

Make Your PERM Substitutions Now and Other Changes (Part I)

This is the first article of a two-part series explaining significant changes concerning existing and future PERM labor certification cases:

On May 17, 2007, a strict U.S. Department of Labor (“USDOL”) regulation was published that significantly impacts how existing PERM labor certification cases (“PERM”) will be handled, and how employers and employees must proceed with such cases in the future. In brief, PERM is the first step of a two-step process that many foreigners take in order to secure U.S. lawful permanent resident status (commonly known as “green card” status), with the support of a petitioning employer (commonly known as a “sponsoring” employer). The May 17th USDOL regulation only impacts this first step. (The second step is a U.S. immigration process whereby the foreigner secures actual U.S. immigration benefits.)

The PERM process requires that the U.S. employer prove there is no available U.S. worker, minimally qualified to accept a job offer, the employer wishes to extend to a foreign worker. Each year, thousands of foreigners secure U.S. lawful permanent resident status through PERM and the subsequent immigration petition processes.

Frequently, after an employer successfully completes the PERM process, the employee is no longer interested in pursuing the second step of this process to secure actual U.S. immigration benefits, or the employer does not wish to offer the available job to the initially-intended foreign employee. When such situations occurred in the past, the USDOL and U.S. Citizenship and Immigration Service (“USCIS”) permitted the employer to substitute a new foreign employee into this process, as long as certain criteria were met (for example, the new employee must hold identical credentials to those of the initial employee). As a result, the employer could continue with these processes, and fill the available position with this new foreign employee.

Many foreign employees secured U.S. lawful permanent resident status for themselves and their family members, after being substituted into an existing labor certification process, wherein they were not the initially-intended foreign employee. The May 17th USDOL regulation will end such opportunities.

According to this new regulation, if an employer wishes to substitute a new foreign worker into such an existing labor certification process, the employer must file its USCIS Form I-140 petition by no later than July 16, 2007. After such date, USDOL and USCIS will no longer accept the substitution of such new foreign workers into existing labor certification processes. All employers and employees considering such a substitution should act accordingly, to prepare and file the USCIS Form I-140 as soon as possible.

This May 17th USDOL regulation significantly changes how PERM labor certification will be conducted from this point forward in many other ways. There are penalties and serious consequences for those employers, employees and attorneys who do

not comply with this new regulation. Next week, I will discuss the additional changes that I believe are particularly important.

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