

DOL Agrees to Reopen BEC Cases

Last Updated: Wednesday, July 19, 2006

Under AILF's Threat to Sue, DOL Agrees to Reopen BEC Cases

30- DAY DEADLINE FOR RESPONDING!**

AILF's credible threat to sue the U.S. Department of Labor has caused the DOL to agree to reopen Backlog Elimination Center (BEC) cases erroneously closed for alleged failure to respond to a 45-day letter. This agreement includes cases where the employer or attorney never received the 45-day letter and also where they received the 45-day letter and timely responded, but the case was nonetheless closed.

Background:

In March 2005, DOL adopted a new system for filing applications for labor certifications, known as the Program Electronic Review Management (PERM). The new system only applies to applications filed on or after March 28, 2005. When it adopted this new system, DOL already had pending before it over 300,000 labor certification applications that had been filed under the old system but had not yet been decided. This backlog of pre-PERM cases is not being handled under the new PERM system.

DOL set up two BECs to handle all of the backlogged cases - one in Dallas and one in Philadelphia. Throughout 2005, DOL shipped the 300,000 plus backlogged cases from around the entire country to these two BECs.

The BECs began sending a "45-day" letter to the employer/attorney in every one of the backlogged cases. These letters request that the employer/attorney check a box on an enclosed form if they want to proceed with the case. If the employer/attorney fails to respond to the letter within 45 days, BEC closes the case.

There were serious problems with the BECs' management of the 45-day letter process. The two primary problems were:

1. Cases that were closed for failure to respond to the 45-day letter even though the attorney and the employer never received a copy of the letter; and
2. Cases that were closed for failure to comply with the 45-day letter although the employer/attorney did send a timely response to the letter to the BEC.

DOL had failed to set up a reasonable and fair process for reopening cases that were wrongly closed for one of these two reasons.

The Litigation

Months of liaison efforts by the American Immigration Lawyers Association (AILA) to resolve the issue with DOL were not successful. AILA then brought the issue to AILF's Legal Action Center. AILF's legal and fact research convinced us that litigation against DOL likely would be successful and would produce the desired results. AILF identified numerous injured parties who were willing to sue DOL over this issue. We drafted the complaint (lawsuit) and sent DOL a demand letter. DOL quickly notified us and AILA that they were willing to negotiate solutions to the problems.

The Solutions

Following negotiations with AILF and AILA, DOL established a special process for handling requests for reopening these erroneously closed cases.

DOL Agrees to Reopen BEC Cases

Published on Immigration Policy Center (<http://www.immigrationpolicy.org>)

Source URL: <http://www.immigrationpolicy.org/litigation/dol-agrees-reopen-bec-cases>