

BNA Daily Labor Report

Thursday, August 7, 2008

Immigration

DOL's Labor Certification Process Burdensome, Complex, Study Says

The Labor Department's labor certification process is damaging U.S. competitiveness and job growth because the process is burdensome, lengthy, and complex, according to a study released recently by the **National Foundation for American Policy (NFAP)**.

The 15-page study, "Certifiable: The Department of Labor's Approach to Labor Certification," was released July 31 by NFAP, which describes itself as an Arlington, Va.-based, nonprofit, nonpartisan public policy research organization focusing on trade, immigration and related issues.

The study said that while the law requires labor certification for most skilled immigrants seeking visas, the department has created the current system "out of whole cloth."

"There was no mention of individualized recruitment in the proposed labor certification regulations on November 19, 1965, or the final version of these same implementing rules that came out on December 3, 1965," according to attorney Gary Endelman. "There was no sense that employers had to advertise."

For years, the study said, the department has required that employers sponsoring skilled immigrants fulfill the provisions of the Immigration and Nationality Act by placing advertisements to show that no eligible U.S. worker could fill the job, documenting the results of the recruitment, and "other methods that require volumes of paperwork and time for the government agency to review."

"U.S. employers will always opt for the option of hiring an equally qualified U.S. worker --it's far easier than recruiting a foreign professional, navigating the federal bureaucracy, and administering a very cumbersome visa process," said NFAP executive director Stuart Anderson. "However, when a foreign-born professional is the most qualified, the Department of Labor should not create new employment hurdles that aren't required by current law."

The study said the certification process "bears no resemblance to the reality of how companies actually recruit, with few employers using print ads for highly skilled positions, as DOL requires for labor certification, and most engaging in ongoing use of the Internet, networking and employee referrals."

Further, it said the department does not consider economic facts in adjudicating labor certification applications, such as that most unemployment rates for professionals have hovered between 1 percent to 2 percent, essentially full employment, or that major U.S. technology companies average more than 470 U.S.-based job openings for skilled positions, according to NFAP.

The study said DOL "has made the process so complex that employers need the advice of attorneys to navigate the system."

"By requiring so much government oversight it created backlogs that lasted years," the study said. "The new PERM (Program Electronic Review Management) system is supposed to be streamlined. Yet since DOL audits a large proportion of cases it still takes a year or more."

The Labor Department Aug. 6 declined to respond to the study.

To view the complete report, visit the NFAP Web site at <http://www.nfap.com/pdf/080731laborcertification.pdf>. 