

# EMPLOYER’S GUIDE TO ALIEN LABOR CERTIFICATION

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## **Introduction**

# **Employer's Guide to the Alien Labor Certification Program**

U.S. immigration law allows an alien to become a permanent resident of the United States based on a job offer, only if it can be shown that qualified U.S. workers (citizens, nationals, permanent resident aliens, temporary residents, refugees and those granted asylum) are not available and willing to perform that job. Alien Labor Certification (ALC) is the process employers must use to document that their hiring needs cannot be met by U.S. workers.

Procedures governing ALC (federal regulations at 20 CFR 656) spell out the employer's responsibility to recruit U.S. workers at prevailing wages and working conditions under the direction of the Employment Service. **Applications submitted for ALC processing MUST be for full-time work and for a person other than oneself** (an employer and the alien as the employee). The application must describe a specific job opening and detail work duties, work schedule, wage offer and minimum job requirements.

The Ohio Department of Job and Family Services (ODJFS) administers the ALC program in Ohio. Applications for labor certification for jobs in Ohio must be submitted to :

Ohio Department of Job and Family Services  
Alien Labor Certification Program  
P.O. Box 1618  
Columbus, Ohio 43216-1618

ALC staff review applications for compliance with applicable federal regulations, determine prevailing wages to ensure wages of similarly employed U.S. workers are not undercut, direct employers in required recruitment efforts, provide instructions for completing each step in the process and forward completed applications for determination to the Regional Certifying Officer of the U.S. Department of Labor in Chicago, Illinois. If labor certification is granted, the employer, on the alien's behalf, can then apply to the Immigration and Naturalization Service (INS) for a visa.

Only INS has authority over immigration matters and an alien's authority to work in the U.S. If you have immigration questions, **please call 1-800-755-0777** visit their website or use the government blue pages for the telephone number the nearest office.

Pages 3-8 of this guide detail how to complete the two required sets of application forms (ETA750, Parts A and B). Pages 9-13 describe steps an employer must take and documentation that must be submitted. The ALC process differs somewhat if an application is for a live-in household domestic service worker, college teaching position or job of temporary duration (pages 14-19).

ALC services are available only to employers or their legally designated representatives. **ODJFS does NOT work directly with the alien or the alien's representative.**

ALC is just one of many free services ODJFS provides employers from our central office and a network One Stop offices throughout Ohio. Other services include recruitment, screening, interviewing, testing of applicants, assistance with individual and multiple hirings, as well as information on labor market conditions and administration of the unemployment compensation system. Please visit our website, <http://www.state.oh.us/odjfs/>, if you are ready a hard copy or merely return to our home page to visit the other services we provide. The major development is the merging of ODJFS with the Ohio Department of Human Services effective July 1, 2000. We will become known as the Ohio Department of Job and Family Services.

## **A guided Tour of U.S. Department of Labor Forms – ETA 750 Parts A and B**

Properly completed documents prevent processing delays of ALC applications. This guide provides assistance on how to complete the application forms item-by-item.

Pages 3 through 8 in this manual are set up in the exact sequence of the actual forms with additional information indented beneath.

**ITEM #>** The form number is to the left of the page and alongside it is the form block name and a description of what information must be included.

**EXAMPLES >** The next level of information will be examples or clarifying notes, where these seem helpful. They are clearly marked “Example(s)” when listed as illustrations of the type of information needed.

**COMMON ERRORS>** At the third level of information are common errors noted in the processing of applications over the years. They are clearly marked as “common errors” to be avoided or “notes”

Follow the item-by-item description of Forms ETA 750, Part A and B, is additional information about ALC. These are cross-referenced in the forms section at the specific item or in the index or both.

The format is designed to enable you to easily begin form completion with reference to the level of detail required as you go through the form item by item.

## Completing U.S. Department of Labor Form ETA 750 Part A, (750A)

### ITEM

1. **Name of Alien.** Enter **LAST NAME FIRST** in CAPITAL LETTERS, followed by first, middle and maiden name (if applicable). This entry **MUST** be the same as item 1 on 750B.  
  
**Common Error:** Last name **NOT** entered first and **NOT** capitalized. Name **NOT** in same order on both 750A and 750B.
2. **Address of Alien.** Enter the address at which the alien currently resides, whether in the U.S. or abroad.
3. **Type of Visa.** Enter the type of visa held by the alien if residing in the U.S. (e.g., B-2, visitor; F-1, student or current status as shown on INS form I-94). If the alien is abroad, leave this item blank.
4. **Name of Employer.** Enter full business name, or if employer is an individual enter full name as used for legal purposes on documents.
5. **Telephone.** Enter employer's business phone number (where the person who signs 750As can be reached). If the employer is a private household and all adult residents are employed, enter both business and home telephone
6. **Address.** Enter employer's complete mailing address. **If employer uses a Post Office Box** instead of a street address for mailing purposes, then **Item 7 must be completed** with the address of the alien's work site.
7. **Address where Alien will work.** Complete this item if the alien will be working at a location different from address in Item 6 above. Do not list a post office box in this item. Item 7 **must** identify the actual job location; if the job requires work to be done in more than one location, the application must include the itinerary locations and duration of work at each location (Item 13 or 15 may be used or additional information may be provided in a separate letter dated and signed by the employer who submitted the 750s)  
  
**NOTE:** It should be clear at which address the person signing the 750As can be reached and what address resumes are to be sent.
8. **Nature of Employer's Business Activity.** If the employer is an individual seeking to engage a household domestic worker, enter "private household." Otherwise enter business activity engaged in by the employer and include product(s) produced or sold or service provided.  
  
