



## **Recommendation 73-2**

### **Labor Certification of Immigrant Aliens**

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(Adopted June 8, 1973)

Under the 1965 amendments to the Immigration and Nationality Act aliens seeking permanent residence for the purpose of employment must obtain a certification from the Secretary of Labor that, in essence, there are no suitable workers available in the United States and that their employment will not adversely affect wages and working conditions. 8 U.S.C. 1182(a)(14). The labor certifications are made by the regional offices of the Manpower Administration of the Department of Labor.

This recommendation, like the underlying study, is confined to labor certification for permanent residence and does not reach to the certification either of temporary workers or of seasonal or daily commuters. In FY 1972 about 60,000 applications for permanent labor certifications were received and about 30,000 were granted. Aliens in the professions, sciences and arts (PSA) generally make their own applications for employment; all other applications are made by the employer for a particular employment (job-offer).

The procedures and standards for certification and review are outlined in the regulations. 29 CFR 60.2-60.4. Except for two lists of employments where certification is automatic and where it is precluded, the regulations are sparse in detail. They are supplemented by 14 pages of Guidelines, which in turn are supplemented by memoranda from the national office of the Manpower Administration. Some regions hold these supplemental materials confidential, while others make them publicly available.

The initial decision by the certifying officer is made without hearing, incorporating information either gathered (in writing or by telephone) from the state employment service or independently developed by the officer; the underlying information is often vague and formless in nature. Notice of grant or denial is given to the Immigration Service or the consular office which submitted the application, in the case of a PSA applicant, or to the employer in the case of a job-offer applicant, but not to the alien himself. Ninety days are allowed in which either the alien or the employer may appeal a denial; a considerable part of that period may expire before the alien himself has received notice of denial. The Department does not include with its notice



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of denial any advice as to the right of appeal. The Immigration Service has since February 1972 been advising the PSA applicant of his right to appeal when it forwards the notice.

Review is conducted by a reviewing officer in a regional office. He is free to go outside the record made by the certifying officer. The stated policy is to make the material before the certifying officer available to the alien or his employer, but the practicing bar denies that that policy is carried out and finds in any case that the information is often uninformative. There is no procedure for access by the applicant to any new material developed by the reviewing officer before final administrative decision. The decisions on review are ordinarily written and adequately informative.

One district court has twice afforded judicial review of a denial of certification, and has in each case reversed the denial with a sharply critical opinion.

### **Recommendation**

#### *A. PROCEDURES AND STANDARDS FOR DECISION*

The Guidelines and appropriate supplemental memoranda should be made available to the public as required by the Freedom of Information Act. Copies should be maintained in each regional office. The published regulations should, at such time as this is feasible, be expanded to include the appropriate parts of this supplemental material.

#### *B. THE RECORD FOR DECISION*

The national office of the Manpower Administration should in its regulations develop standards which would improve the quality and degree of specificity of the record upon which certification is granted or denied.

#### *C. TAKING AN APPEAL*

1. Notice of denial of certification should be sent by the certifying officer directly to the alien who is a PSA applicant as well as to the Immigration Service and the consular office. Notice of denial should be sent the alien job-offer applicant as well as the employer; to avoid consequent confusion the regulations might appropriately be changed to provide that only the employer can appeal denial of a job-offer certification.



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2. A notice of the right of appeal should accompany each denial of certification, in conformity with the recent practice of the Immigration Service when it forwards notice of denial to a PSA applicant.

3. In cases where the applicant shows that circumstances beyond his control have prevented timely completion of his material on appeal, the reviewing officer should allow a protective appeal, to be supplemented within a prescribed time.

### *D. DECISION ON REVIEW*

1. The regulations should provide that an applicant on appeal has full access to the record upon which the certifying officer bases his denial.

2. The regulations should state the circumstances in which the reviewing officer may appropriately develop new information, and should provide for advice to, and opportunity for comment by, the applicant if the new information has an effect adverse to his interests.

### **Citations:**

38 FR 16840 (June 27, 1973)

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