

DOL and PERM: “Vigorously Enforcing” a Fictional “Statutory Mandate”

By Angelo A. Paparelli

The saga of DOL’s new focus on PERM enforcement continues. As reported yesterday in the *National Law Journal* (“[Labor Agency Audit of Firm Angers Immigration Lawyers](#)”), after clearing away its pre-PERM backlog in the fall of last year, the Department of Labor found itself with time on its hands.

Apparently adopting the view that the idle mind of a bureaucrat is the devil’s workshop, the agency has decided to focus the attention of its PERM staff on audits and other enforcement mechanisms. As DOL Solicitor, [Gregory F. Jacobs](#), explained to the *NLJ* reporter: “We are vigorously enforcing and making sure we are adhering to our statutory mandate.” Mr. Jacobs’ wording is a bit of a contortion of the phrase “statutory mandate” given that nowhere in the INA is there any authorization for the Rube Goldberg recruitment test required by the PERM regulation. See the definitive [article](#) by Gary Endelman that refutes Mr. Jacobs’ assertion.

Setting aside the absence of statutory duty, I began to wonder: How much time does DOL spend on adjudicating PERM applications? Turning to the lawyer’s trusty friend (the Paperwork Reduction Act [PRA]), I decided to look under the DOL’s hood for the answer. It turns out, according to the DOL [Supplemental Statement to Form 9089](#) submitted under the PRA, the agency spends precious little time on average: about 15 minutes each on “clean” applications. On the 30% of the 100,000 PERM cases per year that DOL estimates will be audited, it spends an average of four hours per application (three hours by an “analyst” and one by a “manager”). That’s 120,000 hours on audits per year. The DOL omits any time estimate on supervised recruitment.

“Vigorous,” in my mind and in the dictionary, connotes “energetic activity” or “intensity.” But turning to another dictionary definition, I see that after all the word is correctly used: “powerful in action or effect: *vigorous law enforcement* [italics in original].” Now I see the “shock and awe” impact of unbridled power. With the power of the press release, backed by a paltry four hours per audit, the agency enjoys the *in terrorem* effect of intimidation of law-abiding companies and attorneys.

Ironically and tragically, this action occurs just as the top technology official charged with keeping us safe, Jay Cohen, the Department of Homeland Security’s Undersecretary for Science and Technology, warns that America faces the risk in two decades that our economy will no longer be “first-world” because of a severe shortage of students in science and math: “[Homeland Security Official Warns U.S. Workforce Faces Skills ‘Crisis.’](#)”

In the waning months of the Bush Administration, this blogger, quoting [Marvin Gaye](#), asks in frustration and sadness: "What's Going On?"