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ALIEN LABOR CERTIFICATION

Procedures And Requirements

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ALIEN

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Approved Bureau No. 44-R1301

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LETING THIS FORM questions on this form, use a separate sheet.

2. ALIEN REGISTRA- NUMBER (If any)

3. TYPE OF VISA (If in U.S.)

5. SEX MALE FEMALE

6. MARITAL STATUS MARRIED SINGLE

7. NATIONALITY OR (Country)

8. TYPE OF VISA (If in U.S.)

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FOREWORD

This pamphlet furnishes general information to assist you in alien labor certification. It does not include exceptional situations nor all of the requirements and exemptions. Complete information may be obtained by consulting regulations designated 20 CFR Part 656, or by contacting the nearest District Office of Immigration and Naturalization Service listed on page 5.

Alien Labor Certification Program

The entire program of alien labor certification is strictly regulated by law—from the filing of a request for a worker by the employer to the ultimate decision-making and the ensuing notification by the U.S. Department of Labor. Because procedures and requirements are so specific and numerous, we have collected what we consider to be the pertinent information to help you in filing applications for alien workers to fill positions in your organization.

Procedures

In most cases, an alien who wishes to immigrate for the purpose of employment (instead of on another basis, such as close relationship to U.S. citizens) is not eligible to obtain a visa or legally enter the United States until the Department of Labor has determined and certified to the Department of State and to the Immigration and Naturalization Service that:

1. Qualified United States workers are not available, and
2. Employment of the alien would not adversely affect the wages and working conditions of the workers in the United States who are similarly employed

The Department of Labor forms used for requesting certification of an alien may be obtained at any Iowa Job Service local office, Immigration and Naturalization Service Office, or from the Consulate in the foreign country where the alien claims residency. Required forms are:

- MA 7-50A Statement of Qualifications of Alien—required if job offer is for a specific alien (Exception: Temporary workers other than entertainers)
- MA 7-50B Job Offer for Alien Employment—required on all job offers by employer

- MA 7-50C Supplemental Statement for Live-at-Work Job Offers—required for all job orders if alien is to live-in

The Iowa Job Service local office, serving the area where the alien is to be employed, is responsible for processing the above forms and any required documents or written contracts after they have been completed by the employer and/or the alien. If the alien is an entertainer seeking temporary employment, the local office serving the employer's place of business may process the information.

The Department of Labor will not accept an application for less than 32 hours of work a week.

When an employer wishes to hire an alien who is presently in the United States in a non-work visa status, the same procedures are followed.

An alien brought into this country in response to the employer's job offer is not obliged to remain on the employer's job for any definite period of time.

Responsibilities of the Agencies Involved

Iowa Job Service local offices are responsible for assisting the Department of Labor by carrying out the following activities:

1. Preparing Job Service job offer for the job opening in which the employer is considering importation of an alien; selection and referral of qualified local applicants, if any, to the employer; assistance to the employer in recruitment of workers
2. Reviewing immigration forms (prepared by employer and/or alien) for completeness of entries and adequacy of any required supporting documents or contracts. (These are legal forms. Only the employer or alien, or his or her authorized representative, may make changes, additions, or deletions to his or her own form.)
3. Preparing a Summary Report for the Department of Labor covering the following areas of information concerning the occupation:

Availability of qualified workers
 Prevailing wage rate
 Any adverse working conditions
 Other pertinent information

4. Forwarding immigration forms, required documents and/or contracts and the Summary Report to the Iowa Department of Job Service, Des Moines, Iowa

The Iowa Department of Job Service, on receipt of the immigration forms and data from the Job Service local office, reviews the information, adds any pertinent statewide information to the Summary Report, and forwards all the completed forms, documents and contracts to the Department of Labor, Employment and Training Administration, regional office in Kansas City, Missouri.

The U.S. Department of Labor, Employment and Training Administration, Regional Office will notify the employer of its decision within 60 days (unless forms must be returned for additional information). If approved for certification, the regional office will notify the employer and inform him or her of any further action required and/or where papers have been sent; if not approved, one copy of each form will be returned to the employer with the reason this certification was denied.

For additional information contact one of the Iowa Job Service local offices listed on the back page or the nearest District Office of the Immigration and Naturalization Service. Aliens outside of the United States should contact the American Embassy or Consulate serving their country.

District Offices of Immigration and Naturalization Service

Omaha, Nebraska 68102 New Federal Building 215 North 17th St. Phone (402) 221-4651	Chicago, Illinois 60604 Courthouse & Federal Office Bldg. 219 South Dearborn Street	Kansas City, Missouri 64106 819 U.S. Courthouse 811 Grand Avenue
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Requirements for Employer Compliance

1. The employer has been recruiting at the prevailing wage, and at prevailing working conditions, and has reason to think it will continue to be unsuccessful in its recruiting of U.S. workers through the public employment system and/or through other labor referral and recruitment sources normal to the occupation.

The employer must in good faith recruit from all available appropriate sources of U.S. workers. The employer does not have the option of being the sole source of recruitment.

