

THE IMMIGRATION EDGE

Deadline for Speeding up the Green Card Process Approaches, Window Closes January 20, 2007

1/9/07

A window is open for employers who filed the first phase of the green card process for foreign employees to convert to a speedier process. The window closes January 20, 2007.

This conversion opportunity applies where an employer filed a Labor Certification Application with the U.S. Department of Labor (“DOL”) to show there were no U.S. workers for a permanent job the employer wants a foreign worker to fill. It applies to cases filed before March 26, 2005. Before then, employers could file cases without advertising or recruitment under a process called “Traditional Recruitment” (“TR”), passively waiting for the DOL to send recruitment instructions. Most TR cases are sitting on the shelf accumulating dust in a DOL Backlog Elimination Center in Dallas or Philadelphia. As an alternative, employers could exert more control to complete recruitment and file under a process called “Reduction in Recruitment” (“RIR”). Many RIR cases also are sitting at the Backlog Centers, but the DOL has blown the dust off, started processing and already certified many RIR cases.

Up to January 20, 2007, employers can notify the DOL by e-mail of the intent to convert a case from TR to RIR for potentially faster processing, using specified language. After the deadline, employers still can convert to RIR and commence recruitment. But the DOL might send conflicting recruitment instructions in the meantime that render the case ineligible for conversion to RIR, keeping the case on the slow track and delaying advancement through the next phases of the green card process.

What Are the Three Phases of the Employer-Initiated Green Card Process?

Under immigration law, applying for a permanent resident status and a so-called “green card” is a multi-phase process. Following are typical phases of the process:

- **Phase 1** -- Labor certification application, through which the employer demonstrates that there are no qualified, willing and available U.S. workers for the job;
- **Phase 2** -- Immigrant petition for alien worker (Form I-140), to ask U.S. Citizenship & Immigration Services (“USCIS”) under the Department of Homeland Security to allow the employer to hire a specific foreign worker; and
- **Phase 3** -- Adjustment of Status (Form I-485) or consular processing for background checks and other procedures to obtain the green card.

The RIR conversion opportunity speeds up Phase 1, which could ultimately result in the foreign employee having a green card in hand quicker than by waiting for the DOL to send instructions for advertising and recruitment for the TR case.

Are There Any Risks To Converting To RIR?

The employer and employer's attorney who sent the RIR conversion e-mail by January 20 must act quickly to follow up by placing ads at once, in a manner that will comply with the DOL regulations. Timing is critical. Recruitment usually takes more than 30 days, and *the RIR conversion package, with documentation for the case, must be sent to the DOL by April 1, 2007, or the case will be denied and closed with no right of appeal.*

An RIR conversion also could be denied for the following reasons:

- The recruitment is insufficiently documented.
- The wage offered is less than the prevailing wage.
- The recruitment revealed qualified, willing and available U.S. workers for the job.

In addition, there is a risk that the DOL will decide that the case is not suitable for RIR, but then, instead of denying, the DOL will process the case as a TR case.

To minimize risk, the employer might choose to let the case remain a TR case and wait for the DOL to issue specific recruitment instructions.

Why Is the DOL Making RIR Conversion Available?

Since March 2005, the TR and RIR processes were replaced with a new labor certification application process, called the PERM process, through which employers or their lawyers can file cases electronically. The DOL plans to complete processing of the hundreds of thousands of TR and RIR cases before October 2007, and to close the Backlog Centers. The RIR conversion option is a measure to help clear out the backlog.

What Does This Mean for Employers?

Employers who have any TR or RIR cases pending should expect to initiate or receive some communication with the DOL in the coming months regarding the status of the cases, in anticipation of the planned center closures by October 2007.

If RIR conversion is an option, the employer and attorney should weigh the pros and cons of quicker processing time against risks of denial and other factors based on the specific facts of each case.

To review the DOL FAQs, including the specified language for the "intent to convert" e-mail, e-mail addresses for the Dallas and Philadelphia Backlog Elimination Centers, and other information, see the DOL [website](#) and scroll down to "Backlog Elimination Centers, Extended RIR Conversion Date."

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