**Examples:** "Retail Sale of Computer Parts," "Manufacture of Cleaning Supplies," "Wholesale Distribution of Auto Parts," "Import/export of Glassware," etc.
9. **Name of Job Title.** Enter the common name or payroll title of the job being offered. This entry should accurately reflect the job described in Item 13 .
10. **Total Hours per Week.** In Item 10 a, "**Basic**," enter the standard number of hours, excluding overtime, to be worked each week. Indicate number of hours of "**Overtime**," if any, in Item 10b. Entries in Item 10 must comply with state and federal wage and hour laws and should correspond with the work schedule entered in Item 11.

11. **Work schedule.** Enter the DAILY work schedule for the job.

**Example:** “9 am to 5 pm,” or “7 am to 11am and 4 pm to 8 pm.” If work schedule is **NOT** Monday through Friday, enter the days of the week to be worked in Item 13 (just below Item 11).

12. **Rate of Pay.** In Item 12a, “Basic,” enter amount paid or to be paid to the alien. **The entry must be a guaranteed wage and a unit of pay.** The wage offer cannot be based on commission, bonuses or other incentives unless the employer guarantees a wage paid on a weekly, bi-weekly or monthly basis. Indicate overtime-hourly rate of pay, if applicable, in Item 12b. Overtime rate of pay shown in Item 12b **must** comply with state and federal wage and hour laws.

**Examples:** (12a): “\$8.00 per hour,” “\$1,500.00 per month,” “\$30,000.00 per year.”

**Note:** The employer’s wage offer must be within 5 percent of the prevailing wage for the occupation unless the job is covered by one of the following:

Union contract, in which case the wage offer must be in accordance with the rate currently in effect in the contract.

Service Contract Act (SCA) or Davis Bacon Act (DBA), in which case the wage offer must be in accordance with the rate required under that Act, even if the job is covered by collective bargaining/union contract.

The employer will be notified in writing if the wage needs to be increased.

Item 12 cannot be a wage range but the employer may use a wage range in the eventual advertisement and job posting. (See page 11 for definition of “wage range” as it is used here.)

13. **Fully Describe the Job to be Performed.** Describe the work duties as to be performed by any worker filling the position. **Describe ONLY the job duties** (no job requirements or reference to the specific alien or employer). The job description is used by ODJFS to assign an occupational classification and to determine an appropriate prevailing wage. (This information will be put into the advertisement.)

**Example:** Analyze samples of air in work areas of steel mill to determine amount of suspended foreign particles and effectiveness of control methods using dust collectors.

**Note:** Avoid vague or general descriptions, trade jargon and acronyms. Insufficient or inappropriate job description can delay processing of an application. Specific task(s) to be performed should be identified by detailing what is done, how and why it is done and what is involved in doing it. Include work performed, equipment operated and tools used.

14. **Minimum Requirements.** Qualifications that can be identified as EDUCATION, TRAINING and EXPERIENCE are to be entered here. Use Item 15 **ONLY** for **requirements not in these categories or to clarify entries listed in Item 14.**

**Note:** “Experience” has two sections: “Job Offered” and “Related Occupation.”

An entry under “Job Offered” **means** the employer is requiring experience performing **ALL** the job duties listed in Item 13 above.

If experience is required but **NOT** in every duty of the job offered, then experience requirement should be entered under “Related Occupation.”

If related experience is required, the block “**Related Occupation (specify)**” must be completed. The entry must be a specific job title and the employer should list all acceptable related occupation job titles. Entries under both headings are viewed as “either/or” requirements but not both.

**Item 14 should reflect total amount of experience required.** *It should also be clear that any special experience requirements in Item 15 are part of (not in addition to) total amount of experience required in Item 14.* One method of making this clear is to use corresponding asterisks next to correlated entries in Items 14 and 15. “**On the job training**” should be listed as **experience, not training.**

**Special Note:** Job duties in Item 13 are separate and apart from job requirements in Items 14 and 15 (unless experience is required under the “Job Offered” heading). If “Related” Experience is indicated, U.S. workers cannot be rejected for lack of experience with a specific duty only listed in Item 13 unless it is specified as a special requirement of the related experience. (See item 14/15).

- 14./15. Minimum and Other Special Requirements.** Only minimum necessary and reasonable requirements for anyone to perform the job being offered should be entered in Items 14 and 15 (**not qualifications the alien happens to possess**). Job requirements must be those normally required for the job in the U.S.

Restrictive requirements limiting consideration of otherwise qualified U.S. workers should not be included or must be documented as arising from business necessity by the employer in a signed and dated letter. The employer must prove the business necessity of a restrictive requirement.

To document business necessity the employer needs to show that the qualification is reasonably related to the job to be performed, is essential to the satisfactory performance of the job described, and that the employer has not hired workers with less or lower qualifications for the same or similar jobs, with convincing independent documentation to support employer statements.

