

to the Certifying Officer who issued the labor certification; must include documentary evidence from a Consular or Immigration Officer that a visa application or visa petition, as appropriate, has been filed; and must include a Consular Office or DHS tracking number.

(3) A duplicate labor certification shall be issued by the Certifying Officer with the same filing and expiration dates, as described in paragraphs (a) and (b) of this section, as the original approved labor certification.

[69 FR 77386, Dec. 27, 2004, as amended at 72 FR 27946, May 17, 2007]

**§ 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 (OIG). 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 com-

pletion 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, the National Certifying Officer may resume processing some or all of the applications, or may extend the suspension in processing until completion of any investigation and/or judicial proceedings.

(c) *Criminal indictment or information.* If the Department learns that an employer, attorney, or agent is named in a criminal indictment or information in connection with the permanent labor certification program, the processing 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, requests the Department to do otherwise, the Department shall provide written notification to the employer of the suspension in processing.

(d) *No finding of fraud or willful misrepresentation.* If an employer, attorney, 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 misrepresentation.* If an employer, attorney, or agent is found to have committed fraud or willful misrepresentation involving the permanent labor certification program, whether by a court, the Department of State or DHS, as referenced in § 656.30(d), or through other proceedings:

(1) Any suspension of processing of pending applications related to that

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employer, attorney, or agent will terminate.

(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 application involving an attorney or agent found to have committed fraud or willful misrepresentation, DOL will notify the employer associated with that application of the finding and require the employer to notify DOL in writing, within 30 days of the notification, whether the employer will withdraw the application, designate a new attorney or agent, or continue the application without representation. Failure of the employer to respond within 30 days of the notification will result in a denial. If the employer elects to continue representation by the attorney or agent, DOL will suspend processing of affected applications while debarment proceedings are conducted under paragraph (f) of this section.

(f) *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 Debarment from the permanent labor certification 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 determining 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 certifications, or any other action prohibited 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;

(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; or

(vi) Conduct resulting in a determination by a court, DHS or the Department of State of fraud or willful misrepresentation involving a permanent labor certification application, as referenced in § 656.31(e).

(2) The Notice of Debarment shall be in writing; shall state the reason for the debarment finding, including a detailed explanation of how the employer, attorney or agent has participated in or facilitated one or more of the actions listed in paragraphs (f)(1)(i) through (v) of this section; shall state the start date and term of the debarment; and shall identify appeal opportunities under § 656.26. The debarment shall take effect on the start date identified in the Notice of Debarment unless a request for review is filed within the time permitted by § 656.26. DOL will notify DHS and the Department of State regarding any Notice of Debarment.

(g) *False statements.* To knowingly and willfully furnish any false information in the preparation of the *Application for Permanent Employment Certification* (Form ETA 9089) or the *Application for Alien Employment Certification* (Form ETA 750) and any supporting documentation, or to aid, abet, or counsel another to do so is a Federal offense, punishable by fine or imprisonment up to five years, or both under 18 U.S.C. 2 and 1001. Other penalties apply as well to fraud or misuse of ETA immigration documents and to perjury with respect to such documents under 18 U.S.C. 1546 and 1621.

[72 FR 27946, May 17, 2007]

### § 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