

DEPARTMENT OF LABOR**Employment and Training
Administration****Foreign Labor Certification; Reduction-
in-Recruitment (RIR) Conversion;
Extension of the RIR Eligibility Date**

AGENCY: Employment and Training
Administration, Labor.

ACTION: Notice.

SUMMARY: This Notice provides information regarding Foreign Labor Certification: Reduction-in-Recruitment (RIR) Conversion; Extension of the RIR Eligibility Date, and Amendments to General Administration Letter No. 2-02. It is directed to the Office of Foreign Labor Certification (OFLC) National Processing Center Directors, OFLC-Backlog Elimination Center Directors, and State Workforce Agency Directors (Prevailing Wage). The purpose of this Notice is to extend the eligibility date the Department of Labor (Department) uses for determining whether RIR re-application requests are timely.

SUPPLEMENTARY INFORMATION:**I. References**

20 CFR 656.21 (2001); 69 FR 43716 (July 21, 2004); 66 FR 40584 (Aug. 3, 2001); General Administration Letter (GAL) No. 07-97; GAL No. 2-02 Attachment B; and Training and Employment Notice (TEN) No. 12-05.

II. Background

Under regulations governing the Permanent Labor Certification Program in effect prior to March 28, 2005, the Department processed most employer applications for permanent certification under a "Traditional Recruitment" (TR) standard. Under this process, employers seeking to test their local labor markets for available, qualified United States workers were supervised in their recruitment activities.

The TR process often took extensive time to complete and contributed to the growing number of backlog cases. Therefore, the Department began to encourage employers to utilize the streamlined "Reduction-in-Recruitment" (RIR) process. On August 3, 2001, the Department published a final rule at 66 FR 40584 establishing a process for converting TR labor certification applications into RIR applications for the permanent employment of aliens in the United States. This regulation amended 20 CFR 656.21(i)(6) and included a provision allowing employers to convert TR cases they filed on or before August 3, 2001, to RIR applications, at their option.

The Department has found the RIR application processing time takes significantly less time than the TR application processing time. The TR processing time delays the filing process for employers because they may be required to wait for up to nine months or longer to receive a resolution (denial or certification) of their case. Accordingly, the Department has encouraged employers to use the RIR process to expedite the labor certification filing process. Such conversions allow an employer to complete its recruitment prior to filing a permanent labor certification application, thus shortening the time potentially required to reach a determination in any given case.

The Department initiated the RIR process via non-regulatory guidance in General Administration Letter (GAL) 1-97. Subsequent to the publication of the final RIR conversion rule in 2001, the Department issued additional, updated guidance to advise on and encourage use of the process through GAL No. 2-02, which originally expired on November 30, 2004. Later, the Department extended the expiration date for GAL No. 2-02 through December 31, 2006 in TEN No. 12-05. Neither of these later guidance documents extended the original August 3, 2001, deadline for conversion to RIR procedures in the final rule.

On July 21, 2004, the Department published an Interim Final Rule at 69 FR 43716 (effective August 20, 2004) granting the Employment and Training Administration's (ETA) Division of Foreign Labor Certification (now the Office of Foreign Labor Certification) the discretion to transfer permanent labor certification applications pending in state workforce agencies and ETA regional offices to centralized Backlog Elimination Centers (BECs) for processing. ETA opened the BECs in October 2004. The Department's goal is to have all backlogged permanent labor certification applications eliminated by September 30, 2007.

In December 2004, the Department amended 20 CFR part 656 again through 69 FR 77386 (Dec. 27, 2004). This regulatory amendment had the affect of removing the RIR conversion date in the current Code of Federal Regulations, but did not affect the processing of cases filed prior to March 28, 2005. For those purposes, the previous regulation remains in effect.

III. Policy Guidance

To further assist its backlog elimination goal, the Department has determined the RIR conversion date at section 656.21(i)(6) of the previous

regulation should be extended. Given the extensive backlog of older cases, which remains even with the implementation of a streamlined labor certification process, the Department has determined that it would be contrary to the public interest to delay implementation of this change and to withhold this benefit from applications filed under the regulation in effect prior to March 28, 2005.

By announcement of this Notice in the **Federal Register**, the Department is allowing employers that filed their applications before the removal of 20 CFR 656.21(i)(6) to process their applications under the RIR process with the exception of those cases that are already being processed under 20 CFR 656.21(f)(1) of the basic labor certification process. As a result, GAL No. 2-02 will remain in effect for RIR conversion purposes for applications filed *on or before March 27, 2005*. Further, the Department will process RIR conversions using the same process it currently uses in the backlog centers.

IV. Action Required

Effective on October 6, 2006, Backlog Elimination Center Directors are required to:

A. Provide this guidance to appropriate staff.

B. Apply these procedures for handling employer requests to convert TR applications received by state workforce agencies on or before March 27, 2005, to RIR applications unless the exception described in paragraph 4(C) below applies.

C. Exception: These procedures do not apply to any traditional recruitment cases that are already being processed under 20 CFR 656.21(f)(1) of the basic labor certification process and which recruitment (*i.e.* a job order) has been initiated by the BEC.

V. Inquiries

Inquiries related to the implementation of this guidance should be directed to the appropriate Backlog Elimination Center in Philadelphia at (484) 270-1500 or Dallas at (214) 237-9111.

This information is also released in the form of a Training and Employment Guidance Letter (TEGL), which is available at <http://wdr/doleta.gov/directives>.

Signed at Washington, DC, this 28th day of September, 2006.

Emily Stover DeRocco,

*Assistant Secretary, Employment and
Training Administration, Labor.*

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