



EMAIL BULLETIN

**U.S. DEPARTMENT OF LABOR (DOL) INTRODUCES LABOR CONDITION APPLICATION (LCA) REQUIREMENT, INCLUDING EMPLOYER ATTESTATIONS, FOR E-3 (AUSTRALIAN) VISA PROGRAMS**

**Attestations Mirror Those Required under the H-1B Program**

*30 January 2007*

On January 12, 2007, the U.S. Department of Labor (DOL) published Notice of Proposed Rulemaking in the Federal Register, whereby the DOL provides notice that it require employers to file a Labor Condition Application (LCA) before a candidate may apply for an E-3 visa and enter the United States under the E-3 visa program for employment with the employer. The LCA will include the same attestations that are required of employers under the H-1B program. Similar to the H-1B program, but limited to Australian citizens, the E-3 program permits employment of Australian professionals in a specialty occupation in the United States. While Australians may apply directly with the appropriate U.S. Embassy or Consulate for an E-3 visa, and subsequently at a U.S. Port of Entry for admission in E-3 nonimmigrant status with work authorization, under new DOL regulations, the prospective employer must first file and obtain DOL certification of a Labor Condition Application including the following attestations:

- a. that the employer will pay the higher of the prevailing wage in the geographic area for the occupation, or the actual wage paid to similarly educated and experienced employees in that occupation with the employer;
- b. that the employment of the E-3 worker will not adversely affect the working conditions of U.S workers;
- c. that there is not a strike or lockout in the course of a labor dispute in the occupation at the location of proposed employment;
- d. that notice of filing has been provided to the bargaining representative, or, in the absence of such a representative, to the workforce at the location of proposed employment.

Because most employers filing petitions on behalf of professionals will be familiar with the LCA procedure and the attestations contained in the LCA, it is anticipated that the new LCA requirement for E-3 visa employment will not create an

additional burden on employers. For more information on the new LCA requirement, or on the E-3 visa program permitting the employment of Australian professionals in Specialty Occupations in the United States, contact your Tindall & Foster immigration attorney.