

Continuing Problems with the US Department of Labor's Backlog Processing Centers

In advance of the roll-out of the new PERM Permanent Alien Employment Certification application process in March of 2005, the Department of Labor ("DOL") established two Backlog Elimination Centers ("BECs") to handle the processing of an estimated 350,000 Labor Certification Applications that had been filed and were pending under the pre-PERM rules.

For the past 18 months, the BECs have been cataloguing all of these legacy cases, entering them into a centralized database and sending a letter (called the "45 Day Letter" for the number of days that an employer has to respond to it) to all employer applicants asking whether they would like to continue processing the old legacy case. Current estimates are that the 45 Day Letter process will not be completed for at least another year and, at that point, the BECs will start the much lengthier task of completing the processing of all legacy cases that are still determined to be active.

If you receive a 45-Day Letter regarding a legacy Labor Certification case, make sure you:

- ✓ know the implications of the letter
- ✓ respond quickly
- ✓ keep accurate records of all correspondence

Since the beginning of this process, the immigration community has been plagued by problems with the processing of 45 Day Letters — denial of a legacy case where no 45 Day Letter was received; denial where a 45 Day Letter was received and responded to in a timely fashion; and no receipt of a 45 Day Letter, and thus no evidence that the BECs have record of a legacy case. These problems have been compounded by the fact that the BECs have essentially remained off-limits to the public or the Immigration bar by not responding in a substantive

manner to emails, phone calls or written correspondence.

In early June, the DOL issued a letter indicating that it would reopen any legacy case in which the employer received a denial without ever having received a 45 Day Letter, and then challenged that denial within 30 days of its receipt. In addition, the DOL has taken under advisement how it should respond to cases in which the employer did not complain of the incorrect denial until after 30 days had run or where the employer received a 45 Day Letter, responded in a timely fashion and still received a denial.

These on-going problems are serious because for many foreign nationals a legacy Labor Certification case is the basis on which they continue to remain eligible to stay in the US and extend H-1B temporary worker status. Because of these issues, we are urging our clients and friends to respond quickly to 45 Day Letters and to keep accurate records of all correspondence with the BECs.

Standard H-1B Cap Reached for 2007 Fiscal Year

On June 2, 2006, the CIS announced that the 58,200 H-1B cap for the 2007 fiscal year had been reached on May 26, 2006. Any H-1B cases received by the CIS after May 26th are being rejected and returned.

The Citizenship and Immigration Service ("CIS") makes available each fiscal year 58,200 new H-1Bs, plus 20,000 new H-1Bs for foreign nationals with a Master's degree or higher from a U.S. academic institution, plus an additional 6,800 H-1B visas to citizens of Chile and Singapore. The 2007 fiscal year of the CIS will begin on October 1, 2006 and H-1B petitions for the 2007 fiscal year were filed beginning on April 1, 2006.

On June 2, 2006, the CIS announced that the 58,200 H-1B cap for the 2007 fiscal year had been reached on May 26, 2006. Any H-1B cases received by the CIS after May 26th are being rejected and returned. Cases filed on May 26, 2006 are being randomly selected until a final total is reached

— approximately 100 additional cases that were received by the CIS on May 26th will be retained until a final count of approved H-1B cases is determined.

Note that as of the end of June, approximately 15,000 of the 20,000 H-1Bs available under the U.S. Master's degree cap had been used. We are currently projecting that the U.S. Master's degree cap could be reached within a matter of days.

Last year, the 58,200 H-1B cap was reached in August of 2005. This year, the cap was reached almost three months earlier. There is some hope of future relief in two separate bills that would increase the normal H-1B cap to at least 115,000. We discuss each of these bills in another section of our

Immigration Quarterly on "Comprehensive Immigration Reform Under S.2611".

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