

# Business Immigration

## An Update

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## “Let There be Light!” INS Set to Undergo Much Awaited Restructuring...

*By Vaman Kidambi, Esq.*

The Immigration and Naturalization Service (INS) has developed a restructuring plan that fulfills President Bush's pledge to fundamentally reform the agency by creating a clear division between INS' two vital missions -- service and enforcement. The separation of these functions, while retaining a single agency head to ensure appropriate coordination, balance and policy leadership, will help improve the efficiency and effectiveness of the agency and, in turn, the nation's immigration system.

The restructuring plan can be implemented administratively without requiring legislation. As a result, with the support of Congress, the reform can begin promptly and can be accomplished by the end of FY 2003.

### Major Elements of the Plan

- **Maintains a Single Agency Leader**  
Immigration enforcement and immigration services are inextricably intertwined in statute and policy. The plan maintains a Commissioner who will oversee the coordination of the two functions to ensure that the nation's immigration laws and policy are effectively administered and enforced.



For more information on the INS Restructuring program, contact Attorney Vaman B. Kidambi at [info@kidambi.com](mailto:info@kidambi.com)

### Special points of interest:

The State Department's Visa Office Managing Director has informed Kathleen Walker, chair of AILA's State Department Liaison Committee, that the processing of visa applications from third country nationals who are not resident in the consular districts of the border posts has been suspended. Existing NIV appointments are being cancelled. DOS states that this is a temporary measure.

The DOS has indicated that the Department is concerned that the INS may be changing its practices on the borders. This appears to be a reference to readmission after a stay of less than 30 days in Canada or Mexico. DOS does not want to burden Canada and Mexico with a large number of visa applicants whose cases are pending background and security checks, but who may not be readmitted to the US.

- **Separates INS Enforcement and Services**

The Bureau of Immigration Services will be headed by an Executive Commissioner who will be responsible for all immigration benefit services. These services include processing applications for naturalization, asylum, adjustment of status, employment authorization, Green Card renewals/replacement and petitions for family and employment-based immigration.

The Bureau of Immigration Enforcement will be headed by an Executive Commissioner who will be responsible for all enforcement activities. The Bureau is critical to enhancing national security and is charged with combating illegal immigration activities at the border, ports of entry and in the interior of the United States.

- **Creates Separate Services and Enforcement Field Structures**

The field service structure will have six services areas that will be relatively similar to one another in terms of physical size and client population. They will be headed by Service Area Directors, who will focus on immigration service delivery.

The field enforcement structure will consist of nine investigations offices headed by Special Agents in Charge and nine inspections port areas headed by Area Port Directors. The current 21 Border Patrol Sectors headed by Chief Patrol Agents will continue as part of the Enforcement Bureau. The sectors and field offices will strategically focus resources on the areas of highest security concern

*(Continued on page 2)*

## “Let There Be Light...”

*(Continued from page 1)*

and illegal immigration activity.

- **Increases Accountability**

The current INS Regional, District and local field offices, which have increasingly struggled with the responsibilities of dual missions, will be replaced with area and local offices focused on either immigration services or law enforcement. The new structure will create direct chains of command that match expertise with the function being managed. It will also strengthen accountability through clearly defined roles and responsibilities for INS employees.

- **Addresses Customer Concerns**

INS will create two new offices to address individual concerns of the public. The Ombudsman in the Bureau of Immigration Enforcement will provide the public with a means to communicate concerns and complaints about enforcement actions. The Customer Relations Office in the Bureau of Immigration Services will provide customers with direct access to problem-solving assistance related to immigration benefits.

- **Protects Children**

INS will create the Office of Juvenile Affairs, reporting to the Commissioner. This office reflects INS' commitment to ensure that children, because they are most vulnerable, are treated with particular care.

- **Enhances Enforcement**

Creating a unified law enforcement division that combines the Border Patrol, Investigations, Inspections and Intelligence into an integrated unit will eliminate a diffuse reporting structure that has prevented INS agents in the field from effectively working together and accomplishing the full scope of their mission. Moreover, the enhanced career opportunities the new structure provides will improve the agency's ability to motivate employees and to retain key personnel. De-linking services from enforcement will reinforce the enforcement culture. District Directors are often forced to make difficult decisions about the enforcement culture. District Directors are often forced to make difficult decisions about assigning personnel to meet the competing requirements of effective customer service and effective enforcement.

