

Guidelines For Filing An Application For Temporary Labor Certification On Guam

What's the Process?

A Temporary Labor Certification is required for the filing of a petition for H-2B workers with the Department of Homeland Security (Immigration). Federal regulations at 8 CFR 214.2, vests the Governor of Guam with the authority to issue Temporary Labor Certifications for job opportunities in Guam.

In order to complete this process the employer must:

- Advertise the job opportunity and be able to document such efforts.
- Submit their COMPLETED application to the Department of Labor Alien Labor Processing & Certification Division (ALPCD)
- Test the local labor market through Guam Employment Service
- Obtain an approved Labor Certification
- File for and obtain approval from the USCIS
- File for and obtain the workers VISAs in the foreign country.
- Once the workers arrive in Guam, file for and obtain Work Permit ID Cards from ALPCD

This guideline has been developed to assist you in successfully filing an Application for Temporary Labor Certification in Guam. Once you have compiled all of the required documents, you may contact our office and one of our staff will be happy to review your documents and identify any deficiencies prior to filing. Only completed applications will be accepted for filing and further processing.

The five steps you will need to take to successfully get a Labor Certification are as follows:

- Advertise your job opportunity, directing applicants to apply directly with your company.
- Complete and compile all the required forms and file your application with ALPCD.
- Obtain a GES referral form and Job Orders from ALPCD. Make an appointment with GES and file the job orders to start the 30 day labor market testing.
- Interview any U.S. workers identified by GES and provide results of applicant referrals.
- After the application is processed and signed by the Governor, you must pick up the labor certification and obtain instructions regarding your responsibilities as an H-2B worker employer on Guam.

SECTION 2

Before the Application…

PRIOR RECRUITMENT EFFORTS

Employers should make their own efforts to recruit qualified, able and available U.S. workers prior to filing for a Temporary Labor Certification. These efforts may be, but are not limited to, newspaper advertisements, postings, radio ads, T.V. ads or postings on internet job sites. These ads should direct applicants to apply directly with the employer. Recruitment efforts made more than 60 days prior to the filing of the application may not be recognized.

The employer must document all responses to the ads. Include the name of applicant, the position applied for and the final outcome of the application. If the applicant was not hired, the employer must indicate the specific reason for rejecting the applicant. ALPCD may, at their discretion, investigate the circumstances regarding any rejected applicants.

SECTION 3

The Application…

SUBMITTING A COMPLETE APPLICATION

The documents required to submit a complete application are listed on the Temporary Labor Certification Application Checklist. ALPCD may require other documentation as is deemed necessary after the initial filing of the application. In this section, we will go over some of the documents and answer some frequently asked questions.

Form GDOL 750- Application for Temporary Alien Labor Certification:

This is the form that will be signed by the Governor of Guam and subsequently submitted to the USCIS as supporting evidence with your petition for H-2B workers. It is important that this form be clearly legible and typewritten if possible.

Any corrections to this form should be initialed by the employer.

The form should be submitted in triplicate, with all three copies bearing the original signature of the employer.

It is important that all information on this form be thoughtfully completed as information on other required forms must be consistent. Pay special attention to the job description, the rate of pay and the job requirements. If you are new to this process, you may want to consult with ALPCD staff to determine the proper Prevailing Wage Rate, standard job duties and job requirements for the occupation which you intend to apply for.

Applications which contain overly restrictive job requirements or those which do not meet Prevailing Wage levels may be denied.

FORM GES-514 – JOB ORDER:

This form is used by the Guam Employment Service to test the local labor market. Only certain items on this form need to be completed by the employer. Employers are asked to complete items 3, 4, 5, 6, 7, 8, 17a, 20, 21, 22, 23, 24, 25 & 29. On item #29- Job description, please ensure that the job description is verbatim with the job description on the GDOL 750 form. Should you need additional space, indicate “please see attachment” and continue the job description on an attached sheet. You should also indicate the employment benefits after the job description. The common benefits on most applications are:

Round trip airfare from point of hire, room and board at \$320 per month, local transportation, workers compensation coverage.

ALPCD will review this form, upon successful filing of the application, to ensure accuracy. ALPCD staff will complete a referral form (with the job orders attached), which the employer will take to GES to initiate the labor market testing. The employer will also get a copy of the Proposed 2nd Advertisement which has been reviewed and approved by ALPCD.

2ND ADVERTISEMENT OR THREE DAY AD:

The 2nd advertisement should be published using verbiage that has been approved by ALPCD. Unlike Prior Recruitment Efforts, the 2nd Ad must meet certain requirements mandated by regulations.

The ad must run for 3 consecutive days in the newspaper of largest circulation in Guam.

The ad must indicate the type of job opportunity; the number of job openings; the job title; the job duties; the rate of pay; job requirements; benefits; the case number and must direct applicants to at the Guam Employment Service.

PROPOSED EMPLOYMENT CONTRACT:

The employer must submit a sample of the employment contract which they intend to use upon hiring the alien workers. The contract will be reviewed for compliance with federal and local laws and to ensure that the contract is in line with the job offer on the application. The employer will be required to submit the signed contracts as a part of the Registration Process after the workers arrive in Guam.

Regulations require that the contracts should be in a language in which the worker is literate. It may be necessary for the employer to, provide contracts to ALPCD in the foreign language with an English translation.

BARRACKS/ HOUSING LOCATION SKETCH:

The employer will submit a location sketch to where the barracks or worker's housing will be located. The map should be simple to read and contain sufficient landmarks and street names. Please do not submit official land maps. If the map is not clear, the employer will be asked to re-submit.