A requirement for a language other than English must always be documented as a business necessity.

Submit information documenting business necessity with the application to speed up the processing of the application. Written explanations should provide a clear picture of the business, the job and any unusual or unique aspects or requirement of the job.

- 15. Other Special Requirements.** Job requirements must be clear, concise and measurable. Phrases such as “knowledge of,” “ability to,” “background in,” and the like, should be avoided. Employers should consider how an applicant’s qualifications will be measured and how much of a qualification is sufficient. Subjective requirements such as “good,” “expert,” etc., should be avoided. One way to quantify a foreign language is to specify whether applicants must speak, read and/or write that language. (see item 14/15)

- 16. Occupational Title of Person who will be Alien’s Immediate Supervisor.** Self-explanatory.

**Note:** Be sure to include the job title of the alien’s supervisor. Do not leave this item blank and do not include an individual’s name.

- 17. Number of Employees the Alien will Supervise.** If none, enter zero (0).

**DO NOT WRITE in the “ENDORSEMENTS” section, this is ONLY for use by ODJFS and USDOL !**

- 18. Complete Items Only If Job Is Temporary.** Leave this item Blank if application is for permanent residency.

If the job is temporary, please refer to page 14 relating to temporary certification.

19. **If Job is Unionized.** Leave blank if job is not unionized. If the job is unionized, enter the union name, the number of the local and the city and state where the union local has its main office. The employer **MUST** submit a signed and dated letter from a union official to attest the union is unable to refer qualified U.S. workers and state the current rate for this occupation. A copy of the contract with the current wage for the job must also be included.

20. **Statement of Live at Work Job Offers.** Complete this item only if the job offer is for a live-in household domestic worker. (see page 16).

20a: Self explanatory

20b: Enter number of adults and the number and ages of children under the age of eighteen

20c: This item must be completed (**regulations require an employer to provide a private room and board at no cost to a live-in household domestic**). See Item B on page 16 for additional information on live-ins.

21. **Describe Efforts to Recruit U.S. Workers and Results.** This item need not be completed.

22. **Applications require various types of documentation. This item requires no entry.**

23. **Employer Certifications.** **Read Items 23a-h carefully !** The employer certifies to these eight (8) conditions of employment by signing the form under penalty of law.

24. **Declarations.** Item 24 has two sections:

**“Declaration of Employer”** At least one 750A **MUST** bear an **ORIGINAL SIGNATURE** of the employer or the employer’s duly authorized representative with hiring authority for the position being offered in the first signature block. Include the date of the signature.

**“Authorization of Agent of Employer”** Type or print the signor’s name and title in the appropriate blocks of the “Declaration of Employer” section. False statements are subject to federal perjury and fraud penalties.

Completing the “Authorization of Agent of Employer” sections is optional. If the employer designates an agent or attorney to process an application, the employer should sign, date and complete this section on the back of the 750 As or the attorney should submit a signed and completed Form G-28, “Notice of Entry of Appearance as Attorney or Representative.” Employers should not sign blank forms since they are fully responsible for representations made by an agent or attorney.

Identical information must be entered on both original forms 750As. Blank forms may be reproduced and photocopies of completed forms may be submitted **PROVIDED one 750A has an ORIGINAL SIGNATURE. TWO signed, completed copies of the two sided 750As MUST be submitted and each form MUST be copied back-to-back (not on two separate pages).** Entries for ALL items must be made directly on the forms, not just as an attachment. **Attachments are appropriate ONLY if additional space is needed.**

**Common Problem will delay processing:**

- One or both 750As are photocopies and neither copy has an original signature. An original signature is required on at least one of the two completed 750As and Bs.

## Completing U.S. Department of Labor Form ETA 750, Part B (750B)

### ITEM

1. **Name of Alien.** Enter alien's **LAST NAME FIRST IN CAPITAL LETTERS** to look exactly as the entry in ITEM 1 of form 750A.
2. **Present Address.** Enter address at which alien currently resides whether in the U.S. or abroad.
3. **Type of Visa.** If alien is in the U.S., enter the type of visa. If alien is abroad, leave this item blank.
4. **Alien's Birth date.** Enter month, day and year the alien was born.
5. **Birthplace.** Enter city and country (if Korea, specify North or south, if China, specify People's Republic or Republic of China).
6. **Present Nationality or Citizenship.** Enter country of which alien is currently a citizen or national.
7. **Address in the U.S. where alien will reside.** Self Explanatory
8. **Name and Address of Prospective Employer if Alien has job in the U.S.** Enter employer's business name and complete address of location where the alien will work.
9. **Occupation in which Alien is seeking Work.** This entry should correspond with the job title in Item 9 on the 750As.
10. **"X" Appropriate Box and Furnish Information for Box marked.** Self-explanatory
11. **Names and Addresses of Schools, Colleges and Universities Attended.** List names and addresses of all schools attended by the alien as well as field of study, dates attended (month as well as year) and type of degree or certificate earned for each document.
12. **Additional qualification and Skills Alien Possesses and Proficiency in the use of Tools, Machines or Equipment which would help Establish Alien Meets Requirements for Occupation in Item 9.** List information and/or supporting documents that can be provided to INS to establish that the alien meets requirements entered in Items 14 and 15 on the 750As. Be sure to enter where and when the alien acquired the qualifications.
13. **List Licenses (Professional, journeyman, etc.).** Self-explanatory
14. **List Documents Attached, Which are Submitted as Evidence that Alien Possesses the Education, Training, Experience and Abilities Represented.** Self-explanatory
15. **Work Experience.** List all jobs held during **past three years to present** including **employment with the employer seeking labor certification**. An addendum should be used if additional space is needed. Information on an addendum should be in the format prescribed for this item. If currently employed, "present" should be listed as the "date left." Give all requested information, including month and year for dates started and left, kind of business, hours per week and detailed descriptions of each job performed. If the alien held more than one job with the same employer, describe each job.

