy of all three Advertisements.

- One copy of the Recruitment Results.

- One copy of the Resumes.

d. For the most part, applications which meet the limited review criteria will be expedited for approval when they are received in the Regional Office. Some applications will be randomly selected for review for quality control and SESA training purposes.

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