



EMAIL BULLETIN

**U.S. DEPARTMENT OF LABOR (DOL) PUBLISHES REGULATION EXTENDING ELIGIBILITY FOR CONVERSION OF TRADITIONAL (“REGULAR TRACK”) APPLICATIONS FOR ALIEN EMPLOYMENT CERTIFICATION TO THE MORE RAPID REDUCTION-IN-RECRUITMENT PROCESS**

**Traditional Applications Filed Before March 28, 2005 Now Eligible for Conversion**

*09 October 2006*

In an ongoing push to completely eliminate the backlog of pending Applications for Permanent Employment Certification at U.S. Department of Labor (DOL) Backlog Elimination Centers (BEC), the DOL has extended the eligibility criteria for converting pending Traditional (“Regular Track”) Applications for Permanent Employment Certification (labor certification applications) to the more rapid “Reduction-in-Recruitment” (RIR) process. On October 6, 2006, the DOL published a regulation authorizing conversion requests for any Traditional Application filed on or before March 27, 2005.

Traditional Applications must undergo “supervised recruitment” wherein the DOL will monitor a recruitment period during which the employer must open a Job Order with the State Workforce Agency (SWA) and place an advertisement in the newspaper for three consecutive days while also posting notice of the opening at the worksite for ten consecutive business days.

Reduction-in-Recruitment Applications undergo pre-filing, unsupervised recruitment throughout a period of six months, during which time the employer must document a six-month period of good faith recruitment and a lack of qualified applicants available in the geographic area to perform the duties of the job opportunity based on the opportunity’s minimum requirements. Generally this process requires at least one newspaper advertisement in conjunction with multiple additional forms of recruitment.

Because the adjudication of Traditional Applications is more resource-intensive at the government level, the DOL believes that conversion of Traditional Applications to the less-resource-intensive RIR process will advance efforts to eliminate the existing backlog of labor certification applications pending at the two Backlog Elimination Centers.

Requests for conversion must be accompanied by evidence of recruitment efforts establishing a pattern of recruitment over a six month period, during which an insufficient

number of qualified applicants were identified for the position at the prevailing wage in the geographic area. This means that the six-month pattern of recruitment must occur prior to filing a request for conversion to RIR processing.

Only those applications for which the DOL has not yet begun supervised recruitment will be eligible for conversion to RIR processing. Applications for which the DOL has begun supervised recruitment, typically by instructing the employer to open a Job Order with the SWA, will not be eligible for conversion. This limitation creates the risk that employers will conduct the additional pre-filing recruitment required for RIR conversion and then receive an instruction for the DOL to open a Job Order with the SWA prior to actually gathering the recruitment results and documentation to submit with the request for conversion. The DOL regulation and published conversion information do not allow for procedures to “hold” or delay progress on the Traditional Application while the employer undergoes the necessary recruitment efforts and submits a formal request for conversion to RIR processing.

With the inherent risk that the DOL could begin adjudication of a pending Traditional Application prior to an employer’s ability to request conversion based on new recruitment efforts, the impact of the DOL’s extension of eligibility criteria on the reduction of the overall backlog may be limited. If few employers are willing to accept the risk of loss in advertising dollars, perhaps few cases will be converted, leaving many Traditional Applications to continue along the lengthier Regular Track process for adjudication. Because Traditional Applications are in line for processing at the BEC in accordance with their original date of filing, it is anticipated that the earliest filed cases should be opened for recruitment first. The DOL has already begun supervised recruitment for some of the oldest Traditional Applications now pending with the BEC.

Employers interested in potentially requesting conversion of one or more Traditional Applications to RIR processing should contact their Tindall & Foster immigration attorney. Your Tindall & Foster immigration attorney will be able to assist you in evaluating whether a particular Traditional Application may be appropriate or recommended for conversion to RIR processing. For appropriate cases, your Tindall & Foster immigration attorney will be able to assist in planning the company’s pre-filing recruitment, preparing the documentation evidencing a six-month period of good faith recruitment and insufficient qualified U.S. workers, and filing a formal request for conversion of a pending Traditional Application to RIR processing.

The U.S. DOL continues to project elimination of the substantial backlog in labor certification applications by September 30, 2007, the end of the government’s current fiscal year. Tindall & Foster, P.C. will continue to monitor DOL efforts in reducing the backlog of both Traditional and RIR Applications at the BEC and will provide updates via future Email Bulletins and on our website at [www.tindallfoster.com](http://www.tindallfoster.com).