



EMAIL BULLETIN

THE U.S. DEPARTMENT OF LABOR (DOL) IMPLEMENTS A NEW PROCEDURE IN ORDER TO ENCOURAGE EMPLOYERS TO TAKE ADVANTAGE OF THE OPTION TO CONVERT REGULAR TRACK APPLICATIONS FOR EMPLOYMENT CERTIFICATION TO REDUCTION-IN-RECRUITMENT (RIR) APPLICATIONS

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As reported in a previous Tindall & Foster Email Bulletin, on October 6, 2006, the U.S. Department of Labor (DOL) published a regulation authorizing the conversion of Regular Track Applications for Employment Certification filed before March 27, 2005, to Reduction-in-Recruitment (RIR) Applications for adjudication on a faster track. The purpose of the DOL regulation was to encourage conversion of applications from the more resource-intensive Regular Track processing track requiring supervised recruitment to the faster-moving Reduction-in-Recruitment processing track wherein the recruitment is not supervised.

In order to convert from Regular Track to Reduction-in-Recruitment, employers are required to recruit in advance of filing the Application for Conversion. According to the DOL regulation of October 6, 2006, if the DOL opened the supervised recruitment period for the Regular Track Application before receiving the employer's Application for Conversion, the case would no longer be eligible for conversion. This limitation exposed employers to the risk that advertising costs would be wasted in the event the DOL opened supervised recruitment before the employer could submit the Application for Conversion. The DOL conversion regulation provided no means for holding the Regular Track adjudication process in abeyance in order to permit the employer to complete the recruitment required for filing an Application for Conversion. For this reason, many employers decided to forgo the opportunity to request conversion.

DOL Will Place a Hold on Regular Track Adjudication to Enable Completion of Recruitment Efforts and Filing of Conversion Applications

In a further effort to encourage employers to convert the more resource-intensive Regular Track Applications for Employment Certification to the faster-moving Reduction-in-Recruitment process, the DOL has now implemented procedures whereby employers can avoid the risk that the DOL will open supervised recruitment in connection with the Regular Track adjudication process before the employer can complete the recruitment required for conversion.

An employer seeking to take advantage of conversion may now request that the DOL hold the Regular Track adjudication in abeyance in order to permit the employer to conduct recruitment and file the Application for Conversion. **The DOL procedures require special notification to the DOL by January 20, 2007, and filing of the Application for Conversion by April 1, 2007.** Once the employer notifies the DOL of the employer's intent to convert the application, the employer must proceed with recruitment and filing of the Application for Conversion by April 1, 2007. Failure to do so will result in closure of the case by the DOL, a decision which cannot be appealed.

Employers who do not notify the DOL by January 20, 2007, of the intent to convert an application may still proceed with conversion; however, the employer remains vulnerable to the risk that the DOL will open supervised recruitment after the employer has expended resources on the conversion recruitment efforts but before the employer is able to assemble and file the Application for Conversion.

Conversion Eligibility Requirements

In a Response to Frequently Asked Questions (FAQ), the DOL has clarified requirements for conversion eligibility and recruitment requirements. One of the most important clarifications offered in the FAQ is that the DOL will require a minimum of one newspaper advertisement as well as one other form of recruitment in order to demonstrate the pattern of recruitment required for adjudication under the Reduction-in-Recruitment track.

The DOL has specified that applications filed for "high demand" positions and positions in "high growth industries" are appropriate for conversion. Your Tindall & Foster immigration attorney will be able to research the designation applicable to a position in order to assist in evaluation of conversion eligibility prior to notifying the DOL of an intent to convert to Reduction in Recruitment.

For assistance in evaluating the potential eligibility of one or more cases for conversion from Regular Track to RIR processing, contact your Tindall & Foster, P.C. immigration attorney as soon as possible. Because each case must be independently evaluated for eligibility prior to notifying the DOL of the employer's intent to convert, do not wait until the conversion deadline to make this decision. Contact your Tindall & Foster immigration attorney now so that all necessary steps can be taken to assure DOL notification prior to the January 20, 2007 deadline, and the filing of a complete Conversion Application prior to the April 1, 2007 deadline.