**It must be evident from entries in Items 11-15 on the 750Bs that the alien's qualifications (at the time the application is filed or at the time the alien was hired into the job being offered, whichever is earlier) meets or exceeds the minimum qualifications required in Items 14 and 15 on the 750As. Documentation of the alien's qualifications is not required for labor certification (although INS may require such evidence if labor certification is granted).**

**16. Declarations.** This item is divided into two sections:

**“Declaration of Alien”** must be signed by the alien and dated.

**“Authorization of Agent Of Alien”** signed ONLY if the alien designates an agent or attorney to assist in processing the application. The employer should **NEVER** be listed as the agent for the alien.

Identical information is to be entered on both original 750B forms submitted. Blank forms enclosed may be reproduced and photocopies of completed forms may be submitted **PROVIDED at least one form has an ORIGINAL SIGNATURE.**

**TWO** signed, completed copies of 750B forms **MUST** be submitted and copied back to back (not on two separate pages). If a 750B or copy including signature block is used as an addendum, it must be signed and dated the same as the original 750Bs.

## Additional Information

### 1. **Submitting an Application:**

The employer submits **TWO** sets of properly completed ETA 750 Part A and Part B application forms to :

**Ohio Department of Job and Family Services  
Alien Labor Certification Program/Unit  
P.O. Box 1618  
Columbus, Ohio 43216-1618**

Accurate and adequate information is needed for ODJFS/ALC to process your applications as quickly as possible. At least one of the 750As and one of the 750Bs must have original signatures. For faster processing, be certain to include your Federal Employer Identification Number (FEIN)/Employer's Identification Number (EIN) or Unemployment Compensation Account Number (UCAN) in your cover letter.

### 2. **Filing Date of Application:**

The Ohio Department of Job and Family Services' (**ODJFS**) Alien Labor Certification program/ unit (ALC) will enter the date an application is received and accepted in the lower right hand corner of the 750As. Applications are processed in order by date received. Also, the Immigration and Naturalization Service (**INS**) processes permanent visa requests based on "priority date" which, for categories requiring labor certification, is the date an application is received by ODJFS. Preserve this important date by responding within the 45-day period to all requests made regarding the application.

### 3. **ODJFS Processing of Applications:**

ALC staff review applications and identify deficiencies on an application **BEFORE** recruitment is done. They advise employers to assist them in complying with applicable federal regulations and they are responsible for ensuring an adequate test of the labor market for availability of U.S. workers to fill bona fide job openings. Our responsibilities include:

- analyzing job offers for unusual or restrictive requirements;
- determining the correct prevailing wage to ensure the wages of similarly employed U.S. workers are not undercut;
- preparing correspondence to provide instructions on how to correct deficiencies in applications;
- providing directions for required recruitment efforts;
- advising employers when required documentation is to be submitted;
- and reviewing documents and transmitting completed applications to the United States Department of Labor (**USDOL**) Regional Certifying Officer for determination.

### 4. **Amending an Application:**

When amending, correcting or adding information, make changes directly on the forms; any changes, deletions or insertions on the 750As should be dated and initialed by the employer. Do NOT make any entries in the lower section past Item 17 in the "**Endorsements**" section of the 750A. It is not necessary to use new forms. Even though changes may be addressed in a cover letter, actual changes need to be made on the forms themselves.

### 5. **45-day deadline:**

If ODJFS requests additional information or action from an employer once an application is submitted, the employer must respond within 45 days from the date of the Department's written request. If no response is received within the non-extendable 45-day period, the entire application will be returned to the employer and the file will be closed. If the employer elects to resubmit, a new filing date will be assigned.

**6. Inquiries or assistance:**

Should an employer need to call or write about a filed application, the following information is necessary:

- Four digit case number
- Employer's business name as entered in **Item 4** of form 750A
- Spelling of alien's last name

**7. Mandatory recruitment:**

After an application is filed and before a job can be certified by USDOL, the employer must carry out a three-part recruitment effort to document that qualified U.S. workers are not available to fill the position. At the direction of ALC staff, the employer must place a job advertisement under the name of the Employment Service in a publication appropriate for the occupation and provide a notice of the job opening within the employer's organization. At the same time, ALC staff will act as liaison with the applicable local Job Service in writing a job order which must remain open for at least 30 days

**A. Advertising.**

After an application has been reviewed and deficiencies corrected, the ALC staff will provide the employer or designated representative with instructions for placing an advertisement for the job and recommend an appropriate publication. The employer arranges for the ad to be published and must notify the ALC unit of the date of publication by phone at least one full week prior to its publication date. This advance notice is needed for ALC staff to coordinate the writing of a job order by the local Job service. The required 30-day recruitment period cannot begin until the date the job order is written.

