



Business Immigration

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An Update

PERM – The Bitter-Sweet Panacea Continues to Elude!

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Applications for Alien Employment Certification continue to remain pending in New York and New Jersey. The lines grow increasingly long and tedious. Clients have been calling incessantly wanting to know whether the PERM regulations have been promulgated and whether there is a way to expedite their Applications. Recently, in an AILA-DOL/ETA Teleconference, DOL officials announced,

“The PERM regulations and backlog reduction are foremost on DOL’s agenda at present. The regulations will be published in the late fall. Implementation is planned for the end of the year. PERM may be affected by the

funding situation for backlog reduction. If the funding for backlog elimination is hung up, this might affect plans for implementation of PERM. In addition, the OMB process may be unpredictable.

However, even if the backlog cannot be reduced, PERM will move along on a parallel track. DOL-ETA has already prepared a timeline for the PERM technology and will be beta testing. DOL-ETA will be reaching out to AILA and other groups to test the technology.”

To date, no word on PERM is forthcoming. The interim regulations met with stiff resistance from AILA and other representative groups for numerous reasons. Most significantly, PERM seeks to

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do away with precedent decisions that have shaped the current permanent labor certification program. For instance, Applicants will no longer be able to rely on Board of Alien Labor Certification decisions that hold that an employer may justify certain job duties listed on the Application [Form ETA 750A] on the basis of "business necessity." PERM seeks to end the concept of "business necessity."

A Chinese Banking Institution, dealing with clients in Hong Kong, requiring the services of an accountant familiar with Chinese Accounting principles, would no longer be able to justify the unique requirement on the basis of "business necessity." This could also affect the IT world. Increasingly, recruiters seek multiple skills from qualified candidates. However, under PERM, the ETA could limit the number of skills that could be stated on an Application. In fact, the NY State ETA [Pre-RIR] questioned any Application that listed more than six skills [including OS] in item 13 of Form ETA 750A. Practitioners are wary of the hidden effect that PERM could have on the entire Foreign Labor Certification program.

PERM will allow for parallel processing of applications and also allow for conversion. Reading the interim regulations, the conversion rules are similar to current GAL 2-98 RIR requirements. However, at least four print advertisements may be required to document good faith recruitment efforts. Moreover and more importantly, at least two of the advertisements need to be twenty-eight days apart. These rules and others that govern the recruitment process may eventually change.

In closing, the Foreign Labor Certification process is on the verge of change, but is it for the better? Only time will tell.



H-1B \$1000.00 Fee Sunsets

A September 15, 2003 Memo from Mr. William Yates of BCIS instructs that H-1B petitions filed with the \$1130.00 training and filing fees combined in one check, on October 1st or later, will be returned. Alternatively, if the \$1000 training fee is sent as a check separate from the \$130.00 fee payment, only the \$1000 check will be returned.



EB-1 Petition for Tennis Coach

Recently, this Office successfully petitioned and obtained an approval for an extraordinary tennis coach from Slovakia. Since our client coaches amateur junior players, the question of remuneration posed a challenge. The Petition presented the Service with evidence of the coach's extraordinary achievements by detailing his work with his students and providing evidence of how his lack of professional training in other fields left him no option but to continue coaching and producing winners. In other words, his ability to continue coaching at a high level was presented as an inevitability.

Finally, the Petition concluded by stating that a coach who is able to consistently bring out the best in his players is clearly extraordinary.

