

3 July 2007



5225 N. Wilson Blvd.
Arlington, VA 22205-1148

Phone: (703) 908-4800
Fax: (703) 908-4890

firm@immigration.com
firm@businesslaw.com
www.immigration.com

Attorneys:

Rajiv S. Khanna *
William W. Hamilton#
Jitesh Malik +
Mathew Chacko +

* Admitted to practice law in DC, VA
#Admitted to practice law in VA
+ Admitted to practice law in NY

Elaine L. Chao
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Re: Amendments to 20 CFR 656 Published 17 May 2007

Dear Ms. Chao:

We are writing on behalf of our clients and our community of stakeholders to seek clarification on two very important issues left unaddressed by the above referenced regulations. Expedient response from your office would be much appreciated and would greatly help in orderly administration of PERM.

Do the regulations require us to modify contracts for dual representation entered into between counsel and clients before July 16th, 2007?

This question is in the minds of a very large number of stakeholders. We, the counsel, have been performing legal services pursuant to several contracts entered into before 16 July and/or 17 May 2007. Pursuant to these contracts, we represent both the employer and the employee, irrespective of who is paying the legal fees. Kindly address this issue at the earliest so we can advise our community and clients and choose our future course of action.

Do the regulations permit counsel to voluntarily represent the employers, pro bono, even where employees are retaining counsel? Such representation is often necessary for efficient and effective protection of the individual employee's interest.

In most cases, for effective and efficient representation of the individual employee, counsel need to represent the employer as well. Indubitably, Section 656.12(b) places a bar upon the employers seeking to be represented, unless they pay the legal fees. It is also clear that an individual employee may retain counsel and pay the legal fees. But what is unclear is that does this bar also prevent counsel from voluntarily representing an employer pro bono? Such representation is usually necessary for counsel to effectively and efficiently represent our employee clients. The question here pertains to counsels' choice to represent both sides where deemed

necessary in their professional opinion. The regulation as framed seems to foreclose counsels' choice of pro bono representation by requiring the employers to pay the legal fees even if they do not necessarily wish to be represented at all or to be represented by the same counsel.

Both these issues raise hitherto unaddressed APA and constitutional law concerns regarding, *inter alia*, due process, federal encroachment upon state subjects, retroactivity, right to contract and *ultra vires* rule-making. We also believe that these issues confer *locus standi* upon the bar to seek judicial redress.

We respectfully remind you that these regulations carry heavy penalties and as such must be clearly defined. Such clarity is mandated by law and equity. Kindly provide clear guidance for the stakeholders before the regulations go into effect on 16 July 2007.

Thank you for your time and attention.

Law Offices of Rajiv S. Khanna, PC



By:

Rajiv S. Khanna

cc:
John R. Beverly, III
Administrator, Office of National Programs
U.S Department of Labor
Assistant Secretary for Employment and Training
200 Constitution Avenue, NW
Washington, D.C. 20210