A job opportunity resulting from an application for alien labor certification must be advertised in a publication appropriate for the occupations: in a newspaper of general circulation (for three consecutive days to include a Sunday but we recommend that major holiday weekends to be avoided such as Christmas) or in a national professional journal (one time). ALC staff will recommend a publication most likely to elicit responses from qualified U.S. workers.

The ad must contain the same job information as is stated on the 750As including the wage offer. While NOT identifying the employer, published job advertisements must contain ODJFS' name and address and the ALC assigned four digit case numbers. Please note that the case number is provided by ALC and CANNOT be obtained by the employer from a local One Stop Office.

Resumes received by ODJFS in reply to an advertisement or the 30-day recruitment listing in a local office will be screened and forwarded to the employer (or to the employer's attorney if there is one). The employer should contact applicants who appear to qualify or to obtain additional information without delay in 14 calendar days either by phone or in writing. Occasionally, resumes are received by ODJFS after the mandatory 30-day recruitment period has ended; these will also be forwarded to the employer and must be given the same consideration.

**B. Job Order.**

The regulations governing labor certification require that a job order be written and placed into the regular ODJFS recruitment system for a period of 30 days. ALC staff arrange for the appropriate local One Stop office to write job orders .

Notification of a scheduled publication date for an ad is the ODJFS signal to write a job order. The local One Stop is responsible for conducting a file search for qualified applicants, making referrals directly to the employer, and eventually for reporting referral activity and results to the ALC unit.

Resumes received by One Stops because of the job order will be forwarded to the employer for hiring consideration. Verification of referral letters may accompany resumes received as a result of the job order. Referral verifications are to be returned to the local One Stop; they are not to be retained or submitted to the ALC unit.

**C. Internal Notice.**

Except for domestic jobs in households where no U.S. workers are employed, notice of the job and filing of an application for permanent labor certification must be provided either to the employer's bargaining representative, if there is one, or, if not, by conspicuously posting for 10 consecutive business days at the place where the alien will work. The notice must state it is the result of the employer's filing of an application for permanent alien labor certification. It must also state: "Any person may provide documentary evidence bearing on the application to the Ohio Department of Job and Family Services' Alien Labor Certification Unit and/or to the U.S. Department of Labor Regional Certifying Officer"; job information identical to the published ad and 750As; the wage rate; and (contrary to the ad) that applicants are to apply directly to the employer (and not to the Ohio Department of Job and Family Services). Employers must provide the notice to the Department along with a written, signed and dated letter attesting to whom, when and where it was posted or provided and the number of responses, resumes or employment applications received from persons responding to the internal notice. Applicants who appear qualified must be contacted and given hiring consideration.

**8. Using a wage range :**

Employers are permitted to use a wage range in the ad and/or posting provided that the low end of the range is within 5 percent of the prevailing wages for the position as determined by the ALC unit and the high end is as much or more than the amount offered to the alien (Item 12 of 750A). If the job is subject to the Service Contract Act (SCA), Davis-Bacon Act (DBA) or Union wage, the low end would be the with **NO 5 % leeway.**

**9. Consideration of U.S. workers who apply:**

The employer is responsible for reviewing all resumes from all sources and taking necessary action to interview all qualified U.S. workers (U.S. citizens, permanent resident aliens, temporary residents, refugees and asylees).

U.S. workers who apply can only be rejected for lawful, job related reason, i.e., those based solely on the minimum job requirements specified on the 750A, in the ad and in the posting. Refusal by an applicant to pay his or her own expenses to attend a personal interview is not acceptable as the sole basis for rejection, nor is lack of a qualification not stated on the application. The fact an applicant appears overqualified or that the alien may be more qualified are not valid reason for rejecting U.S. workers.

Applicants who appear to qualify should be interviewed by telephone or in person. Applicants should also be contacted if additional information is needed. Contact should be made without unreasonable delay.

Documentation should be obtained to support the rejection of an applicant which is not based on the job requirements, e.g. return receipt for certified mail to document attempt to contact an applicant who appears to qualify, a signed and dated letter from a past employer to document a bad work reference, etc. and if possible, a signed and dated statement from any qualified applicant who is unavailable or unwilling to accept the position.

## **10. Documenting the recruitment efforts:**

After the 30-day recruitment period, the employer will be advised in writing by the ALC staff to submit evidence of all recruitment efforts and a written report of the results including all resumes and the reasons for rejecting each applicant. The employer will be required to submit the following:

### **A. Recruitment Summary**

*A written report in a letter format and processed on the employer's letterhead detailing all efforts undertaken to recruit U.S. workers. The letter must be dated and signed by the employer (not the employer's agent or attorney), i.e., by the person who has hiring authority for the position, usually the person who signed the 750As.*

The report should first describe all sources used for recruitment and state the number of responses from each source. The employer should then list the names of all individuals who applied, state the job title of the person who interviewed each applicant and specify the lawful, job-related reason for selecting or rejecting each U.S. worker (see Item 9 "Consideration of U.S. workers who apply" above).

