

IMMIGRATION REPORT
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by

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Backlog Reduction Centers

With all of the attention being placed on the PERM Labor Certification System, it is important to know what is happening to all of those pre-PERM labor certification cases. Unfortunately, the Department of Labor has not provided much information on the current processing times at these Backlog Reduction Centers.

As readers of www.longchangonline.com are aware, the Department of Labor has sent all labor certification cases filed before March 28, 2005 (the start date of the new PERM Labor certification system) to Backlog Reduction Centers in either Dallas or Atlanta (depending on the state where the case was originally filed). All cases originally filed in North Carolina have been transferred to the Backlog Reduction Center in Atlanta for continued processing.

According to the Department of Labor, the Backlog Reduction Centers are busy inputting these pre-PERM cases into a new computer system and assigning them new case numbers. After inputting this information, a "45-day letter" is supposed to be sent out to the employer or the attorney of record. The "45-day letter" requires the employer to indicate whether it wishes to continue processing the case or whether it wants to stop the processing of the case. In addition, the 45-day letter often requests additional information to confirm the authenticity of the employer. For example, if the personnel at the Backlog Reduction Center cannot verify the existence of the employer, the 45-day letter will request additional proof of the employer's existence from tax records, leases, business licenses and other forms of proof. The bottom line is that the pre-PERM labor certification case will not be processed until a response to the 45-day letter is returned to the Backlog Reduction Center.

Our office has noticed that the timing of these 45-day letters is not very consistent and does not indicate when the case will be processed. Pre-PERM labor certification cases filed on the same day often receive the 45-day letter months apart. Also, a quick response to the 45-day letter does not necessarily mean your case will be processed quickly from that point forward. It is very frustrating for employers, the foreign nationals

and the attorney in these cases because it is so difficult to predict when the case will be processed. Recently, our office received an approval on a pre-PERM labor certification case that was initially filed in North Carolina in June 2001. Our office received the 45-day letter on February 17, 2005 and mailed a response to the 45-day letter to the Backlog Reduction Center on February 21, 2005. The approval for this particular case was dated August 5, 2005.

Since pre-PERM cases are supposedly being processed on a first-in, first-out basis, this could mean that the Department of Labor's Backlog Reduction Center in Atlanta is still working on cases filed on or about June 2001. Thus, there still appear to be significant backlogs at the Backlog Reduction Centers.

Department of Labor Proposes An End to Substitutions in Labor Certification Cases

The Department of Labor recently published a proposed rule which would end the process of substitution in labor certification cases and require the filing of the employment-based immigration petition within 45 days of a labor certification approval. This proposed rule can be read at <http://www.reginfo.gov/public/do/elViewRule?releID=253350>.

It is important to note that, at this time, this rule is only a proposal and has not yet been finalized. If it is, however, it will have a tremendous impact on labor certifications. The first notable change would be the elimination of the process of substituting alien beneficiaries in labor certification cases. This means that, if a labor certification is filed or approved on behalf of a particular alien beneficiary, then that alien beneficiary is the only person who could receive an immigration benefit from that case. Another alien beneficiary would no longer be able to be substituted in place of the alien beneficiary named in the original labor certification application (either the "old" Form ETA 750 or the new PERM Form ETA 9089).

In addition, the Department of Labor proposes a requirement that the employer's immigrant visa petition (Form I-140) must be filed within 45 days of the date of an approved labor certification. Currently, an approved labor certification is valid indefinitely.

Our office will provide updates on this proposed rule as information becomes available. Stay tuned to www.longchangonline.com for further details.

H-1Bs Still Available for Holders of Advanced U.S. Degrees

The fiscal year 2005 H-1B cap of 65,000 was reached as of August 10, 2005. However, legislation passed earlier this year provided a cap-exemption for up to 20,000 individuals who have graduated from a U.S. college or university with an advanced degree (either Master's degree or Ph.D. degree). Shortly after announcing that the H-1B cap of 65,000 was reached, the United States Citizenship and Immigration Services (USCIS) confirmed

that the cap-exemption of 20,000 H-1Bs has not yet been reached. As a result, H-1B petitions can still be filed on behalf of individuals who have graduated from a U.S. college or university with either a Master's degree or a Ph.D. degree.

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