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DOL Proposes To Eliminate Substitution of Labor Certifications and Impose Deadlines on I-140 Filings

On February 13, 2006, the Employment and Training Administration (ETA) of the Department of Labor (DOL) published a Notice of Proposed Rulemaking regarding changes to the PERM labor certification program. Citing program abuse and fraud, the DOL proposes to impose clear limitations on the use of permanent labor certification applications in order to reduce the potential for fraud and abuse in the permanent labor certification program.

By way of background, PERM labor certification is typically the first step in the employment-based sponsorship of foreign nationals for legal permanent residency ("green card"). The program requires the employer to conduct broad public recruitment for the specific job position and to attest that no qualified U.S. applicants were available for the position. DOL now seeks to eliminate policies which it believes contribute to abuse and fraud of the system. The proposed rule would do the following:

- Eliminate the current practice of allowing a similarly qualified foreign national to use a labor certification application that had been approved for (but not used by) a different foreign national (called "substitution"). This rule would apply to PERM, as well as "Traditional" and Reduction in Recruitment (RIR) Labor Certification applications.
- Impose a 45-day deadline for employers to file I-140 petitions with USCIS after a labor certification application is certified by DOL. Again, this rule would apply to PERM, as well as "Traditional" and RIR Labor Certification applications.
- Clarify that no requests for amendments to pending labor certification applications will be accepted.
- Expressly prohibit the sale, barter, or purchase of permanent labor applications and certifications, as well as other related payments including any reimbursement to the employer by alien beneficiaries for expenses related to the application.

This proposed regulation would apply to all labor certifications, whether approved, pending under the PERM system or under the Backlog Elimination Center, or filed after the effective date of the final rule. DOL is currently soliciting comments on this proposed rule until April 14, 2006. DOL has not indicated how quickly it intends to move toward a final rule after close of the comment period.

Please note that this is a proposed rule, and the final rule may differ from the current version. However, employers should make an inventory of any unused, certified Labor Certifications and PERM applications, so that they can assign these certifications to other employees prior to the scheduled date of the final rule.

If you have questions about the information contained in this One Minute Memo or would like to know more about Seyfarth Shaw's Business Immigration Group and our inbound and outbound visa processing capabilities, please contact Jim King at jking@seyfarth.com, Russell Swapp at rswapp@seyfarth.com or any attorney on our website at www.seyfarth.com.



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