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Questions and answers

Lid on alien workers tightened

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The third and sixth preferences are reserved for professionals, persons of distinguished merit and ability, and skilled and unskilled laborers. These categories of aliens, it is claimed, pose competition to American workers. Hence, it has been necessary to effect strong controls to protect American labor from the influx of alien workers.

The immigration device of control is known as labor certification. Under the old law, this simply meant that for an alien worker to become an immigrant, he had to get a certificate from the Secretary of Labor stating that: (a) there were not sufficient workers in the US who were able, willing, qualified and available at the place of destination of the alien; and (b) the employment of such alien would not adversely affect the wages and working conditions of workers in the US similarly employed.

The new law retains the basic concept of labor certification. It does, however, effect stronger safeguards as reflected in the following guidelines issued recently by the Immigration Service.

Are there any modifications of the existing labor certification requirement of section 212 (a) (14) of the Act?

Yes, in order for a labor certification to be issued in the case of an alien who is a member of the teaching profession or who has exceptional ability in the sciences or the arts, the alien must be better qualified than available domestic workers. Also, the shortage of workers must be at the place of intended employment rather than in the United States. Under P.L. 94-571, the labor certification requirement is applicable to immigrants from both hemispheres entering under the third and sixth preference categories, and under the non-preference category if entering to work).

What changes are proposed in Labor Department procedures for applying for an individual labor certification?

Any alien requiring a labor certification, except an alien whose occupation is listed in Schedule A, must have an employer or prospective employer apply through the local state employment service office for a labor certification on his behalf by filing Department of Labor forms entitled Statement of Qualifications of Alien (hereafter referred to as MA 7-50A) and Job Offer for Alien Employment (hereafter referred to as MA 7-50B), and, in addition, Supplemental Statement for Live-at-Work Job Offers (hereafter referred to as MA7-50C) if the application involves a job offer as a live-in domestic. Application for labor certification for a Schedule A occupation by a third or sixth preference or nonpreference alien shall be made directly to the Service or an American consular officer, who shall determine whether the alien is a qualified member of and intends to pursue the Schedule A occupation. While an advisory opinion may be requested of the regional office of the Employment and Training Administration as to whether the alien is qualified for the Schedule A occupation when a Service officer is unable to resolve the matter on the basis of the evidence submitted, the ultimate decision rests with the Service (or the State Department) and that decision shall be conclusive and final.

(While the Department of Labor has advised that the form numbers MA 7-50A, MA 7-50B, and 7-50C will be changed, it is not anticipated that the change will be effected in the near future).

How does the foregoing affect the procedure for filing third and sixth preference petitions?

Forms MA 7-50A and MA 7-50B are an integral part of each third and sixth preference visa petition. Each third and sixth preference petition must be supported by Form MA 7-50A, and supporting evidence, and Form MA 7-50B, to which the individual labor certification under section 212 (a) (14) of the Act has been affixed by the Secretary of Labor or his designated representative, except that such certification may be omitted if the beneficiary is qualified for and will be engaged in an occupation currently listed in the Department of Labor's Schedule A (20 CFR Part 656). Thus, a third or sixth preference petition filed on or after January 1, 1977, on behalf of an alien who is a member of the professions or who possesses exceptional ability in the sciences or the arts and whose profession or occupation is not listed on Schedule A, will no longer be referred to the Labor Department by the Service for an individual certification. In such a case, the individual-issued labor certification must accompany the petition. If it does not accompany the petition, the petition and supporting documents shall be returned to the petitioner with instructions as to the manner to apply for certification through the local state employment service office, and the petitioner shall be advised that he may not file the

petition with the Service until Forms MA 7-50A and MA 7-50B have been returned to him with the required certification.

Are there any circumstances under which a third or sixth preference visa petition filed on or after January 1, 1977, will be referred to the Department of Labor by the Service for a certification?

No.

Under existing Labor Department regulations, individually-issued labor certifications are valid indefinitely except in the cases of teachers and live-in domestics. Is there any change in this regard?

Yes. Under the proposed amendments, all certifications will be valid indefinitely, unless invalidated subsequent to issuance because of fraud or willful misrepresentation of a material fact involving the labor certification application.

How does the employment offer requirement for third preference classification affect the period of validity of an approved third preference petition filed on or after January 1, 1977?

A job offer must remain in effect. Unless revoked, the approval of a third preference petition shall remain valid for as long as the supporting labor certification is valid and unexpired provided there is no change in the respective intentions of the prospective employer and the beneficiary that the beneficiary will be employed by the employer in the capacity indicated in the supporting job offer.

Where an alien files a third preference visa petition on his own behalf and subsequent to approval of the petition he acquires a new job offer, what effect does this have on the validity of the approved petition? Is a new visa petition required?

When the beneficiary of an approved third preference petition no longer intends to accept employment with the prospective employer or the offer of employment is withdrawn, the petition shall be deemed invalid and the beneficiary shall no longer be entitled to a priority as of the date of filing of the petition. However, upon submission of a new Job Offer for Alien Employment, and a certification under section 212 (a) (14) in the case of an occupation not listed in Schedule A, the petition shall be deemed reinstated with the original priority date. The filing of a new petition is not required in such case.