The Department of Labor will not accept a recruitment summary that consists of a signed and a separate list of applicants and reasons for rejection on an attachment. **If** such an attachment is used, **each page must be signed and dated by the employer.** The preferred format is a letter incorporating all required information and concluding with the signature of the employer.

### **B. Tear sheet(s) of the Ads.**

*As evidence of the recruitment, the full page containing the ad (tear sheet) for each day the ad appeared. Each tear sheet must contain the name and date of publication in original form, i.e., as published, not typed or handwritten. If the name and date of publication do not appear on the page containing the ad, a copy of the publication's cover should be attached. A photocopy is acceptable as long as it is legible and the name and date of publication appear in original form.*

### **C. Internal Notice.**

*The original notice is to be posted or provided internally. The notice must contain or be accompanied by the employer's signed and dated statement attesting to whom, when and where the notice was posted or provided and the number of responses. If there were none, the employer should clearly state that there were no responses to the internal posting. The person who has hiring authority for the position, usually the person who signed the 750As, should sign the statement.*

**11. Completing the Process:**

**A. Transmittal of completed documents to U.S.D.O.L.**

ODJFS' ALC unit will review completed applications with their supporting documentation and transmit those cases to the USDOL Certifying Officer in Chicago. The employer will be notified in writing when the application is forwarded to USDOL for its decision. ALL correspondence from this point forward should be done directly with the USDOL Regional office. Notice of the final determination will be communicated by USDOL directly to the applying employer.

**B. USDOL Determination.**

**Only USDOL's Regional Certifying Officer can grant or deny labor certification.** For labor certification to be granted, USDOL must be able to certify there are NO able, willing and qualified U.S. workers available for employment in the job and employment of the alien will not adversely affect wages and working conditions of similarly employed U.S. workers. If qualified U.S. workers applied and were not rejected for lawful, job-related reasons or if the application includes circumstances that are contrary to applicable federal regulations or which precluded an adequate test of the labor market, request for labor certification will be denied.

If labor certification is granted, the application form bearing a certification stamp will be returned to the employer who may then file it with any required immigration forms to the Immigration and Naturalization Service to request a permanent visa for the alien beneficiary.

**12. Special Instructions for temporary workers, live-in household domestic workers and college and university teaching positions:**

**A. Temporary labor certification.**

To qualify for temporary labor certification the job itself must be temporary (less than 365 days) and no longer exist after being performed by a temporary worker. INS and DOL definitions of temporary require that the employer establish that the temporary labor shall be either: (1) a onetime occurrence; (2) a seasonal need; (3) a peak load need; or (4) an intermittent need. The employer's statement of temporary need must be explained fully.

1. Onetime occurrence: Employer must establish that (a) it has not employed workers to perform the services for labor in the past; and (b) that it will not need workers to perform the services or labor in the future, or that it has an employment situation that is otherwise permanent, but a temporary event of short duration has created the need for a temporary worker. Examples:
  - Employer obtains an unexpectedly large, onetime contract to furnish a product or service considerably above its current capacity.
  - Job is permanent in nature, but an incumbent is ill and is expected to remain ill for an extended period.
2. Seasonal need: Employer must establish that the service or labor is traditionally tied to a season of the year by an event or pattern and is of a recurring nature. The employer must specify the period(s) of each year in which it does not need the additional services or labor. The employment is not seasonal if the period during which the services or labor is unpredictable, subject to change or considered a vacation period for the employer's permanent employees. Certain occupations in resort and tourist industries and food processing industries are perhaps the most obvious example.
3. Peak load need: The employer must establish that it regularly employs permanent workers to perform the service or labor at the place of employment and it needs to supplement its permanent staff on a temporary basis due to a seasonal or short-term demand with temporary employees who

will not become a part of the regular operation. This category overlaps, to some extent, with onetime and seasonal categories.

4. **Intermittent need:** The employer must establish that it has not employed permanent or full-time workers to perform the services or labor, but occasionally or intermittently needs temporary workers for short periods.

One example would be a manufacturing establishment that from time to time receives contracts for goods it cannot manufacture with its regular workforce. Another example would be a greater demand for workers during the height of the busy season as opposed to the beginning and ending periods of the seasonal bulge.

There must be a valid job offer open to U.S. workers. [If the reason for filing is to TRAIN the alien, the employer should first contact INS to determine if Visa Category H-3 (Trainee) is appropriate. If so, labor certification is NOT required.]

To receive a timely determination, **a temporary labor certification application should be filed at least 60 days before labor certification is needed, but not more than 120 days before the start date of the employment.** This time period is specified because an adequate test of the labor market cannot be made for a longer period due to changes in availability of U.S. workers over short periods of time.

For temporary labor certification, the employer must submit **TWO** signed and completed 750As. (750Bs are NOT needed for temporary certification.) A signed and dated statement must be provided – on the employer’s letterhead – explaining the temporary nature of the job including why a permanent worker cannot perform the job on a continuous basis. Employer must clearly show the need for a temporary worker is of a short identified length limited by an identified future event.

