20 CFR 655.1310

This document is current through the October 4, 2019 issue of the Federal Register. Title 3 is current through August 2, 2019.

Code of Federal Regulations > TITLE 20 -- EMPLOYEES' BENEFITS > CHAPTER V -- EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR > PART 655-- TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES > SUBPART N -- LABOR CERTIFICATION PROCESS FOR TEMPORARY AGRICULTURAL EMPLOYMENT IN THE UNITED STATES (H-2A WORKERS) [SUBPART N IS SUSPENDED. SEE 74 FR 25972, 25985, MAY 29, 2009.]

§ 655.1310 Validity and scope of temporary labor certifications. [This section is suspended. See 74 FR 25972, 25985, May 29, 2009.]

[PUBLISHER'S NOTE: *74 FR 25972, 25985,* May 29, 2009, suspended this section, effective June 29, 2009.]

(a) Validity period. A temporary labor certification is valid for the duration of the job opportunity for which certification is granted to the employer. Except as provided in paragraph and (d) of this section, the validity period is that time between the beginning and ending dates of certified employment, as listed on the Application for Temporary Employment Certification. The certification expires on the last day of authorized employment.

(b) Scope of validity. Except as provided in paragraphs (c) and (d) of this section, a temporary labor certification is valid only for the number of H-2A workers, the area of intended employment, the specific occupation and duties, and the employer(s) specified on the certified Application for Temporary Employment Certification (as originally filed or as amended) and may not be transferred from one employer to another.

(c) Scope of validity--associations.

(1) Certified applications. If an association is requesting temporary labor certification as a joint employer, the certified Application for Temporary Employment Certification will be granted jointly to the association and to each of the association's employer members named on the application. Workers authorized by the temporary labor certification may be transferred among its certified employer members to perform work for which the temporary labor certification was granted, provided the association controls the assignment of such workers and maintains a record of such assignments. All temporary agricultural labor certifications to associations may be used for the certified job opportunities of any of its employer members named on the application. If an association is requesting temporary labor certification as a sole employer, the certified Application for Temporary Employment Certification is granted to the association only.

(2) Ineligible employer-members. Workers may not be transferred or referred to an association's employer member if that employer member has been debarred from participation in the H-2A program.

(d) Extensions on period of employment.

(1) Short-term extension. An employer who seeks an extension of 2 weeks or less of the certified Application for Temporary Employment Certification must apply for such extension to DHS. If DHS grants the extension, the corresponding Application for Temporary Employment Certification will be deemed extended for such period as is approved by DHS.

(2) Long-term extension. For extensions beyond 2 weeks, an employer may apply to the CO at any time for an extension of the period of employment on the certified Application for Temporary Employment Certification for reasons related to weather conditions or other factors beyond the control of the employer (which may include unforeseen changes in market conditions), provided that the employer's need for an extension is supported in writing, with documentation showing that the extension is needed and that the need could not have been reasonably foreseen by the employer. The CO will grant or deny the request for extension of the period of employment on the Application for Temporary Employment Certification based on the available information, and will notify the employer of the decision in writing. The employer may appeal a denial for a request of an extension in accordance with the procedures contained in § 655.115. The CO will not grant an extension where the total work contract period under that application and extensions would be 12 months or more, except in extraordinary circumstances.

(e) Requests for determinations based on nonavailability of able, willing, available, eligible, and qualified U.S. workers. (1) Standards for requests. If a temporary labor certification has been partially granted or denied based on the CO's determination that able, willing, available, eligible, and qualified U.S. workers are available, and, on or after 30 calendar days before the date of need, some or all of those U.S. workers are, in fact, no longer able, willing, eligible, qualified, or available, the employer may request a new temporary labor certification determination from the CO. Prior to making a new determination the CO will promptly ascertain (which may be through the SWA or other sources of information on U.S. worker availability) whether specific able, willing, eligible and qualified replacement U.S. workers are available or can be reasonably expected to be present at the employer's establishment within 72 hours from the date the employer's request was received. The CO will expeditiously, but in no case later than 72 hours after the time a complete request (including the signed statement included in paragraph (e)(2) of this section) is received, make a determination on the request. An employer may appeal a denial of such a determination in accordance with the procedures contained in § 655.115.

(2) Unavailability of U.S. workers. The employer's request for a new determination must be made directly to the CO by telephone or electronic mail, and must be confirmed by the employer in writing as required by this paragraph. If the employer telephonically or via electronic mail requests the new determination by asserting solely that U.S. workers have become unavailable, the employer must submit to the CO a signed statement confirming such assertion. If such signed statement is not received by the CO within 72 hours of the CO's receipt of the request for a new determination, the CO will deny the request.

(3) Notification of determination. If the CO determines that U.S. workers have become unavailable and cannot identify sufficient specific able, willing, eligible, and qualified U.S. workers who are or who are likely to be available, the CO will grant the employer's request for a new determination. However, this does not preclude an employer from submitting subsequent requests for new determinations, if warranted, based on subsequent facts concerning purported nonavailability of U.S. workers or referred workers not being eligible workers or not able, willing, or qualified because of lawful job-related reasons.

History

[52 FR 20507, June 1, 1987; *71 FR 35511, 35519, 35522,* June 21, 2006; *73 FR 77110, 77207,* Dec. 18, 2008; redesignated and suspended at *74 FR 25972, 25985,* May 29, 2009]

Annotations

Notes

[EFFECTIVE DATE NOTE:

74 FR 25972, 25985, May 29, 2009, redesignated Subpart B as Subpart N, and suspended Subpart N, effective June 29, 2009.]

Case Notes

NOTES TO DECISIONS: COURT AND ADMINISTRATIVE DECISIONS SIGNIFICANTLY DISCUSSING SECTION --

Rowe v Grapevine Corp. (1999) 206 W Va 703, 527 SE2d 814, 139 CCH LC P58799

Research References & Practice Aids

[CROSS REFERENCE:

This section was formerly § 655.110.]

NOTES APPLICABLE TO ENTIRE TITLE:

EDITORIAL NOTE: Other regulations issued by the Department of Labor appear in 20 CFR chapters IV, V, VI, VII and IX, 29 CFR subtitle A and chapters II, IV, V, XVII and XXV, 30 CFR chapter I, 41 CFR chapters 50, 60, and 61, and 48 CFR chapter 29.

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