



Business Immigration

Fall 2004

An Update



Light At The End of The Tunnel

Backlog Reduction and PERM

For the past few weeks, our phones have been ringing off the hook with clients seeking information about the Department of Labor's new backlog reduction plan [Memo dated September 29, 2004 from Assistant Secretary for Employment and Training, Emily Stover DeRocco] and PERM processing. The Memo states in the introduction: "*Please pay close attention; this is a complicated process and the guidance contains an abundance of information...*" That about sums up the backlog reduction plans being touted as panacea for the current morass that is a lengthy, often nightmarish process called Alien Labor Certification.

Several websites have put out conflicting information and opinions about the backlog reduction plan, clearly intending to drum up business. Recently, the American Immigration Lawyers Association met with the Department of Labor to seek clarification on the backlog reduction plans. Here are some of the interesting items of significance that came out of that meeting along with additional information about the backlog reduction plan:

PERM IMPLEMENTATION:

The Plan is based on an assumption that by the end of this calendar year, the Department of Labor will be able to publish the PERM regulation. The implementation period con-

templated is 60 days and not 120 days as stated previously. In other words a shorter transition period.

NATIONAL PROCESSING CENTERS:

Interestingly, this change may be tied to the progress made on the facilities for the two "**National Processing Centers**" – in **Atlanta and Chicago** where all permanent labor certification applications (except for those backlogged cases being processed in **Dallas and Philadelphia**) will be processed.

The two National Processing Centers, located in Atlanta and Chicago are being built out at this time and should be completed by the end of October 2004. By that time, the Atlanta and Chicago Regional Offices are expected to move with their cases to the new facilities.

SWA BEING ELIMINATED:

The role of the **State Offices** [SWA], in the permanent Labor Certification process, is being phased out regardless of the PERM regulation. It is clear that the goal is to have all applications processed at the Federal level through the two National Processing Centers and for a *temporary period*, until **January 2006**, through the **New York and San Francisco** Regional Offices.

If the **PERM regulation is published** on or

(Continued on page 2)

(Continued from page 1)

around December 2004, Applications for Labor Certification will no longer be filed with the State Offices. State Offices will be instructed to stop accepting applications for permanent labor certification from employers 61 days after the publication of the regulation and ETA will issue specific guidelines as to where State Offices must forward remaining applications. However, if the **PERM regulation is not published**, the State Office would continue to accept cases, but after **January 1, 2005**, the State Office will accept, but not open any applications. In other words, the State Offices will continue to “date stamp” and log in applications, as this filing date is critical for subsequent processing. These cases would then be forwarded directly without processing to one of the National Processing Centers in Atlanta or Chicago.

CURRENT BACKLOG REDUCTION:

On July 21, 2004, the Employment Training Administration [ETA] published in the Federal Register an interim final rule “Labor Certification for the Permanent Employment of Aliens in the United States; Backlog Reduction.” This rule **will allow the ETA to transfer permanent labor certification cases pending at either an ETA Regional Office, or State Office [SWA] to one or more centralized processing locations**. These locations have currently been established in Philadelphia and Dallas [not to be confused with the National Processing Centers]. These locations will be open for two years in an attempt to reduce national backlog and then closed.

TIME LINE FOR BACKLOG REDUCTION:

By **March 31, 2005**, the ETA expects all backlogged cases at the State Offices to either be transferred to the two new backlog reduction centers [Philadelphia and Dallas], or assigned to foreign labor certification staff in an ETA foreign labor certification office [New York, Boston, or San Francisco] for completion of processing. Cases transferred and received at the backlog reduction centers will be processed in order of the original filing dates, with the oldest being worked on first. The ETA believes that this First in, First out [FIFO] principle, regardless of the location where a case was originally filed, is an equitable and fair approach to all applicants.

IMMEDIATE ACTION SCHEDULE:

ETA will immediately transfer a large number of unprocessed cases from its San Francisco foreign labor cer-

tification office to the two backlog reduction centers in Philadelphia and Dallas. ETA will also simultaneously seek transfer of unprocessed cases from State Offices to the backlog center in either Philadelphia or Dallas. ETA is expected to issue detailed instructions of a specific transfer schedule for each state office to follow.

Here is a Table indicating the National Foreign Labor Certification Processing Centers and Corresponding State Workforce Agencies:

Atlanta Processing Center:

Alabama	Connecticut	Delaware	Florida
Georgia	Kentucky	Maine	Maryland
Massachusetts	Mississippi	New Hampshire	New Jersey
New York	North Carolina	Pennsylvania	Puerto Rico
Rhode Island	South Carolina	Tennessee	Vermont
Virgin Islands	Virginia	Washington D.C.	West Virginia

Chicago Processing Center:

Alaska	Arizona	Arkansas	California
Colorado	Guam	Hawaii	Idaho
Illinois	Indiana	Iowa	Kansas
Louisiana	Michigan	Minnesota	Missouri
Montana	Nebraska	Nevada	New Mexico
North Dakota	Ohio	Oklahoma	Oregon
South Dakota	Texas	Utah	Washington
Wisconsin	Wyoming		

Clearly, there are several questions in connection with PERM and the backlog reduction plan that remain unanswered. One thing seems clear - Employers who relied on faster regional processing of foreign labor certification applications will now have to rely on other incentives to recruit and retain H-1B employees!

PERM is clearly on the way and backlog reduction aims at eliminating the uncertainty that was often associated with local processing of foreign labor certification applications.

