



NOV 20 2003

**MEMORANDUM FOR ALL REGIONAL CERTIFYING OFFICERS**

**FROM:** WILLIAM L. CARLSON *Bill Carlson*  
Chief  
Division of Foreign Labor Certification

**SUBJECT:** Processing of Regional Office Reduction in Recruitment (RIR) Requests

**Background:** The Division has previously provided procedural guidance to Certifying Officers when making determinations on RIR Requests; see GAL 01-97, Change #1, and the March 18, 2002, and May 28, 2002, Memoranda to Certifying Officers. New developments, including the impending implementation of PERM, require the issuance of additional guidance with respect to the disposition of RIR requests.

**Current Situation:** Several Regional Offices have a substantial backlog of RIR cases, particularly those involving Information Technology (IT) occupations. Under normal circumstances, labor market conditions might require that many of these cases be remanded to a State Workforce Agency (SWA) for conventional recruitment. However, in certain regions, the remanding of large numbers of cases would create backlogs which could produce processing delays of two or more years in addition to the delays that have already occurred. Delays of this extent are not desirable under any circumstances, but are simply unacceptable given the imminent implementation of PERM.

**Purpose:** To provide policy guidance in light of the aforementioned situation designed to assist in the processing of Regional Office backlogged as well as new RIR cases filed under existing rules and regulations governing the current Permanent Program. This procedure is for Regional Office use only.

**Process:** The following standard operating procedures have been developed to guide the decision-making of Regional Certifying Officers as they review and process RIR requests filed under the current Permanent Labor Certification Program.

- 1. Initial Review Provision.** All RIR applications must be reviewed based upon existing criteria for completeness of the application, demonstration of a pattern of recruitment, and compliance with applicable regulations such as absence of restrictive requirements, **layoffs by the requesting employer that have not been adequately addressed**, etc. Certifying Officers, at their discretion based upon information available to them, may deny the employer RIR request at this stage of review.



A Proud Member of America's Workforce Network

- Applications not meeting current completeness/compliance requirements will be issued a Notice of Finding (NOF), as appropriate.

- For the remaining applications which have met the completeness/compliance review, the following guidelines shall be applied:

- ❖ Applications for positions requiring a Bachelor's Degree and three (3) or more years of experience or a Master's Degree (+) six (6) months of experience (assuming these requirements are appropriate) **should be certified** and not subject to the retest provisions noted below.
- ❖ Applications not meeting the above criteria will be reviewed to determine if the level of recruitment and the detail provided in the recruitment report satisfy the Certifying Officer such that further recruitment is unnecessary. All such applications should be certified.

2. **Retest Provision.** For any remaining applications, **both those in IT occupations and others**, the following procedures are established. The employer and/or attorney of record shall be sent a letter which offers the following options:

- Withdraw the application totally.
- Withdraw the RIR request and have the case remanded to the SWA and placed in the SWA queue based on its priority date unless the employer requests, in writing, that the case be put in the queue based on its remand date.
- Conduct a one-day "retest" of the labor market in accordance with direction provided by the Certifying Officer. Although employers may utilize the type of broadly crafted advertising common in previously filed RIR applications, they need to be advised that their recruitment reports will need to specifically identify the disposition of all applicants for the position. The employers should be advised to conduct their recruitment and to submit their recruitment report within **sixty (60) days of the date of the letter to the employer..** Employers are encouraged to provide copies of the resumes submitted in response to the advertisement. In the event retest documentation is not provided within seven (7) days of its due date to the Certifying Officer, the case will be considered abandoned.

3. **"Look Back" Provision.** Currently, the Department permits employers who have filed a RIR application and who have placed an advertisement within the past sixty (60) days to use that advertisement in lieu of conducting the new recruitment which takes place pursuant to Paragraph 3 of the March 18, 2002, Memorandum. Henceforth, when additional recruitment is required in support of an RIR application, the Department shall permit employers to utilize advertisements placed within the past six (6) months. Thus, if an employer has

already retested the market within the past six (6) months, it is not necessary for the employer to conduct and incur the cost of any additional recruitment efforts.

However, employers electing to pursue this option must be able to submit to the Department a detailed recruitment report at the level of individual positions and document reasons why applicants were not selected. In addition, a copy of the advertisement must be provided as well. The Department also reserves the right to review resumes and may do so for quality assurance purposes.

4. **Application Modification Provision.** Employers who elect to engage in the "retest" opportunity shall be permitted to make modifications to their application(s) which do not change the **occupational classification** of the job opportunity at the original time of filing. Changes may include different job requirements or additional duties. However, any adjustments, including the addition of work experience, must meet Departmental criteria, e.g., experience not gained on the job, **requirements not restrictive**, etc., in order to be considered. Decisions as to the acceptance of the proposed changes remain within the discretion of the respective Certifying Officer.

**Employers who submit "retests" that have been modified in such a way that the job requirements are not in compliance with regulations are to be sent a Notice of Findings, and not offered the opportunity to further re-advertise.**

*provided by:*  
**MARCOS NEGRON & AKAIKE, LLP.**  
*(English site) (Japanese site)*