CONSTRUCTION INDUSTRY JUSTIFICATION OF NEED:

PROJECT SUMMARY SHEET

The employer will submit a project summary sheet in a format provided by ALPCD. The information on the project summary details the projects which the employer intends to use the workers on.

*Examples to determine "Amount Completed":

\$100,000.00 project is 20% completed

Computation: $\$100,000.00 \times .20 = \$20,000.00$ ("Amount Completed")

*Examples to determine "PROJECT NET AMOUNT":

"Project Contract Amount" minus "Amount Completed" = Project Net Amount

PROJECT LOCATION SKETCH:

The employer will submit a location sketch to the project site. The map should be simple to read and contain sufficient landmarks and street names. Please do not submit official land maps. If the map is not clear, the employer will be asked to re-submit.

PROJECT CONTRACTS:

The employer must submit contracts for all projects listed on the project summary sheet. If the contract is a sub-contract,

the employer must also submit the prime contract from the prime contractor or developer.

In the event that the employer intends to sub-contract any portion of a project, listed on the project summary sheet, the amount the employer will sub-contract should be listed on the "Subcontracted Amount" box of the project summary.

ALPCD staff may ask for a copy of the subcontract if deemed necessary. Appropriate Building Permits should be attached to all project contracts.

In cases where contractor is the developer, a Written Submittal will be required. The submittal must, at a minimum contain the following:

• The Scope of Work of the project • The project amount • The means of financing • Start & Completion Date

Computation to determine number of workers allowed:

Project Amount divided by \$55,000 = # of workers allowed

NON-CONSTRUCTION INDUSTRY JUSTIFICATION OF NEED:

The employer must submit a written submittal justifying the need for the workers based on business necessity. In support of this, the employer must submit a recent audited financial statement and a location sketch to the employers office. It is important that the employer clearly justify the need for the workers, as this is a determining factor as to whether or not the certification will be granted.

PROOF OF LICENSING:

Employers must submit proof that they are licensed to perform the business activity in which they intend to use the workers in. A Guam Contractor's License is required for all employers in the construction industry. ALPCD may research with other governmental agencies to determine if licensing submitted by employers is appropriate.

COMPANY STRUCTURE:

Employers must also produce documentation relative to the organizational structure of the company. Sole Proprietorships need not submit any additional documents. Corporations, LLC and partnerships must submit their Articles of Incorporation or their partnership agreements. ALPCD must have this information to determine who the principles of the company are.

COMPLETED CLEARANCE SHEET:

Employers are required to comply with all laws and regulations applicable to employment in Guam. Any employer who is not in compliance, may have their application returned, delayed or denied. To ensure that employers are in good standing, they must secure clearances from various agencies. ALPCD will review the completed clearance sheet and will determine if any action needs to be taken in cases where a clearance is not given for any particular agency.

STATEMENT OF EMPLOYER'S ASSURANCES:

The employer is required to provide certain assurances to the Department with regards to the employment of the H-2B worker and similarly employed U.S. workers. This assurance should be done on company letterhead and must be notarized. The employer is strongly urged to read and understand the assurances since violation of the assurances may result in fines or disapproval of current or future labor certifications.

WAGE BOND:

Pursuant to the Guam Code Annotated and 17 GAR 7104(b)(5)(c)(2), the employer is required to post a bond totaling 4% of the total project amount. For non-construction employers, the bond may be in 4% of the worker's annual salary.

The bond may be submitted in the form of an Insurance Bond, Cashier's Check, Letter of Credit or Time Certificate of Deposit. Please consult with ALPCD staff before securing your bond document as the wording differs for each financial instrument.

REPATRIATION BOND:

Pursuant to the Guam Code Annotated and 17 GAR 7104(b)(5)(c)(1), the employer is required to post a Repatriation Bond. This bond guarantees the return airfare for the worker. The bond may be in same form as the Wage Bond and the rates for foreign points of origin may be obtained from ALPCD staff.

SECTION 4

Testing the Labor Market…

YOUR APPLICATION HAS BEEN SUCCESSFULLY FILED

Once ALPCD has received a completed application, the caseworker will then record your case and assign a case

number. The caseworker will then review and prepare the job orders you submitted. A GES referral form will be attached and you will be contacted to file your job orders with Guam Employment Service (GES) to start the testing of the labor market.

A copy of the proposed advertisement will also be given to the employer so that the 2nd advertisement can be placed in the newspaper of largest circulation in Guam, which is the Pacific Daily News. The advertisement must run for 3 consecutive days.

GUAM EMPLOYMENT SERVICE

Before approaching the GES staff, the employer should make sure to make an appointment to place the job order. Contact Ms. Fran Bell or Catalina Cruz

For a period of 30 days, the Guam Employment Service will aggressively attempt to identify and recruit U.S. workers for the job opportunity. Employers are cautioned to follow all instructions given by GES. Their report on the results of the labor market testing weighs heavily on the final outcome of the application.

Adjudication…

Once the result of the labor market testing have been received by ALPCD, the caseworker will then do the final processing on the application and formulate a recommendation to the Administrator and the Director of Labor. The Director will then officially note the recommendation on the GDOL 750 and the application is then forwarded to the Office of the Governor of Guam for certification or denial.

Once the Governor has made his determination, the application is forwarded back to ALPCD for final processing. The employer will be contacted to pick up the application. As a part of the release procedure, the employer will be advised in writing as to their responsibilities as an H-2B employer. The employer will be asked to sign an acknowledgement that they have received this notice.

The employer will then be given the labor certification and may proceed to file appropriate documents with the Department of Homeland Security to petition for the entry of the worker into the United States.