

**§ 1187a. Provision of assistance to non-program countries**

The Secretary of Homeland Security, in consultation with the Secretary of State, shall provide assistance in a risk-based manner to countries that do not participate in the visa waiver program under section 1187 of this title to assist those countries in—

(1) submitting to Interpol information about the theft or loss of passports of citizens or nationals of such a country; and

(2) issuing, and validating at the ports of entry of such a country, electronic passports that are fraud-resistant, contain relevant biographic and biometric information (as determined by the Secretary of Homeland Security), and otherwise satisfy internationally accepted standards for electronic passports.

(Pub. L. 114-113, div. O, title II, §208, Dec. 18, 2015, 129 Stat. 2995.)

CODIFICATION

Section was enacted as part of the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, and also as part of the Consolidated Appropriations Act, 2016, and not as part of the Immigration and Nationality Act which comprises this chapter.

**§ 1188. Admission of temporary H-2A workers**

**(a) Conditions for approval of H-2A petitions**

(1) A petition to import an alien as an H-2A worker (as defined in subsection (i)(2)) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

(A) 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

(B) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(2) The Secretary of Labor may require by regulation, as a condition of issuing the certification, the payment of a fee to recover the reasonable costs of processing applications for certification.

**(b) Conditions for denial of labor certification**

The Secretary of Labor may not issue a certification under subsection (a) with respect to an employer if the conditions described in that subsection are not met or if any of the following conditions are met:

(1) There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

(2)(A) The employer during the previous two-year period employed H-2A workers and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer at any time during that period substantially violated a material term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers.

(B) No employer may be denied certification under subparagraph (A) for more than three

years for any violation described in such subparagraph.

(3) The employer has not provided the Secretary with satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

(4) The Secretary determines that the employer has not made positive recruitment efforts within a multi-state region of traditional or expected labor supply where the Secretary finds that there are a significant number of qualified United States workers who, if recruited, would be willing to make themselves available for work at the time and place needed. Positive recruitment under this paragraph is in addition to, and shall be conducted with in the same time period as, the circulation through the interstate employment service system of the employer's job offer. The obligation to engage in positive recruitment under this paragraph shall terminate on the date the H-2A workers depart for the employer's place of employment.

**(c) Special rules for consideration of applications**

The following rules shall apply in the case of the filing and consideration of an application for a labor certification under this section:

**(1) Deadline for filing applications**

The Secretary of Labor may not require that the application be filed more than 45 days before the first date the employer requires the labor or services of the H-2A worker.

**(2) Notice within seven days of deficiencies**

(A) The employer shall be notified in writing within seven days of the date of filing if the application does not meet the standards (other than that described in subsection (a)(1)(A)) for approval.

(B) If the application does not meet such standards, the notice shall include the reasons therefor and the Secretary shall provide an opportunity for the prompt resubmission of a modified application.

**(3) Issuance of certification**

(A) The Secretary of Labor shall make, not later than 30 days before the date such labor or services are first required to be performed, the certification described in subsection (a)(1) if—

(i) the employer has complied with the criteria for certification (including criteria for the recruitment of eligible individuals as prescribed by the Secretary), and

(ii) the employer does not actually have, or has not been provided with referrals of, qualified eligible individuals who have indicated their availability to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary.

In considering the question of whether a specific qualification is appropriate in a job offer,