

## **New Department of Labor Regulation Regarding Labor Certifications & Update on USCIS Premium Processing Procedures**

May 18, 2007

On May 17, 2007, the U.S. Department of Labor (DOL) published a final regulation that contains several key changes regarding the Alien Labor Certification Program. In particular, the new regulation:

- Eliminates an employer's option to substitute one alien beneficiary for another alien beneficiary on a pending or approved application for Alien Labor Certification (known as "labor certification substitution"). This provision becomes effective July 16, 2007;
- Requires the employer to file an I-140 Immigrant Petition within 180 days of approval of the application for Alien Labor Certification; and
- With limited exceptions, requires the employer to bear all attorney fees, advertising costs and other fees associated with the processing of an application for Alien Labor Certification.

In response to this rule change, U.S. Citizenship & Immigration Services (USCIS) announced that, beginning today, it will terminate Premium Processing Service for Form I-140 Immigrant Petitions that request labor certification substitution. Premium Processing Service guarantees that USCIS will complete its initial adjudication of an I-140 Immigrant Petition within 15 calendar days of receipt, in exchange for an additional filing fee of \$1,000. In its press release dated yesterday, USCIS announced that it anticipated a dramatic increase in the number of I-140 Immigrant Petitions requesting labor certification substitution in light of the DOL's intention to eliminate the practice effective July 16, 2007. Because the volume of such petitions filed is expected to exceed USCIS' capacity to provide adjudications within 15 calendar days, USCIS has opted to eliminate the option of Premium Processing Service for I-140 Immigrant Petitions based on labor certification substitution.

For now, employers may continue to file such petitions using the regular processing option. However, beginning on July 16, 2007, USCIS will no longer accept any I-140 Immigrant Petitions that are supported by applications for Alien Labor Certification for an alien other than the alien beneficiary named on the application.

If you have any questions about USCIS or DOL policies and procedures, please contact your McCandlish Holton immigration attorney.