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Supervised Recruitment - PERM FAQ 1

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Submitted by Rajiv S. Khanna on Jun 1st 2010

USDOL has posted the following FAQ

1. Under what authority can the Department of Labor's Office of Foreign Labor Certification select an employer's application for supervised recruitment?

Ans. 20 CFR 656.21 provides, "Where the Certifying Officer determines it appropriate, post-filing supervised recruitment may be required of the employer for the pending application or future applications pursuant to 20 CFR 656.20(b)," and 20 CFR 656.24(f) provides, in part, "If the Certifying Officer determines the employer substantially failed to produce required documentation, or the documentation was inadequate, or determines a material misrepresentation was made with respect to the application, or if the Certifying Officer determines it appropriate for other reasons, the employer may be required to conduct supervised recruitment pursuant to 656.21 in future filings of labor certification applications for up to two years from the date of the Final Determination."

2. How will the employer know it has been selected for Supervised Recruitment?

Ans. The employer will be notified by the Office of Foreign Labor Certification/Atlanta National Processing Center (OFLC/ANPC).

3. What does the Supervised Recruitment process entail?

Ans. The supervised recruitment process generally consists of the following steps:

a. The employer will receive a Notification of Supervised Recruitment letter. Using the advertisement's general content requirements outlined in the Notification of Supervised Recruitment letter, the employer must supply a draft advertisement of the job opportunity to the Certifying Officer for review within 30 calendar days from the date of the notification letter. The employer may submit a request for one extension (for good cause) of the 30-day timeframe, to be granted at the Certifying Officer's discretion. In drafting the advertisement, the employer cannot substantively deviate from the job opportunity's requirements as listed in Section H of the submitted ETA Form 9089.

b. Upon receipt and review of the draft advertisement, the Certifying Officer may issue an Assessment/Correction Letter to the employer, identifying any changes/additions that must be made before recruitment can begin.

c. Once the draft advertisement is approved, the Certifying Officer will send the employer a Recruitment Instructions letter identifying in what sources or publications, as well as when, the employer's advertisement(s) must be placed. The employer must not initiate recruitment for U.S. workers until it receives this letter.

d. The employer's advertising will direct applicants to send resumes and or applications to an OFLC or ANPC post office box address as outlined in the Recruitment Instructions letter. The Certifying Officer will send all resumes and applications received in response to the employer's advertisement(s) along with a cover letter listing the resumes/applications to the employer's attorney or agent of record, if any, with a copy of the cover letter to the employer. If the employer is not represented by an attorney or agent, the resumes and or applications will be sent directly to the employer. The employer will be required to consider all U.S. applicants for this job opportunity and any rejections must be made only for lawful reasons.

e. A Recruitment Report Letter outlining the requirements set forth under 20 CFR 656.21(e) will be sent to the employer requiring it to submit a written recruitment report to the OFLC/ANPC within 30 calendar days of the request. The employer may request one extension (for good cause) of the 30-day timeframe, to be granted at the OFLC/ANPC's discretion.

f. The Certifying Officer will utilize all recruitment information and supporting documentation to determine whether to grant or deny the employer's application.

4. What is the average time it takes for an application to be processed in Supervised Recruitment?

Ans. A "clean" application undergoing supervised recruitment i.e., one that does not require additional information or clarification from the employer, should take approximately 180 days to process and receive a final determination. The process may take longer, depending upon whether the employer requests extensions of time or the analyst requires additional time to review documentation and make a determination.

5. What will happen if the employer fails to timely respond or request an extension of time at any point in the Supervised Recruitment process?

Ans. In accordance with the regulation, failure to adhere to any timeframe throughout the supervised recruitment process will result in a denial of the employer's application. A pattern or practice of failing to comply in the supervised recruitment process is a ground for debarment of an employer, attorney, agent, or any combination thereof from the permanent labor certification program for a reasonable period of up to three years.

6. When should an employer undergoing Supervised Recruitment provide notice that it has changed its attorney/agent?

Ans. The employer must provide notification of a change of representation as soon as the decision to hire the attorney or agent is finalized. The notification may be included with other

correspondence or communication with the OFLC/ANPC. If the employer's communication with OFLC/ANPC is via e-mail, a copy of the notification, in PDF format, must be attached to the email and, thereafter, the signed original must be mailed to the OFLC/ANPC. Please note: Communication will not be held with an attorney or agent who is not listed on the ETA Form 9089 and for whom no notification establishing employer representation is provided to the OFLC/ANPC.

Green Card:

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