To show recruitment efforts, the employer's documentation must:

- a. List the sources used for recruitment; i.e., advertising, public and/or private employment agencies, colleges, universities or vocational or technical schools, unions, etc.
- b. Identify each source by name.
- c. Give number of responses from U.S. resident workers.
- d. Give number of interviews conducted with U.S. resident workers.
- e. Specify reasons for not hiring the persons interviewed.
- f. Specify the wages and working conditions offered.

2. The employer has enough funds available to pay the wage or salary offered the alien.

A statement of employer's gross annual income (MA7-50B Item 8) will normally be sufficient to support any representation by the employer. If that income does not appear sufficient to meet the wage obligation, the local office may request the employer to explain what arrangements have been made to assure payment of the wage offered the alien. If a new company or business, the employer should be advised that the Certifying Officer normally requires an audited financial statement or a commitment of financing as documentation.

3. The wage offered equals or exceeds the prevailing wage (as determined by CFR 656.40) and the employer guarantees that, if a labor certification is granted, the wage the employer will pay to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work.

If the job opportunity is in an occupation which is subject to a wage determination covered by the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act, the prevailing wage shall be the rate required by statute. The Certifying Officer will confer with the DOL Employment Standards Administration if assistance is needed in making this determination. If the job opportunity is covered by a union contract negotiated between a union and the employer, the wage rate in the union contract will be considered the prevailing wage.

If the wage offered is not covered by statute or by union contract, the wage will be considered as meeting the prevailing wage standard if it is within 5% of the average rate of wages paid to workers similarly employed in the area of intended employment. ("Similarly employed" means having substantially similar levels of skills in the occupational category in the area of intended employment.) To determine the average rate of wages paid to workers similarly employed, the local office must determine the wage paid by other companies and then average these wages (a wage range cannot be used).

EXAMPLE:

Company A -----	\$14,000
Company B -----	\$22,000
Company C -----	\$18,000
Company D -----	\$16,000
	$\$70,000 \div 4 = \$17,500$
	Prevailing Wage

A prevailing wage determination shall not permit an employer to pay a wage lower than that required under any other Federal, State or Local law.

As part of the documentation submitted by the employer, a supplemental statement should be included guaranteeing that, if a labor certification is granted, the wage the employer will pay to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work.

4. The wage offered is not based on commissions, bonuses or other incentives, unless the employer guarantees a wage paid on a weekly, bi-weekly or monthly basis.

Labor certification cannot be given unless the application for certification contains a guaranteed wage. Documentation that the guaranteed wage will be paid is implicit in the signature of the employer on the MA7-50B.

5. The employer will be able to place the alien on the payroll on or before the date of the alien's proposed entrance into the U.S.

This provision assures that the alien has employment on arrival and will not become a public charge. The employer must submit a statement assuring that the alien will be paid from the time of his or her arrival in the United States. This is particularly important when an employer is starting a new business.

6. The job opportunity does not involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap, or citizenship.

Documentation to comply with this provision is implicit in the employer's signature on the MA7-50B.

7. The job opportunity has been and is clearly open to any qualified U.S. worker.

Documentation to comply with this provision is implicit in the employer's signature on the MA7-50B.

8. **The job opportunity has been and is being described without unduly restrictive job requirements**
- (i) **The job opportunity's requirements, unless adequately documented as arising from a business necessity, shall be those normally required for the job in the U.S., be those defined for the job in the DOT including those for subclasses of jobs, and not include requirements for a language other than English**
 - (ii) **If the job opportunity involves a combination of duties, for example engineer-pilot, the employer must document that it has normally employed persons for that combination of duties and/or workers customarily perform the combination of duties in the area of intended employment, and/or the combination job opportunity is based on a business necessity.**

Documentation to comply with this provision is the job description contained in the job offer section of the MA7-50B. If the job description is unduly restrictive, contains requirements not normally required as defined in the DOT, involves a combination of duties not normal to a single occupation or requires a language other than English, the employer must provide written documentation that: They have normally employed persons for that combination of duties and/or workers customarily perform the combinations of duties in the area of intended employment, and/or the combination of duties is based on a business necessity. It is also expected that workers will be appropriately compensated for any unduly restrictive requirements.

9. (i) **The employer has advertised and is still advertising the job opportunity without success in such media as newspapers of general circulation, and ethnic and professional publications**
- (ii) **The employer's advertising offers prevailing working conditions and requirements and the prevailing wage for the occupation, states the rate of pay, offers training if the job opportunity is the type for which the employer customarily provides training, and offers wages, terms and conditions of employment which are no less favorable than those offered to the alien at the time the alien was employed.**
 - (iii) **The employer's advertising describes the job opportunity with particularity; the documentation shall include a copy of at least one advertisement placed by the employer**
 - (iv) **The employer's advertisement has produced no satisfactory results.**

The employer's newspaper advertising required by this regulation must state the name of the employer, the address; describe the job opportunity, giving particulars of prevailing working conditions and requirements, the rate of pay; and offer training (if customary), wages, terms and conditions of employment which are no less favorable than those offered to the alien. That is, the job must be offered to a U.S. citizen as it was prior to filling the job with an alien.

