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DOL publishes final rule regarding the elimination of labor certification substitutions; USCIS announces termination of Premium Processing for immigrant visa petitions based on substitute labor certifications.

Global Edition

A Littler Mendelson Newsletter specifically for the Global Industry

New DOL Rule Eliminates Labor Certification Substitutions and USCIS Terminates Premium Processing for Visas with Such Labor Certifications

DOL Final Rule

Published on May 18, 2007, in the Federal Register is the Department of Labor (DOL) final rule regarding the elimination of the ability to substitute beneficiaries of unused approved labor certifications (LC). The final rule also includes a validity period within which an approved LC must be used for filing an employment-based immigrant visa petition and a prohibition against employers receiving reimbursement for costs incurred during the LC process.

The new rules provide that LC substitutions will be allowed until July 16, 2007. This rule affects not only LCs filed as traditional or reduction-in-recruitment cases, but also those filed under the PERM rule.

The final rule also provides that LCs approved prior to July 16, 2007, must be filed in support of an immigrant visa petition within 180 days of July 16, 2007. For LCs approved on or after July 16, 2007, the approved LCs will be valid for 180 days from the date of approval.

Previously, there was no prohibition against an employer receiving reimbursement for costs incurred during the LC process. The new rule explicitly prohibits reimbursement for costs connected with the preparation and filing of an LC. The topic of reimbursement will be the subject of a separate ASAP.

These are the major points of the new regulation. Littler Global attorneys are available to discuss the finer points of the new rule and how they apply to your particular situation.

USCIS Announcement Regarding Premium Processing

Related to the news that DOL will be eliminating the ability to substitute LC beneficiaries is the announcement that effective today, USCIS has terminated premium processing for I-140 immigrant visa petitions based on an LC that will use a substituted beneficiary.

Prior to the DOL final rule, USCIS was accepting I-140s that were being filed with substitute LCs for premium processing but because the agency anticipates a large number of filings that will be taking advantage of substitute LCs prior to July 16, USCIS announced that it cannot guarantee these types of I-140s will be processed within 15 calendar days. It is unclear from the announcement whether USCIS is terminating premium processing regardless of when the substitute LC I-140 was filed or if it only applies to filings made on or after May 18.

Littler Global attorneys are available to discuss strategies to best use of your company's approved LCs for substitution during this rapidly closing window of opportunity.