

Business Immigration

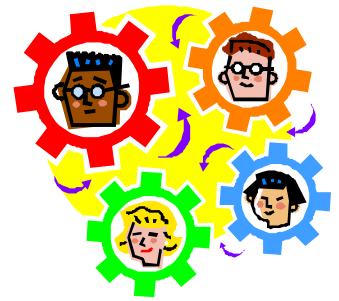
An Update

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“How Much For That PERM ?” – An Overview of DOL’s Proposed New Labor Certification Process

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How would you like *Premium Processing* applied to the Labor Certification Process? “Would you be willing to pay a \$1000.00 fee for this benefit?” The Department of Labor has been contemplating a new program known as “PERM,” which would essentially convert the existing permanent labor certification process into a “Premium Processing” program, complete with electronic filing and expedited processing. The Department would selectively isolate cases for special handling or queries and process three to five times the number of cases currently being processed. Of course, the Employer would be expected to pay \$1000.00 as a filing fee for this benefit and document recruitment as it would normally do as part of the current ‘Reduction in Recruitment’ [RIR] process.



For more information on the PERM program, contact Attorney Vaman B. Kidambi at info@kidambi.com

I have had mixed reactions to the idea of a PERM program. Employers have been less than enthusiastic with the idea of obtaining Applications certified in 15 days, while employees have reacted enthusiastically to the idea. The PERM program is seen as an improvement over the RIR process. In fact, on Friday, August 3, 2001, the Department of Labor issued its long-awaited final rule allowing pending traditional labor certifications to be converted to RIR cases without loss of the priority date (Fed. Reg., August 3, 2001, Vol. 66, No. 150, Pages 40584-40590). The rule states that an employer may file a request with a local office of the Department of Labor to have any application filed before August 3, 2001, processed as an RIR case, provided that Department of Labor directed recruitment has not yet begun in the case.

Special points of interest:

INS' numbers do not indicate any significant decline in overall H-1B demand, but recent filings have slowed. As of March 7, INS reported to Congress it had approved 72,000 H-1Bs against the current FY 2001 cap of 195,000. News articles quote INS reporting an additional 66,000 H-1B cases pending on that date (an unknown number of which may count toward the cap). These figures are higher than the numbers at the same time last fiscal year: 74,300 approvals and 45,000 pending. However, between January and February of this year, the number of new filings decreased by 14,000, from 30,000 in January to 16,000 in February. It is too soon to tell if this trend will continue or indicates a slowdown. INS has not released any updated statistics.

The final rule as written allows RIR conversion for any case for which the Department of Labor has not yet placed a job order. This would encompass cases forwarded to a regional office prior to the initiation of recruitment. The preamble also confirms that the DOL will allow RIR conversion in cases requiring amendments to the ETA 750A & B forms, as long as the job opportunity remains essentially the same. With respect to such amendments, the DOL suggests that the local offices

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will be following their own long-established procedures.

Finally, the preamble contains encouraging language with respect to DOL’s view toward RIR conversions. It states: “[G]enerally all requests for conversion to RIR processing will be granted. Only where the occupation listed in the application is on Schedule B, or the request is not timely, would the employer request for conversion to RIR processing be denied.”

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Unfortunately, the implementation of the PERM program has suffered a setback with the artificial deadline that was set earlier this year for Section 245(i) filings. By the middle of June, approximately 230,000 applications for labor certification were filed across the country. About half of these cases were filed in New York and California alone. This huge influx of cases has sapped the ability of the Department to allocate funds designed for the PERM program implementation. It looks unlikely that the DOL will get fresh funding to implement this program, unless Congress wills otherwise. The change of power in the Senate complicates things further as the pro-labor Democratic party wrestles with the idea of allowing foreign workers permanent certification for specialized jobs in record time. The worsening economy is no help either.

As one Department of Labor official remarked, “the intended date of implementation is one thing, actual implementation is another.” Let us keep hoping...



A Washington Post article published on Income Tax Day highlighted the fact that undocumented workers are contributing to the Social Security surplus. The piece notes that, in 1998, the last year for which figures are available, undocumented workers contributed nearly \$4 billion to Social Security. From 1990-1998, they paid over \$20 billion to Social Security but received no credit for those contributions, since they are ineligible to receive any benefits.

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