

NOTICE REGARDING STATUS OF PROPOSED PERM REGULATION

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by

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On November 15, 2004, our office attended a meeting with a senior official from the North Carolina Employment Security Commission. This official provided valuable information regarding the status of the proposed PERM regulation which will overhaul the traditional labor certification process.

At Long, Chang & Associates, L.L.P., we strive to keep our clients up-to-date on current immigration laws and proposed immigration laws so that our clients can make an informed decision about how to proceed with their immigration cases. To that end, we would like to inform you of what we learned at our recent meeting.

The official from the North Carolina Employment Security Commission stated that she expects the PERM regulation to be published in the Federal Register by January 2005. After publication, the PERM regulation is expected to become effective 60 days later. As a result, if the PERM regulation is published in January 2005, then it would become effective in March 2005.

The PERM regulation will greatly change the current labor certification process. One significant advantage is that once a properly completed and properly documented labor certification case is received by the Department of Labor, the case will be adjudicated within 21 days. This is a much faster turnaround time for labor certification cases at the Department of Labor stage.

Despite the advantage in terms of faster processing times, there are several potential drawbacks or disadvantages to the PERM process. First, there will be additional advertising requirements which must be satisfied before a case can be submitted. These additional advertising requirements will increase (a) the cost of advertising, (b) the amount of time it takes to prepare a labor certification case before it can be filed, and (c) the likelihood that qualified U.S. workers may apply for the job and request an interview for the job opening. As is the case with current labor certification processing, if a qualified U.S. worker applies for the job opening, he or she must be interviewed by the employer for the job.

Although the advertising requirements cannot be known for certain until the PERM regulation is published, it is believed that more advertising will be required. For non-professional jobs (i.e., jobs that do not require a college degree), the employer will be required to advertise the job opening in a Sunday newspaper on two different occasions with three weeks in between each Sunday newspaper advertisement, and to place a job order advertisement for 30 days with the local Employment Security Commission office. For professional jobs (i.e., jobs which require a college degree), the employer will likely be required to advertise in a Sunday newspaper as well as in a professional journal. It is believed that the employer will also be required to demonstrate three additional advertising sources, such as website, job fairs or additional newspaper advertisements. Again, the foregoing advertisement requirements are what is expected based on the proposed PERM regulation and previous reports from the Department of Labor. These advertising requirements cannot be confirmed until such time as the PERM regulation is officially published. Once the PERM regulation is published, Long, Chang & Associates will provide a detailed analysis of PERM on our website at www.longchangoonline.com.

Employers and individuals who are considering filing a labor certification case at this point should keep in mind the advantages and disadvantages of the PERM system. If filing a labor certification at this point (prior to PERM) you should consider whether your current advertising for the job will be sufficient under the proposed PERM system. In addition, you should consider the faster processing times associated with the proposed PERM system (e.g., 21 days after filing a completed labor certification application) as opposed to the slower processing times with the traditional labor certification system.

All of the foregoing assumes that the PERM regulation will be published in the near future. We cannot stress enough, however, that the current labor certification process remains in place until the PERM regulation is published. Nobody knows if and when the PERM regulation will be published. However, it is believed by many that PERM will be announced near the end of this year or the first part of next year.

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