

ATTACHMENT 1

US Immigration Client Alert

The U.S. Department of Labor (DOL) published a final rule in the May 17, 2007 edition of the Federal Register that impose a number of requirements designed to combat fraud and the improper sale, barter or purchase of labor certifications. The rule—the full title of which is "Labor Certification for the Permanent Employment of Aliens in the United States; Reducing the Incentives and Opportunities for Fraud and Abuse and Enhancing Program Integrity"—will be effective on July 16, 2007.

The final rule prohibits an employer from receiving payment of any kind as an incentive or inducement to file, or in reimbursement of the costs of preparation and filing of, a labor certification application, including covering the costs of the employers' attorneys' fees. Employers are also prohibited from reducing the wages, salary or benefits of a foreign national named on a labor certification application for any expenses related to the preparation and filing of the application. This prohibition includes the payment by the foreign national of costs (for recruitment or other activities in furtherance of the labor certification) as well as the employers' attorneys' fees.

In the preamble, DOL states that its intent is to make clear that employers who submit labor certification applications do so with the full understanding that the costs they incur for the preparation and filing of the application are to be borne exclusively by the employer. While recognizing that many legitimate employers may have a practice of seeking reimbursement from the foreign nationals they hire for the expenses they incur in filing and obtaining labor certification, DOL believes that a foreign national who reimburses an employer is effectively being a paid a lower wage than agreed to by the employer on the labor certification application, and that this, in turn, undermines the DOL's finding—in granting labor certification—that the wages and working conditions of the job will not adversely affect U.S. workers.