- **Focuses Customer Service**

A dedicated, focused, and properly trained immigration services management structure will equip INS to provide consistent, courteous, accurate and timely service, and to consider the customer first when developing policy and procedures. By establishing consistent procedures and sharing information with the enforcement division, the Services Bureau will be able to better analyze applications.

- **Preserves Vital Service and Enforcement Links Necessary to Screen Individuals and Enhance Security**

Immigration enforcement and immigration services are intertwined in statute and policy. This requires close coordination and balancing of service and enforcement interests to administer the overall system effectively and to achieve the objectives of the nation's immigration laws and this or any future Administration's policy. Splitting immigration services and enforcement functions, while providing unified overall direction under a single agency head, is the logical way to ensure coherence in the administration of our nation's immigration laws.

- **Improves Data Systems and Interagency Information Sharing**

The Chief Information Officer (CIO) will be responsible for marshalling the information systems to provide agency-

*(Continued on page 3)*

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wide data to the enforcement and services bureaus. The CIO, through the Information Coordinator, will ensure that the Services Bureau maintains access to relevant enforcement data for adjudication, and that the Enforcement Bureau maintains access to data collected by the Services Bureau. The CIO will also be responsible for developing the necessary information inter-links with other federal, state, local law enforcement and other relevant agencies.

- **Fosters Strategic Intergovernmental Relationships**

The new INS will place emphasis on further developing its extensive relationships with foreign, federal, state and local law enforcement agencies. The Interagency Liaison Officer will facilitate an improved flow of information and cooperation with federal, state and local law enforcement organizations.

## **RIR Conversion Q's&A's from the USDOL, Washington D.C.**

### **1. Is there a date by which an employer's labor certification application must have been filed in order to be eligible for a Reduction-in-Recruitment (RIR) conversion? Is there an end date by which such requests must be submitted?**

(A) The regulation provides that any application filed on or before August 3, 2001, the date the regulation was published, is eligible for an RIR conversion, provided the state has not yet commenced the recruitment process by placing a job order into the regular Employment Service system pursuant to § 656.21(f)(1). There is no stated termination date for RIR conversion requests, but there is a "natural" end date: when the state places a job order on the last of the applications received by the state on or before August 3, 2001. Obviously, when this will occur will vary from state to state.

### **2. What is the "supporting documentation" for a request for conversion to RIR processing?**

(A) The supporting documentation required for a conversion to RIR processing is the same as that required for an application initially filed under the RIR process, as well as a written request for conversion.

### **3. What if an employer submits a request for an RIR conversion on an application filed after August 3, 2001, or after the job order has been placed pursuant to § 656.21(f)(1)? What if an employer submits a request for an RIR conversion but does not include with the request the required recruitment documentation?**

(A) If an employer submits a request for an RIR conversion that is untimely, whether because the application was filed after August 3, 2001, or because the conversion request was received after the placement of the job order, the state should inform the employer that the RIR conversion will ultimately be denied by the Regional Office and offer the employer an opportunity to withdraw the conversion request. While the ultimate authority for determinations on RIR conversion requests rests with the Regional Certifying Officer, states are encouraged to inform the employer of such obvious deficiencies, especially those that are incurable. Similarly, with respect to requests for conversion to RIR processing that do not include the required recruitment documentation, the state should inform the employer that the lack of such documentation will ultimately result in the denial of the request for conversion by the Regional Office. The employer will be informed that they must either submit the required documentation or withdraw the request for conversion. Should the employer refuse to withdraw conversion requests that are untimely, or refuse to submit the required recruitment documentation, the application should be forwarded to the Regional Office where the RIR conversion request will be denied by the Regional Certifying Officer.

### **4. What if the employer wants to make changes to the Form ETA 750?**

(A) Changes to the original Form ETA 750 will not be accepted if they collectively constitute a new job opportunity being requested or the labor market area requested changes. A change which results in the wage offered being less than 95% of the prevailing wage at the time of recruitment will lead to denial of the RIR request. A change in the beneficiary will not affect the Department's processing of an RIR conversion request. Questions regarding whether or not the substituted beneficiary will be grand fathered under Section 245(i) of the Immigration and Nationalization Act (INA) should be directed to the Immigration and Naturalization Service.

### **5. What if an employer requests that the state hold off on placing the job order until the employer has had adequate time to conduct its RIR recruitment activities, and/or to gather evidence that will support a future RIR conversion request?**

(A) States are not required to provide this option to employers. However, a state may offer this option if it determines that this practice will be beneficial to the state and to the majority of employers filing labor certification applications because of efficiencies introduced as a result.