A copy of every advertisement placed, as it appeared in the newspaper, including date and publication, must be submitted as documentation. The employer will also provide a list of applicants who responded to the advertisements, state the number of applicants interviewed and the reason for not hiring each applicant.

NOTE: In addition to the employer's newspaper advertising required by CFR 656.21 (b) (9) (i) explained above, the employer must ALSO provide a copy of an advertisement, placed by the employer in a newspaper of statewide circulation, which states the job description, the salary offered, hours of work, education and training requirements, if any, and directs applicants to report to the local Job Service office for referral to an employer.

10. **The employer has posted within its organization notices of the job opportunity which contain all the information required in the newspaper advertising.**

Documentation of the posting must consist of a copy of the posting and the employer's statement that the posting was made in a conspicuous place, clearly visible, for at least ten days. In addition, the employer must detail the results of the posting and state why any applicants were not hired.

11. **The employer's job opportunity is not:**
- (i) **Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute**
 - (ii) **At issue in a labor dispute.**

Documentation to comply with this provision is implicit in the employer's signature on the MA7-50B. If there is any doubt, a supplemental statement from the employer may be required.

12. **The employer's other efforts to locate and employ U.S. workers for the job opportunity such as recruitment efforts by means of private employment agencies, labor unions, advertisements placed with radio or TV stations, recruitment at trade schools, colleges, and universities or attempts to fill the job opportunity by development or promotion from among its present employees, has been and continues to be unsuccessful.**

In order to support the employer's efforts to locate and employ U.S. workers, the employer must document each source of recruitment used, the responses from each source of recruitment, the number of interviews conducted, the reasons why applicants were not hired, and why development or promotion from within has not resulted in locating a U.S. worker.

The employer advertising may appear within 30 days prior to the placing of the job order with the local Job Service office, or at any time after placing of the job order. (It is suggested that the employer review the ad with Job

Service prior to publication.) The application for Alien Employment Certification, however, will not be forwarded to the Department of Labor by the local office until two weeks have elapsed after the appearance of the employer advertising. A professional or technical position must also be advertised in a professional or trade journal of nation-wide circulation. A position requiring a language or an ethnic background must be advertised in a publication with that ethnic distribution.

13. If unions are customarily used as a recruitment source in the area or industry, they were unable to refer U.S. workers.

If appropriate, the employer's statement explaining the reason given by the union for its inability to refer U.S. workers is suitable documentation.

14. The employer's requirements for the job opportunity, as described, represent the employer's actual minimum requirements for the job opportunity, and the employer has not hired workers with less training or experience for jobs similar to that involved in the job opportunity or that is not feasible to hire workers with less training or experience than that required by the employer's job offer.

Items 30, 31, and 32 on the MA7-50B should be reviewed to determine if the requirements of the job opportunity appear to actually represent the minimum requirements to perform the job. Where an employer has or had the alien on the payroll, the Employment Certification for the alien cannot include as a job requirement experience gained by the alien during the period of employment, since at the time the alien was hired, there was no such experience requirement. The employer must be willing to give a U.S. worker the same opportunity given the alien when originally hired.

15. If U.S. workers have applied for the job opportunity, they were rejected solely for lawful job-related reasons.

The employer must provide a statement detailing why each applicant who applied for the job was not hired. If no one applied for the job or responded to any of the recruitment efforts, the employer must include a statement certifying that no U.S. workers have applied for the job opportunity.

16. The employer's job opportunity's terms, conditions and occupational environments are not contrary to Federal, State or Local law.

The employer's signature on the MA7-50B is considered documentation of compliance with this provision.

The employer is required to show that the job has been advertised and is still being advertised without success. The number and frequency of the ads is determined by the local Job Service office. It is felt that the local office better understands the local labor force and can determine what is a reasonable and good faith recruitment effort for a particular locale. The Certifying Officer, on occasion, may require additional advertising.





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Job Service of Iowa offices are conveniently located in the following cities:

Adel	Des Moines Suburban	Missouri Valley
Albia	Dubuque	Monticello
Algona	Eagle Grove	Mount Pleasant
Ames	Emmetsburg	Muscatine
Arnolds Park	Estherville	New Hampton
Atlantic	Fairfield	Newton
Boone	Forest City	Oelwein
Burlington	Fort Dodge	Osceola
Carroll	Fort Madison	Oskaloosa
Cedar Falls	Glenwood	Ottumwa
Cedar Rapids	Grinnell	Perry
Centerville	Hamburg	Pocahontas
Chariton	Harlan	Red Oak
Charles City	Humboldt	Sheldon
Cherokee	Independence	Shenandoah
Clarinda	Iowa City	Sigourney
Clarion	Iowa Falls	Sioux Center
Clinton	Jefferson	Sioux City
Corning	Keokuk	Spencer
Council Bluffs	Knoxville	Storm Lake
Creston	LeMars	Washington
Davenport	Manchester	Waterloo
Decorah	Maquoketa	Waverly
Denison	Marshalltown	Webster City
Des Moines	Mason City	

Please Note: All major local offices can process alien certification applications. If the office you contact does not provide this service, you will be referred to the nearest office authorized to handle alien certification.