

DEPARTMENT OF LABOR ANNOUNCES NEW PROCEDURES

October 20, 2004

The U.S. Department of Labor recently issued guidelines to the State Workforce Agencies (SWA) regarding future changes to the processing of Labor Certification Applications. The memorandum discusses two possible future scenarios (1) Procedures under a new labor certification program known as PERM; and (2) Alternate procedures in the event that PERM is not implemented in the immediate future

1. Current Plan.

The Department of Labor anticipates publication before December 31, 2004 of final regulations for a new labor certification program known as the Program Electronic Review Management System (PERM). Labor Certifications under the PERM program will involve some additional recruitment steps for the sponsoring employer, but will also allow adjudication of a labor certification in a very short period of time (measured in weeks, as opposed to the current measure of "years").

If the final regulation for PERM is published prior to December 31, 2004, the PERM program will be operational 60 days after the date the final regulation is published. At that time, all new Labor Certification Filings will involve a more streamlined two-step process. First, a determination regarding the current prevailing wage for the job opportunity listed in the Labor Certification Application must be obtained from the State Workforce Agency that has jurisdiction over the place of employment. Then, the Prevailing Wage Determination, together with the Labor Certification Petition, will be filed at one of two US Department of Labor PERM offices that will process all PERM filings. These offices will be located in Chicago and Atlanta, respectively.

2. Contingency Plan.

In the event that the PERM regulation is not published, the Department of Labor has determined that, effective January 1, 2005, a new procedure will be implemented for new Labor Certification filings. Under this contingency plan, Labor Certification filings made with the State Workforce Agency on or after January 1, 2005 will be logged in and then immediately forwarded to the relevant US Department of Labor PERM office to be "opened" and processed by the US Department of Labor. As a result, the State Workforce Agencies function will apparently be reduced to sorting and time-stamping centers, and the actual "opening" and review of cases will not take place until the file is received at either the Chicago or Atlanta US Department of Labor facilities.

The US Department of Labor has also opened two backlog reduction centers that are located in Philadelphia, PA and Dallas, TX. These offices are designated to receive transfers of existing cases that have been long delayed at State Workforce Agencies throughout the U.S.