*(Continued on page 4)*

*(Continued from page 3)*

**6. If an application is converted to RIR processing, does the employer lose its filing or "priority date" for the application?**

(A) No, an application that is converted to RIR processing in compliance with the regulations retains the priority date of the original application filed under the basic process.

**7. What if an employer requests an RIR conversion on an application involving a Schedule B occupation?**

(A) Existing regulations at § 656.21(i) preclude the use of the RIR process for Schedule B occupations. The occupations on Schedule B are defined in the regulations at § 656.11. If the job opportunity being requested is in an occupation that is found in that section, then the job requested is on Schedule B and is not eligible for RIR processing.

**8. What if an application is converted to RIR processing in response to an employer request, is forwarded to the Regional Office for a determination, and the RIR request is subsequently denied due to deficiencies such as an inadequate recruitment effort?**

(A) The converted RIR application is returned to the state, where it is placed in the "regular" queue according to the priority date of the original application filed under the basic process, the same place it was previously situated prior to the RIR conversion. This is in contrast to the procedure to be followed when a traditional RIR request is denied by the Regional Office. Pursuant to GAL 1-97, Change 1, when a traditional RIR request is denied the application is placed in the regular queue according to the date the application is received by the state after being returned by the Regional Office. It is then treated as a regular application received on that date but it retains the original priority date.

**9. What if an application was initially filed under the RIR process but the RIR request was denied by the Regional Certifying Officer and the application was returned to the SESA and placed in the regular queue? Can such cases be converted back to RIR processing?**

(A) Yes, as long as the initial filing of the application occurred on or before August 3, 2001. If an application was initially filed under the RIR process, but the request was denied by the Regional Certifying Officer, the application would then be returned to the SESA and placed in the regular queue. At that point, the employer retains the right to request a conversion to RIR processing as long as the initial filing occurred on or before August 3, 2001. Of course, if the reason for rejecting the original RIR request is not curable, such as a belief by the Regional Certifying Officer that there is a widespread availability of qualified U.S. workers in the occupation and area, any subsequent conversion will merely result in a second denial of the RIR request on the application.

**10. For states that were heavily impacted by the temporary reinstatement of Section 245(i) of the INA, what if the application has not yet been entered into the system used to track cases? How are states to handle requests for RIR conversions with respect to such cases?**

(A) The answer to this question will depend upon the circumstances that exist in the individual state, the state's technological capabilities, and the state's willingness to set up potentially elaborate tracking systems in order to couple RIR conversion requests with the applications at the time they are entered into the state's automated system. States confronting this situation should adopt an approach that makes the most administrative sense in light of the circumstances that exist in that state.

**11. GAL 1-97, Change 1, requires that RIR applications be given expedited processing by both SWAs and Regional Offices. What percentage of time should be devoted to processing RIR cases as opposed to regular permanent cases?**

(A) There is no hard and fast rule on this, but if the state devotes the time to processing RIR applications in the same percentage that they are represented in the total queue of permanent applications, this should result in minimally adequate expediting of these applications, since each RIR application should be able to be processed more quickly than an application filed under the basic process that requires supervised recruitment. (E.g., if 50% of the applications in the queue are RIR applications, it will be expected that the state will spend at least 50% of their time processing RIR applications.)

**12. In order to establish a "pattern of recruitment," which date is used as the reference point - the date the original application was received or the date the RIR conversion request is received?**

(A) The point of reference for the pattern of recruitment is based upon the date the RIR conversion request is received. In other words, the earliest acceptable published advertisement or other recruitment activity must have occurred within the six months prior to the date the RIR conversion request is received by the state. Earlier advertisements or other recruitment activities will not be considered by the Regional Certifying Officer in determining whether a pattern of unsuccessful recruitment has been established.

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**13. If the employer requests to withdraw a regular application filed under the basic process and submit an RIR application in its place, can the employer retain the original priority date?**

(A) No. If an application is withdrawn, any "replacement case" carries the priority date of the date the new application is received by the state.

**14. How should an employer request a conversion to RIR processing?**

(A) The specifics of the request may vary slightly from state to state because of the specific operational needs of each state. However, such a request must consist of a letter requesting conversion to RIR processing and documentation supporting that a pattern of recruitment has been established within the six months preceding the date the conversion request is received by the state, and that any U.S. workers were rejected solely for lawful, job-related, reasons. For most states, it will be extremely helpful if a copy of the original Form ETA 750 is included with an indication of the date it was submitted.

The conversion request will be coupled with the case file and placed in the RIR queue based on the date the conversion request was received by the state.



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