Temporary labor certification for multiple openings can be requested on the same application provided all openings are identical. If applying for temporary labor certification for two or more temporary openings, names and addresses of the aliens should NOT be entered in Items 1 and 2 on the 750As. Instead, in Item 1 enter number of openings and the statement “Names of aliens to be submitted to INS at a later date.” Leave Item 2, address, blank. Temporary applications of a SINGLE job opening, however, must contain the alien’s name and address as required in Items 1 and 2.

Item 18 on the back of the 750As must be completed for temporary labor certification. Enter the number of job openings in Item 18a even if only one opening exists. In 18b list actual beginning and ending dates of employment (month, day and year). This must not exceed 365 days. For example: do not list 05/01/00 to 05/01/01 (which is one year and a day). In this example, the proper entry would be 05/01/00 to 04/30/01. If initial duration of employment is intended to last more than 365 days, an application should be made for permanent, not temporary, labor certification.

### **Advertising for temporary positions.**

Temporary positions must be advertised after filing the application. The ALC unit of ODJFS will review the job offer and supporting documents and provide written instructions. The advertisement for temporary positions must:

- 1) Identify the employer's name and direct applicants to send resumes to ODJFS and to include an identifying ALC number.
- 2) Describe the specific job including the temporary nature of it;
- 3) State rate of pay which cannot be lower than the prevailing wage for the occupation;
- 4) Provide prevailing working conditions (commonly refers to hours, shifts, vacation periods and fringe benefits);
- 5) State minimum job requirements; and
- 6) Offer wages, terms and conditions of employment which are no less favorable than those intended for the alien.
- 7) Number of openings

Information in the advertisement must correspond with information entered on 750As. The ad should be placed in a publication most appropriate for the occupation and most likely to generate responses from U.S. workers. To comply, place the ad for three consecutive days (to include a Sunday) in a general circulation newspaper or one time in a professional, trade or ethnic publication. The recruitment period for temporary labor certification is only 10 days, not 30 days as required for permanent applications.

### **Job Order for temporary applications.**

The ALC unit will ensure that a job order is written (using job information shown on the 750A) and placed into the Job Bank system for 10 days. During this period, local office staff will refer qualified applicants who “walk-in” or are in the Department’s active file.

### **Documenting the recruitment effort.**

After the required 10-day recruitment period, the employer must submit a report detailing recruitment efforts. This report must include the same information and documentation required on forms submitted for permanent certification, (see pages 12 – 13). The ALC unit will not send an additional notification to submit a report or impose a 45-day for temporary applications.

### **Additional Documentation.**

The employer shall also document that unions and other recruitment sources appropriate of the occupation and customary in the industry were unable to refer qualified U.S. workers.

### **Training Schedule.**

If the job for which temporary labor certification is sought requires the alien to train other permanent employees, a training schedule must state the actual dates of training which must correspond to dates of employment in Item 18 of 750A. The schedule should cover each phase of training and the time period required to complete it.

### **Renewal or extension.**

If unforeseen circumstances create a need to extend an approved application, a new application must be submitted to the ALC unit of ODJFS. The employer must also explain – in a signed and dated letter – extraordinary circumstances necessitating the temporary employment of an alien beyond the approved time period and re-recruit. USDOL reviews requests for extensions of a previously certified job opening on a case-by-case basis.

## **B. Live-in household domestic service workers.**

### **Amount of Experience**

The maximum amount of experience (Items 14 and 15 on 750As) that can be required for a household domestic is three months. Experience, if required, must be in an occupation normally associated with maintenance of a private household. For example, requiring experience as a nurse’s aide or teacher would NOT be acceptable since they are not equivalent to tasks normally performed in a private household.

### **Additional documentation.**

Additional documentation required with application for live-in household domestics include:

- An employment contract.
- Documentation of one year of the alien’s past experiences in domestic service work; and
- Documentation of the necessity for the live-in requirement.

### **Employment contract.**

Two originals of an employment contract must be submitted with the application. Each must be signed and dated by both the employer and the alien, not by an attorney or agent, clearly stating:

- 1) wages to be paid on an hourly basis;
- 2) total hours of employment and exact daily work schedule;
- 3) that the alien is free to leave the premises during all non-work hours(except that the alien MAY work overtime if paid not less than the legally required hourly rate);
- 4) that the alien will reside in the employer's residence;
- 5) complete details of duties to be performed;
- 6) total amount of money, if any, to be advanced by the employer with specific details and terms of repayment by the alien;
- 7) confirmation that the alien in no event shall be required to give more than two weeks notice of intent to leave the employer and that the employer must give the alien at least two weeks notice before terminating employment;
- 8) that a duplicate contract has been furnished to the alien
- 9) that PRIVATE room and board will be furnished at no charge; and
- 10) any other agreements or conditions not specified on 750As.

Items 1, 2, 5 and 9 of the employment contract must correspond with information entered on 750As. Any changes made to the contract must be initialed and dated by both the employer and alien on both originals.

### **Documenting one-year paid experience.**

A letter/statement from the alien's past or present employer(s) must be submitted to document an alien's one year of full time, paid experience as a household domestic worker. Documented experience CANNOT have been with the applicant employer or with a family member even if monetarily compensated and must have been in tasks equivalent to those normally associated with maintenance of a private household. This requirement bears no relation to the maximum of three months experience that may be required on 750As. Total paid experience must equal at least one year of full time employment (for example, two years working half days is equal to one year of full time experience, however six months working 16 hour days is not one full year of full time experience). Time spent in a household domestic service training course cannot be included in the required one-year experience.

