
29 C.F.R. § 502.1

Purpose and scope.

(a) *Statutory standard.* Section 218(a) of the INA provides that:

(1) A petition to import an alien as an H–2A worker (as defined in the INA) may not be approved by the Secretary of the Department of Homeland Security (DHS) unless the petitioner has applied to the Secretary of the United States Department of Labor (Secretary) for a certification that:

(i) There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

(ii) The employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed.

(2) [Reserved]

(b) *Role of the Employment and Training Administration (ETA).* The issuance and denial of labor certification under sec. 218 of the INA has been delegated by the Secretary to ETA, an agency within the U.S. Department of Labor (the Department or DOL). In general, matters concerning the obligations of an employer of H–2A workers related to the labor certification process are administered and enforced by ETA. Included within ETA's jurisdiction are issues such as whether U.S. workers are available, whether adequate recruitment has been conducted, whether there is a strike or lockout, the methodology for establishing AEW, whether workers' compensation insurance has been provided, whether employment was offered to U.S. workers as required by sec. 218 of the INA and regulations at 20 CFR part 655, subpart B, and other similar matters. The regulations pertaining to the issuance and denial of labor certification for temporary alien workers by the ETA are found in 20 CFR part 655, subpart B.

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