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## **Making the PERM Work Despite Many Denials**

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When news of the PERM broke out, employers and foreign workers were understandably excited. After all cutting down the processing time for labor certifications from the usual 4 to 5 years to merely 45 to 60 days, seems too good to be real.

Many immigration lawyers, however, chose to be cautious. A good number of them refused to rush into filing labor certification applications, and instead adopted a wait-and-see attitude.

They also attended seminars and conferences, gathered materials and examined the rules several times over to better understand how the PERM will work.

After two months of going into effect, the big question now is—has PERM delivered on its promise?

The American Immigration Lawyers Association (AILA) conducted last week a discussion among members and the Department of Labor (DOL) to answer that.

They collated the experiences of immigration lawyers nationwide on the PERM. The general impression was that for every PERM approval, there were so many more disapprovals and audit requests. Despite the initial disappointment, everyone wanted to make the PERM work.

AILA members and the DOL then scrutinized the grounds for the numerous denials. Much of the problem appeared to arise from kinks in the PERM's automated system.

There were five recurring grounds for the PERM denials.

The first ground refers to the issue of whether the alien meets the minimum qualification in the labor certification application.

Apparently, the PERM system would readily issue a denial where the application indicates that the alien has experience in an alternate occupation, but none in the job offered.

The second ground refers to professional positions where the application indicated that one of the three recruitment steps was conducted less than 30 days from the filing of the application.

It will be recalled that the PERM rules require a 3-step recruitment process for professional positions which must be conducted not earlier than 180 days nor later than 30 days from filing of the application.

The DOL recognized that the application may be approved where only one of the three recruitment steps was conducted after the 30-day period.

The third ground refers to applications for houseworker positions which indicated a failure to post a notice. The law actually does not require posting for household workers where there are no other US workers.

The DOL acknowledged that the denials on the first three aforementioned grounds were erroneous. The other two grounds for denials, however, still stand.

The last two grounds for denials referred to applications which used a P.O. Box as the employer's address and those which included recruitment conducted outside the

180/30 day period. The DOL maintains the validity of the denials on these two grounds.

The DOL said that the employer must state its actual physical address, not a P.O. box in order to prevent fraud.

With respect to recruitment information to be included in the application, it is advisable to provide recruitment information within the prescribed 180/30 day period only.

While records of recruitment that occurred outside the prescribed period should be kept on file in case of an audit, the application itself should not include such information.

To rectify the erroneous denials, the DOL said it has stopped issuing denial letters. It also said it has reprogrammed the PERM automated system and will run all the denied applications through the corrected system.

Applications that have been erroneously denied will be submitted to an analyst for

review, while those that have been properly denied will receive denial letters granting a new 30-day period to appeal.

For PERM applications that have to undergo audit, the predominant reasons referred to: (a) documentation of business necessity and (b) proof of the employer's existence. Nearly all of the applications that needed business necessity documentation required proficiency in a foreign language.

As expected, the DOL will need to examine the signed form ETA 9089 and recruitment report, documentation of the recruitment conducted and a copy of the prevailing wage determination, which are to be submitted 30 days from the date of the for audit purposes.

The PERM is not a perfect system, but it is the only one we have come up with so far.

The dialogue among employers, AILA and the DOL must continue in order to fine tune PERM and optimize the labor certification process to meet the needs of the US economy.