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Interpreter Releases Report and analysis of immigration and nationality law
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***1088 19. DOL Answers Frequently Asked Questions Regarding Centralized Filing of Applications**

On March 5, 2008, the Department of Labor's (DOL's) Office of Foreign Labor Certification (OFLC) announced that effective June 1, 2008, it will centralize the filings of the applications it receives. [FN86] As of that date, permanent labor certification applications (PERM) will be handled by the Atlanta National Processing Center (NPC) [FN87] and temporary applications (H-2A, H-2B, etc.) by the Chicago NPC. On April 3, 2008, the OFLC issued "Specialization FAQs, Round 1" to address issues arising as a result of this transition.

Q: The PERM process requires that a notice of filing be placed, containing information enabling persons wishing to provide evidence bearing on the application to the DOL. Given the transition of cases from the Chicago NPC to Atlanta NPC, what should employers list on the notice for the DOL address?

A: Pursuant to 20 CFR § 656.10(d), an employer seeking to file an application for permanent labor certification must provide notice of the filing either to the bargaining representative or, if there is no such bargaining representative, by posted notice to the employer's employees at the location of the employment. The notice must contain certain information, including the address of the appropriate certifying officer (CO). Because cases filed after June 1, 2008, will be filed with the Atlanta NPC but may have been prepared under the jurisdiction of the Chicago NPC, notices prepared in connection with an application may list an NPC that does not actually receive the case. However, as long as an address for the CO in either the Chicago or Atlanta NPC is identified on the notice, this will be sufficient to ensure that notice of the filing has been provided and an appropriate office can receive information. The OFLC recommends that any application in which a transfer of jurisdiction is expected to take place (i.e., the case might be filed before or after June 1, 2008) list both the Chicago and Atlanta addresses.

Applications in which the posting of the notice of filing commences after June 1, 2008, must list the Atlanta address. Listing the Chicago NPC in addition to the Atlanta NPC, however, will not result in a denial.

Q. How does DOL plan to transition PERM cases pending at the Chicago NPC to the Atlanta NPC?

A: As outlined in the March 5, 2008 Federal Register notice, effective June 1, 2008, employers who do not wish to file online at <http://www.plc.doleta.gov> must mail their PERM applications directly to the Atlanta NPC. All employers who file their PERM applications online on or after June 1, 2008, will receive case numbers with the prefix "A," and the applications will automatically be routed to the Atlanta NPC for processing. Except as outlined below, all PERM applications pending with the Chicago NPC on May 31, 2008, will be transferred to the Atlanta NPC on June 1, 2008.

Requests for Reconsideration/Appeals. Beginning April 15, 2008, all denial determination letters generated by the Chicago NPC will contain instructions requiring that the employer submit a request for reconsideration

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directly to the Atlanta NPC. In other words, denial letters generated on or after April 15 will no longer direct employers to submit requests for reconsideration to the Chicago NPC but rather to the *1089 Atlanta NPC. The employer or the employer's authorized representative must adhere to the instructions contained in the denial letter.

The Chicago NPC will continue to receive and process all requests for reconsideration where the denial determination letter instructs the employer to submit such a request directly to the Chicago NPC. However, requests for reconsideration incorrectly submitted by the employer or the employer's authorized representative to the Chicago NPC, where the letter directed that the response be submitted to the Atlanta NPC, will be date stamped as received and then forwarded by the Chicago NPC to the Atlanta NPC for processing.

The Chicago NPC will continue to process all Board of Alien Labor Certification Appeals (BALCA) cases through May 31. On June 1, the responsibility for processing all BALCA cases will be transferred to the Atlanta NPC.

Responses to Audit Letters. Beginning April 15, 2008, all audit examination letters generated by the Chicago NPC will contain instructions requiring that the employer submit all required documentation directly to the Atlanta NPC. In other words, audit letters generated on or after April 15 will no longer direct employers to submit required documentation to the Chicago NPC but rather to the Atlanta NPC. The employer or the employer's authorized representative must adhere to the instructions contained in the audit letter.

The Chicago NPC will continue to receive and process all audit review cases where the audit examination letter instructs the employer to submit required documentation directly to the Chicago NPC. However, requests for reconsideration incorrectly submitted by the employer or the employer's authorized representative to the Chicago NPC, where the letter directed that the response be submitted to the Atlanta NPC, will be date stamped as received and then forwarded by the Chicago NPC to the Atlanta NPC for processing.

Q. How does the DOL plan to transition H-2B cases pending at a state workforce agency (SWA) to the Chicago NPC?

A: As outlined in the March 5, 2008 Federal Register notice and except for emergency boilermakers, entertainers, and professional athletes, employers must continue to file applications for H-2B temporary labor certification with the SWA serving the area of intended employment. For all applications filed with the SWA on or after June 1, 2008, the SWA must send completed applications to the Chicago NPC.

For H-2B applications currently under review by the SWA, the DOL will implement the following transition policies:

1. If the H-2B application was filed with a SWA under the jurisdiction of the Atlanta NPC prior to June 1, 2008, and the completed application is ready for submission to the NPC prior to June 1, 2008, the SWA will send the completed application to the Atlanta NPC.
2. If the H-2B application was filed with a SWA under the jurisdiction of the Atlanta NPC prior to June 1, 2008, and the completed application is ready for submission to the NPC on or after June 1, 2008, the SWA will send the completed application to the Chicago NPC.

The Atlanta NPC will review and process all completed H-2B applications it receives from the SWA based

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on the transition policies outlined above.

[FN86]. See 73 Fed. Reg. 11954 (Mar. 5, 2008), discussed and reproduced in 85 Interpreter Releases 774, 814 (Mar. 10, 2008).

[FN87]. PERM stands for Program Electronic Review Management regulations (20 CFR Part 656), which govern the permanent employment of aliens in the U.S. and went into effect on March 28, 2005.
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