Each statement submitted to document experience must include: the dates (month and year) employment started and ended; hours of work per day; number of days worked per week; place where alien worked; detailed statement of duties performed; equipment and appliances used; and wages paid per week or month. Each statement must be dated and signed by each employer and must contain the names and addresses of the persons who signed it.

Any statements not in English must be accompanied by a written translation into English. The translator must certify the accuracy of the translation and his or her competency to translate. This certification must include the translator's name, address, telephone number and signature.

### **Documenting the live-in requirement.**

A signed and dated letter from the employer must be submitted to document that the live-in requirement arises from necessity and not preference or convenience, i.e., the circumstances which make it essential that this worker live in. If the job involves caring for children or other persons, the letter should also explain what arrangements have been made to provide such care during hours this employee is not scheduled to be on duty, why teenage children and/or other adults in the home are not able to provide the needed care, etc.

Make sure that the duties and/or work schedule corresponds with the live-in requirement and not those that can be performed by a day worker.

### **C. College or university teaching positions.**

#### **Special Handling.**

If an alien has already been selected for a college or university teaching post, application for the labor certification may qualify for "Special Handling" if :

- 1) the position was clearly advertised as involving actual classroom teaching responsibilities.
- 2) the alien was selected pursuant to the university's normal and customary competitive recruitment and selection process which included advertising the job in a national professional publication appropriate for the field or occupation; and
- 3) the application is received by ODJFS within 18 months of the date the alien was selected.

If the application is appropriate for "Special Handling," job requirements listed in Item 14 and 15 on 750As and Bs must be the same as those stated in the published advertisement.

#### **Documenting the recruitment effort.**

Unlike the basic labor certification process, the following documentation must be submitted with 750As and Bs when an application is filed for "Special Handling."

- 1) As evidence of recruitment the full page containing the ad (tear sheet) from at least one national professional publication appropriate for the occupation and/or field. Each tear sheet must contain the name and date of publication in original form, as published and not typed or handwritten.

If the name and date of publication do not appear on the page containing the ad, a copy of the publication's cover should be attached. A legible photocopy is acceptable if the name and date of the publication appear in original form.

- 2) Evidence of all the sources used to recruit for the job opportunity.
- 3) A recruitment summary prepared on university letterhead, dated and signed by the person with hiring authority for the position. The summary must detail the complete recruitment process including:
  - a) the total number of applicants for the position offered to the alien (including the alien);
  - b) the number of U.S. workers given serious consideration for the job offered to the alien;
  - c) the specific reasons why the alien was found more qualified than ALL U.S. workers who applied for the position, not why others did not qualify or that others declined the position;

- d) the final report of the faculty or administrative body which selected or recommended the alien after the competitive recruitment and selection process.
- e) the date the alien was selected by submitting a copy of the selection committee's recommendation or a copy of the letter offering the position to the alien.

The letter should include all required information and conclude with the signature of the employer. If an attachment is used to provide any information not actually included in the letter, each page of the attachment must be signed and dated by the employer.

It must be made clear the alien was selected under the university's normal and customary competitive recruitment and selection procedure including recruitment sources used, interviews conducted and time frame allowing sufficient interval for applicants to apply and for competitive selection to be made.

"Special Handling" applications are NOT exempt from the internal notice requirement even though other recruitment has been completed (see Item C page 18). Since the wage is not required in ads used in "Special Handling" applications for college teaching positions, it is also not required in the internal notice.

### **13. Reduction in Recruitment (RIR)**

An employer may file a reduction in recruitment (RIR) request for any occupation, except those listed on Schedule B and Temporary (H-2B) applications, if the employer can show that an adequate test to the labor market has occurred at prevailing wages and working conditions through sources normal to the occupation and industry within the previous 6 months.

Requests for RIR will receive expedited processing by the Regional Certifying Officer (RCO) only if they DO NOT contain restrictive requirements or other deficiencies. USDOL instructs us to identify deficiencies in requests for RIRs prior to forwarding applications to the RCO for determination. This office may recommend regular recruitment if it appears unlikely that the request for RIR would not be approved by the RCO.

USDOL now requires that an employer document a history or pattern of recruitment for the position through sources normal to the occupation and industry within the preceding six months (not merely the one ad previously accepted). The employer must submit evidence of the other recruitment for this position within the six months preceding the filing of the application such as newspaper advertising, job fairs, internet and any documentation of normal recruitment practices in the industry by the employer.

In accordance with revised regulations at 20 CFR 656.20(g), an internal notice of the job and the filing of an application is required for all applications for permanent alien labor certification. RIR applications are not exempt even though other recruitment has already been completed. The notice must contain all job information that is in the ad and state that the notice is being provided as a result of the filing of an application for permanent alien labor certification; and state that any person may provide documentary evidence bearing on the application to the Ohio Department of Job and Family Services Alien Labor Certification Unit (PO Box 1618, Columbus, Ohio 43216) and /or to the Regional Certifying Officer of the U.S. Department of Labor (230 S. Dearborn St., Chicago, Illinois 60604).

The General Administration Letter No. 1-97 also gives procedural guidance for RIR applications.