



EMAIL BULLETIN

U.S. DEPARTMENT OF LABOR BEGINS IMPLEMENTING CENTRALIZATION OF ADJUDICATION, REMOVING STATE PARTICIPATION, ATTEMPTING TO REDUCE BACKLOGS

04 November 2004

Big Changes for Labor Certification Processing Finally Here?

A final rule that will change the process for filing and processing labor certification applications is awaiting clearance by the Office of Management and Budget, for publication in the Federal Register. The proposed rule is referred to as the PERM regulation, and it proposes to change the labor certification application process into an automated, web-based application process. It also proposes to dramatically reduce the processing times, from what is now three or more years to potentially as little as 21 days, in part, by limiting the information that can be adjudicated.

Implementing this process transformation further described in our July 2004 Bulletin, the Department of Labor (DOL) is currently staffing two (2) Backlog Elimination Centers, one located in Philadelphia and another in Dallas, to address the national backlog. Most existing cases around the country will likely be processed through these two centers based on a National First-in-First-Out (FIFO) protocol.

In addition, the DOL is establishing two (2) national processing centers in Atlanta and Chicago, where all future permanent labor certification applications (except for those backlogged cases being processed in Dallas and Philadelphia), will be processed.

What This Means to U.S. Employers

Tindall & Foster is advising clients with currently pending labor certification applications (both Reduction in Recruitment (RIR) and traditionally filed labor certifications) that there may be reason for cautious optimism that there will soon be government action taken on long-filed cases.

Balancing that optimism is the fact that we have been waiting on PERM to come into existence for approximately 3 years. The government has repeatedly stated that PERM would be in existence by a certain date, and then failed to publish the regulations that would bring PERM into existence within their stated timeframe. We are therefore guarded about advising clients to wait in the hopes that PERM will be operational in the near future. The latest official statement from DOL indicated that the regulations will be

published by the end of the calendar year in 2004, and will be operational 60 days after the date of publication.

Because this may occur, and because the content and potential limitations and restrictions of the regulations will not be fully known until they are published in final form, we are advising clients to seriously consider filing applications for labor certifications on behalf of any employees on whose behalf they intend to do so, as soon as possible. This is primarily because the proposed regulations for PERM indicate a potentially much more restrictive process than the current labor certification process. The public will otherwise not know whether the actual PERM regulations, if and when they come into existence, will be as restrictive as originally intended, until they are published in final form. At that time it may be too late to file under the current comparatively flexible process and procedures.

Employers who file a traditional labor certification at this time enjoy all of the options currently available AND may take advantage of the processing time of PERM in the future if it proves to be appropriate to their case. On the other hand, those who delay a decision waiting for PERM may find their cases inappropriate or unapprovable under the new PERM limitations and without a viable path to Lawful Permanent Residency for the employees in question.

If you have any questions or wish to discuss these issues in greater detail, please feel free to contact your attorney at Tindall & Foster, P.C.