§ 656.31 Labor certification applications involving fraud, willful misrepresentation, or violations of this part.

The following provisions apply to applications filed under both this part and 20 CFR part 656 in effect prior to March 28, 2005, and to any certifications resulting from those applications.

(a) Denial. A Certifying Officer may deny any application for permanent labor certification if the officer finds the application contains false statements, is fraudulent, or was otherwise submitted in violation of the Department’s permanent labor certification regulations.

(b) Possible fraud or willful misrepresentation. (1) If the Department learns an employer, attorney, or agent is involved in possible fraud or willful misrepresentation in connection with the permanent labor certification program, the Department will refer the matter to the Department of Justice, Department of Homeland Security, or other government entity, as appropriate, for investigation, and send a copy of the referral to the Department of Labor’s Office of Inspector General. In these cases, or if the Department learns an employer, attorney, or agent is under investigation by the Department of Justice, Department of Homeland Security, or other government entity for possible fraud or willful misrepresentation in connection with the permanent labor certification program, the Department may suspend processing of any permanent labor certification application involving such employer, attorney, or agent until completion of any investigation and/or judicial proceedings. Unless the investigatory agency, in writing, requests the Department to do otherwise, the Department shall provide written notification to the employer of the suspension in processing.

(2) A suspension pursuant to paragraph (b)(1) of this section may last initially for up to 180 days. No later than 180 days after the suspension began, if no criminal indictment or information has been issued, or judicial proceedings have not been concluded,
Employment and Training Administration, Labor § 656.31

the National Certifying Officer may re-
sume processing some or all of the ap-
plications, or may extend the sus-
pension in processing until completion of
any investigation and/or judicial pro-
cceedings.

(c) Criminal indictment or information. If
the Department learns that an em-
ployer, attorney, or agent is named in
a criminal indictment or information
in connection with the permanent
labor certification program, the pro-
cessing of applications related to that
employer, attorney, or agent may be
suspended until the judicial process is
completed. Unless the investigatory or
prosecutorial agency, in writing, re-
quests the Department to do otherwise,
the Department shall provide written
notification to the employer of the sus-
pension in processing.

(d) No finding of fraud or willful mis-
representation. If an employer, attor-
ney, or agent is acquitted of fraud or
willful misrepresentation charges, or if
such criminal charges are withdrawn
or otherwise fail to result in a finding
of fraud or willful misrepresentation,
the Certifying Officer shall decide each
pending permanent labor certification
application related to that employer,
attorney, or agent on the merits of the
application.

(e) Finding of fraud or willful misrepre-
sentation. If an employer, attorney,
or agent is found to have committed fraud
or willful misrepresentation involving
the permanent labor certification pro-
gram, whether by a court, the Depart-
ment of State or DHS, as referenced in
§656.30(d), or through other pro-
cedings:

1. Any suspension of processing of
pending applications related to that
employer, attorney, or agent will ter-
minate.

2. The Certifying Officer will decide
each such application on its merits,
and may deny any such application as
provided in §656.24 and in paragraph (a)
of this section.

3. In the case of a pending applica-
tion involving an attorney or agent
found to have committed fraud or will-
fual misrepresentation, DOL will notify
the employer associated with that appli-
cation of the finding and require the
employer to notify DOL in writing, with-
in 30 days of the notification, whether
the employer will withdraw
the application, designate a new attor-
ney or agent, or continue the applica-
tion without representation. Failure of
the employer to respond within 30 days
of the notification will result in a de-

(1) Debarment. (1) No later than six
years after the date of filing of the
labor certification application that is
the basis for the finding, or, if such
basis requires a pattern or practice as
provided in paragraphs (f)(1)(iii), (iv),
and (v) of this section, no later than six
years after the date of filing of the last
labor certification application which
constitutes a part of the pattern or
practice, the Administrator, Office of
Foreign Labor Certification, may issue
to an employer, attorney, agent, or any
combination thereof a Notice of Debar-
ment from the permanent labor certifi-
cation program for a reasonable period
of no more than three years, based
upon any action that was prohibited at
the time the action occurred, upon de-
termining the employer, attorney, or
agent has participated in or facilitated
one or more of the following:

(i) The sale, barter, or purchase of
permanent labor applications or cer-
tifications, or any other action prohib-
ited under §656.12;

(ii) The willful provision or willful
assistance in the provision of false or
inaccurate information in applying for
permanent labor certification;

(iii) A pattern or practice of a failure
to comply with the terms of the Form
ETA 9089 or Form ETA 750; attorney
or

(iv) A pattern or practice of failure to
comply in the audit process pursuant
to §656.20;

(v) A pattern or practice of failure to
comply in the supervised recruitment
process pursuant to §656.21;

(vi) Conduct resulting in a deter-
mination by a court, DHS or the De-
partment of State of fraud or willful
misrepresentation involving a perma-
nent labor certification application, as
referenced in §656.31(e).

2. The Notice of Debarment shall be
in writing; shall state the reason for
§ 656.32 Revocation of approved labor certifications.

(a) Basis for DOL revocation. The Certifying Officer in consultation with the Chief, Division of Foreign Labor Certification may take steps to revoke an approved labor certification, if he/she finds the certification not justified. A labor certification may also be invalidated by DHS or the Department of State as set forth in §656.30(d).

(b) Department of Labor procedures for revocation. (1) The Certifying Officer sends to the employer a Notice of Intent to Revoke an approved labor certification which contains a detailed statement of the grounds for the revocation and the time period allowed for the employer’s rebuttal. The employer may submit evidence in rebuttal within 30 days of receipt of the notice. The Certifying Officer must consider all relevant evidence presented in deciding whether to revoke the labor certification.

(2) If rebuttal evidence is not filed by the employer, the Notice of Intent to Revoke becomes the final decision of the Secretary.

(3) If the employer files rebuttal evidence and the Certifying Officer determines the certification should be revoked, the employer may file an appeal under §656.26.

(4) The Certifying Officer will inform the employer within 30 days of receiving any rebuttal evidence whether or not the labor certification will be revoked.

(5) If the labor certification is revoked, the Certifying Officer will also send a copy of the notification to the DHS and the Department of State.

§ 656.40 Determination of prevailing wage for labor certification purposes.

(a) Application process. The employer must request a PWD from the NPC, on a form or in a manner prescribed by OFLC. Prior to January 1, 2010, the SWA having jurisdiction over the area of intended employment shall continue to receive and process prevailing wage determination requests in accordance with the regulatory provisions and Department guidance in effect prior to January 1, 2009. On or after January 1, 2010, the NPC shall receive and process prevailing wage determination requests in accordance with these regulations and with Department guidance. The NPC will provide the employer with an appropriate prevailing wage rate. The NPC shall determine the wage in accordance with sec. 212(t) of the INA. Unless the employer chooses to appeal the center’s PWD under §656.41(a) of this part, it files the Application for Permanent Employment Certification either electronically or by mail with the processing center of jurisdiction and maintains the PWD in its files. The determination shall be submitted to the CO, if requested.

(b) Determinations. The National Processing Center will determine the appropriate prevailing wage as follows:

(1) Except as provided in paragraphs (e) and (f) of this section, if the job opportunity is covered by a collective