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PART III

On filing a 6th preference petition

By REUBEN S. SEGURITAN

For non-schedule A occupations, the prospective employer is required to apply for a labor certification on behalf of the alien. The application is filed in duplicate with the local employment service office serving the area where the alien will be employed. It should set forth a statement of the qualifications of the alien and a description of the job offer.

As part of the application, the employer should submit documentation which shows that:

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

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

The wage offered equals or exceeds the prevailing wage and that 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 exceeds the prevailing wage which is applicable at the time the alien begins work.

¶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.

¶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 US.

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

¶The job opportunity has been and is clearly open to any qualified US worker.

¶The job opportunity has been and is being described without unduly restrictive job requirements.

¶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. The 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.

¶The employer has posted within its organization notices of the job opportunity.

¶The employer's job opportunity is not at issue in a labor dispute nor is it vacant because the former occupant is on strike or is being locked out in the course of a labor dispute.

¶The employer's other efforts to locate and employ US workers for the job opportunity such as recruitment efforts by means of private employment agencies, labor union, 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.

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

¶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 it is not feasible to hire workers with less training or experience than that required by the employer's job offer.

¶If US workers have applied for the job opportunity, they were rejected solely for lawful job-related reasons.

¶The employer's job opportunity's terms, conditions and occupational environment are not contrary to Federal, State or local law.