

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

This is the second 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 second step is a U.S. immigration process whereby the foreigner secures actual U.S. immigration benefits, through the submission of certain petitions and applications to the U.S. Citizenship and Immigration Service (“USCIS”).

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 employee. Each year, thousands of foreigners secure U.S. lawful permanent resident status through PERM and the subsequent immigration petition processes.

Of particular concern to many small and medium-sized employers is that the May 17th regulation specifically states all fees associated with the PERM process must be paid by the sponsoring employer. In the past, USDOL and USCIS regulations have been silent with regard to who may pay costs and fees associated with the PERM process – the first step of the labor certification process. It is important to note that the USDOL does not address who may or may not pay the costs and fees associated with the second step of this process – the actual immigration petition and application stage. For example, while the employer must pay for the job advertising costs and legal fees associated with the USDOL stage of this process, the foreign employee may pay for the legal fees and costs associated with the USCIS petition and application filings. The May 17th regulation requires that, for any I-140 petition filed on or after July 16, 2007, in connection with a labor certification process, the employer – not the employee, nor any third party – must have paid all PERM fees and costs.

As I previously explained in the first article of this two-part series, often times, after an employer successfully completes the PERM process, the employer – for certain reasons – may substitute a new foreign employee into this process. However, the May 17th regulation will end this opportunity, beginning July 16, 2007. Because of this regulation, many employers are preparing these types of petitions to be filed before July 16, 2007. In anticipation of a flood of I-140 petition filings, USCIS recently announced that it will no longer accept any I-907 premium processing requests for I-140 petitions seeking to substitute a new foreign employee into an existing labor certification process. Premium processing requests for all other types of I-140 petitions are not included in this procedural change.

If you believe your business or employment may be affected by any of the changes resulting from the May 17, 2007 USDOL regulation or the recent USCIS procedural change concerning premium processing requests as discussed in my articles, we urge you to contact your attorney and voice your concerns. The deadline for certain filings is fast approaching, and there may still be considerable work to be completed in connection with your case, before such a filing can even be prepared and actually submitted to USCIS.

Atty. Rio M. Guerrero is the managing partner of The Guerrero Law Firm. During his many years of legal practice, Atty. Guerrero has served as an immigration legal expert witness in the New Jersey State court system, taught complex immigration law at the City University of New York, and represented thousands of clients in a wide range of immigration and nationality matters. You may contact Atty. Guerrero directly at (212) 481-2744 or e-mail him at rio@guerrero-lawfirm.com. The above information is not, nor intended to be, legal advice. Nothing within this publication creates an attorney-client relationship with the reader. Applicability of the legal principles discussed above differs upon individual facts and circumstances.