

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210



OCT 29 2008

Ms. Crystal Williams
Deputy Director of Programs
American Immigration Lawyers Association
1331 G Street, Northwest, Suite 300
Washington, D.C. 20005



Dear Ms. Williams:

This is in response to your letter to Secretary of Labor Elaine L. Chao, co-signed by your colleagues Ms. Kathleen Campbell Walker and Ms. Jeanne Butterfield, which was referred to this office for reply. The Employment and Training Administration (ETA) is responsible for administering the Department's Foreign Labor Certification Program. Your letter expressed concern regarding the Press Release of June 2, 2008, announcing the audit of Applications for Permanent Employment Certification filed by the law firm of Fragomen, Del Rey, Bernsen and Loewy, LLC, and the Department's interpretation of the legitimate role of counsel during the permanent labor certification process.

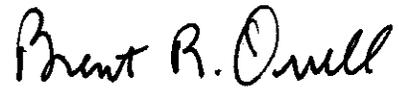
The Department recently issued the Restatement of PERM Program Guidance Bulletin on the Clarification of Scope of Consideration Rule in 20 CFR § 656.10(b)(2) on August 29, 2008. The regulation at 20 CFR § 656.10(b)(2) states:

...(2)(i) It is contrary to the best interests of U.S. workers to have the alien and/or agents or attorneys for either the employer or the alien participate in interviewing or considering U.S. workers for the job offered to the alien. As the beneficiary of a labor certification application, the alien can not represent the best interests of U.S. workers in the job opportunity. The alien's agent and/or attorney can not represent the alien effectively and at the same time truly be seeking U.S. workers for the job opportunity. Therefore, the alien and/or the alien's agent and/or attorney may not interview or consider U.S. workers for the job offered to the alien, unless the agent and/or attorney is the employer's representative, as described in paragraph (b)(2)(ii) of this section... (ii) The employer's representative who interviews or considers U.S. workers for the job offered to the alien must be the person who normally interviews or considers, on behalf of the employer, applicants for job opportunities such as that offered to the alien, but which do not involve labor certifications.

The guidance discusses and clarified the types of actions that are prohibited under this regulatory provision. Among other things, the Restatement makes it clear that "the Department understands and appreciates the legitimate role attorneys and agents play in the permanent labor certification process. Additionally, the Department respects the right of employers to consult with their attorney(s) or agent(s) during that process to ensure they are complying with all applicable legal requirements." The Restatement also provides that "the Department does not... prohibit attorneys and agents from performing the analyses necessary to counsel their clients on legal questions that may arise with respect to this process." I believe this guidance substantially addresses your concern.

If you have any questions, please don't hesitate to call me at (202) 693-2700.

Sincerely,

A handwritten signature in black ink that reads "Brent R. Orrell". The signature is written in a cursive style with a large, prominent initial "B".

Brent R. Orrell
Deputy Assistant Secretary