

HOT TOPICS IN IMMIGRATION



by

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Annual Immigration Conference Provides Insights on the Prospects for Immigration Reform and the Status of Labor Certification Cases

We recently attended the annual conference of the American Immigration Lawyers Conference in San Antonio, Texas from June 21 – June 25, 2006. Highlights of the conference include the following:

Prospects for Comprehensive Immigration Reform

The most widely talked about topic at the conference seemed to be the status of the competing immigration reform proposals in Congress. As has been widely reported, the Senate and the House of Representatives each have immigration bill in Congress. The Senate bill includes enforcement provisions as well as a guest worker program and a path to citizenship for many undocumented immigrants. In contrast, the House of Representative has no such guest worker program or path to citizenship. The House bill focuses on enforcement only. In order for immigration legislation to be passed into law, these competing bills must be reconciled. That is to say, both sides of Congress must negotiate and agree on a bill that the full Congress can vote on.

It was widely reported that this compromise would hopefully be worked out in advance of the November 2006 Congressional elections. Unfortunately, the Republican leadership in the House of Representatives announced last week that Republicans in the House of Representatives would hold town hall meetings on the controversial immigration issue. The political spin is that they want to get feedback from constituents before voting on the issue. This is a huge stumbling block to any prospect of comprehensive immigration reform. First, it will take several additional weeks, if not months, to hold these planned town hall style meetings with local constituencies. Second, the longer it takes, the closer it will be to the November 2006 elections. As we get closer to these elections, the prospects for legislation being passed decrease since Congressman do not want to vote on such a controversial issue just before an election. As a result, we likely will not have a vote on this issue until after the November 2006 election. The period after the election but before the next Congress takes effect is often called a “lame duck session” of Congress. It is possible that comprehensive immigration reform could be voted on at that time since individual members of Congress might be willing to vote on this issue or take a stand without fear of being voted out of office. If legislation is not passed during that session, then it is likely that nothing will happen during this session of Congress and the issue will have to be taken up again in next year’s Congress.

Update on Labor Certification Issues

Another hot topic at this year's immigration conference was the labor certification system. Officials from the Department of Labor indicated spoke on both the pre-PERM labor certification systems and the current PERM process.

Regarding the pre-PERM system, the DOL indicated that by the end of July all 45-day letters should have been sent out. 45-day letters are letters that the DOL sends to the employer asking whether the employer wants to continue the case or not. In addition, the DOL explained that it will soon have an e-mail system in place for attorneys to inquire about cases improperly closed. Many pre-PERM cases have been mistakenly closed by the DOL for failure to respond to a 45-day letter when in fact no such letter was ever sent out or the letter was properly responded to within the 45-day period. Thus, if your case has been improperly closed, there should soon be a system in place for getting the case re-opened. The DOL confirmed that it has a target date of completing all per-PERM cases at the Backlog Reduction Centers by September 2007!

Regarding PERM cases, the general consensus is that the PERM computer system still has numerous glitches or problems and that DOL is working to correct these issues as they arise. DOL officials stressed that, if at all possible, the PERM application should be submitted online instead of by mail. A mailed-in application will take approximately 3 months to be inputted into the system. Despite repeated inquiries as to what types of issues would trigger an audit by DOL, the DOL officials refused to specify any particular items, but confirmed that there are certain "red flags" which will usually trigger an audit. DOL did, however, state that, once a response to an audit is filed, they should wait at least 120 days before following up with DOL to check on case status.

Finally, DOL provided an update on the status of the first PERM case to be appealed to the Board of Alien Labor Certification Appeals (BALCA). That case involves an automatic rejection by the DOL PERM system because the attorney mis-typed the date that a Sunday advertisement was published in the newspaper. The PERM application was filled in using a Monday date instead of the previous day's Sunday date. The PERM computer recognized that the listed date was not a Sunday date, and the case was automatically rejected. Even though the employer had a copy of the Sunday ad and stated that it was just "harmless error" the DOL disagreed and denied the case. BALCA will now decide whether such "harmless errors" can be corrected in the future. In the meantime, one thing is clear – the PERM system demands exactness!

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