job offer for completeness. A job offer containing a wage below the prevailing wage for such employment in the local area is inappropriate and would adversely affect the wages of similarly employed U.S. workers. The SESA shall determine the prevailing wage, guided by the regulations at 20 CFR 656.40.

B. If the job offer is less than full-time, or contains unduly restrictive job requirements, or has terms and conditions of employment which otherwise inhibit the effective recruitment and consideration of U.S. workers for the job, the SESA shall advise the employer to correct the deficiencies before commencing the recruitment.

C. The SESA shall prepare a job order, using the information on the application, and place it into the regular ES system for 10 days. During this period, the SESA should refer qualified applicants who walk-in and

those in its active files.

- D. The employer shall advertise the job opportunity after filing the application, in a newspaper of general circulation for 3 consecutive days or in a professional, trade or ethnic publication, whichever is most appropriate for the occupation and most likely to bring responses from U.S. workers. The advertisement shall:
- Identify the employer's name and direct applicants to report or send resumes to the SESA for referral to the employer;
- 2. Include SESA identification number and the complete name and address of the SESA.
- 3. Describe the job opportunity with particularity, including the duration of the employment;
- 4. State the rate of pay, which shall not be below prevailing wage for the occupation;
  - 5. Offer prevailing working conditions;
- 6. State the employer's minimum job requirements;
- 7. Offer wages, terms, and conditions of employment which are not less favorable than those offered to the alien and are consistent with the nature of the occupation, activity, and industry.
- E. The employer shall document that unions and other recruitment sources, appropriate for the occupation and customary in the industry, were unable to refer qualified U.S. workers.
- F. The employer shall provide the SESA the ''tearsheets' (for each day the advertisement was published) from the publication in which the advertisement appeared and written results of all recruitment which must:
- 1. Identify each recruitment source by
- 2. State the name, address, and telephone number and provide resumes (if submitted to the employer) of each U.S. worker who applied for the job; and
- 3. Explain the lawful job-related reasons for not hiring each U.S. worker.
- G. After the recruitment period, the SESA shall send the application, results of recruitment, prevailing wage findings, and other appropriate information to the regional certifying officer.

## V. Temporary Labor Certification Determinations

A. The certifying officer shall determine whether to grant the temporary labor

- certification, or to issue a notice that such certification cannot be made based on whether or not:
- 1. U.S. workers are available for the temporary employment opportunity.
- a. The certifying officer, in judging if a U.S. worker is available for the temporary employment opportunity, shall determine from documented results of the employer's and SESA's recruitment efforts, if there are other appropriate sources of workers where the employer should have recruited or may recruit U.S. workers. If further recruitment is required, the application should be returned to the SESA with specific instructions for the additional recruitment.
- b. To determine if a U.S. worker is available, the certifying officer shall consider U.S. workers living or working in the area of intended employment, and may also consider U.S. workers who are willing to move from elsewhere to take the job at their own expense, or at the employer's expense, if the prevailing practice among employers who employ workers in the occupation is to pay such relocation expenses.
- c. The certifying officer shall consider a U.S. worker able and qualified for the job opportunity if the worker, by education, training, experience, or a combination thereof, can perform the duties involved in the occupation as customarily performed by other U.S. workers similarly employed and is willing to accept the specific job opportunity.
- d. To determine if U.S. workers are available for job opportunities that will be performed in more than one location, workers must be available in each location on dates specified by the employer.
- 2. The employment of the alien will adversely affect wages and working conditions of U.S. workers similarly employed. To determine this, the certifying officer shall consider such things as labor market information, special circumstances of the industry, organization, and/or occupation, the prevailing wage rate for the occupation in the area of intended employment, and prevailing working conditions, such as hours of work.
- 3. The job opportunity contains requirements or conditions which preclude consideration of U.S. workers or which otherwise prevent their effective recruitment, such as:
- a. The employment opportunity is represented as temporary and the Department of Labor believes it can and should be offered to U.S. workers on a permanent basis.
- b. A permanent certification was issued to an employer for the same job opportunity.
- c. The job opportunity is vacant because the former occupant is on strike or locked out in the course of a labor dispute involving a work stoppage or the job is at issue in a labor dispute involving a work stoppage.
- d. The job opportunity's terms, conditions, and/or occupational environment are contrary to Federal, State, or local law.
- e. The employer has no location within the U.S. to which U.S. worker can be referred and hired for employment.
- f. The employer will not pay a wage or salary for the job to be performed.
- g. The job's requirements are unduly restrictive.

- h. The employer has not recruited U.S. workers according to DOL policies and procedures.
- B. If the Certifying Officer issues a notice that a certification cannot be made, the notice shall:
- (1) Detail the reasons why certification cannot be made;
- (2) Address the availability of U.S. workers in the occupation, and the prevailing wages and working conditions of U.S. workers in the occupation; and
- (3) Indicate the specific DOL policies which were to be followed.
- C. If the Certifying Officer issues a temporary labor certification, it shall be for the duration of the temporary employment, opportunity, not to exceed 12 months. If extraordinary circumstances establish a need that require the alien beneficiary for more than 1 year, a new application must be filed. However, in no instance can the time for which a particular job may be certified exceed 3 unbroken years.
- D. The date on the temporary labor certification shall be the beginning and ending dates of certified employment and the date certification was granted. The beginning date of certified employment may not be earlier than the date certification was granted.

## VI. Document Transmittal

A. After making a temporary labor certification determination, the certifying officer shall notify the employer, in writing, of the determination.

B. If the labor certification is granted, the certifying officer shall send the certified application containing the official temporary labor certification stamp, supporting documents, and completed Temporary Determination Form to the employer of, if appropriate, the employer's agent or attorney. The Temporary Determination Form shall indicate that the employer should submit all documents together with the employer's petition to the appropriate INS office.

C. If a notice is issued that certification cannot be made, the certifying officer shall return one copy of the Application for Alien Employment Certification form, supporting documents, and completed Temporary Determination Form to the employer, or, if appropriate, to the employer's agent or attorney. The Temporary Determination Form shall indicate the bases on which the decision was made not to issue a temporary labor certification, and shall advise the employer of the right to appeal to the INS.

## VII. Appeal of a Notice That a Certification Cannot Be Made

A. The finding by the certifying officer, that a certification cannot be made, is the final decision of the Secretary of Labor. There is no provision for reconsideration or appeal of the decision within DOL. Administrative appeal of such a finding must be made to INS, as set forth below, or the employer may file a new application.

B. Under the Act and regulations of INS, DOL's role is only advisory. The Attorney General has the sole authority for the final approval or denial of a petition for temporary alien employment. The employer can submit