



## Breaking News

February 4, 2014

### DOL Releases Surprising Internal Audit Guidelines

The Department of Labor Atlanta National Processing Center (NPC) recently released internal guidelines used to determine which labor certification cases should be subjected to audits and possible supervised recruitment. A DOL "audit" of a PERM labor certification means that the Department wants to examine the actual documents that back up the employer attestations under oath on either the electronic or paper version of Form ETA 9089. "Supervised recruitment" means that the Department feels that the job in question has not been adequately recruited, and orders new recruitment, with responses routed through its office in Atlanta.

The enumerated audit and supervised recruitment triggers include:

- Jobs for which the primary requirements are less than Bachelor's Degree
- Trade related occupations
- Certain public schools
- Cases that require a degree and no experience
- Some cases where the employer indicates on the labor certification form that it has recently had a layoff
- Applications by same employer and employee that are resubmitted after denial within the calendar year
- Applications by same employer and employee that are resubmitted after withdrawal of an audit case within a calendar year
- Applications which are filed on paper, rather than electronically

Notably, the DOL also indicated that several audit triggers are

#### About Us

Ware|Gasparian has expertise in all areas of immigration law ranging from business and education to asylum and deportation. We provide comprehensive immigration-related services to clients around the world representing corporations, educational institutions, businesses, and individual clients.

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not currently active, meaning these characteristics should not trigger audits but previously may have. Those inactive triggers include:

- H-1B Dependent Employers (employers who have large numbers of H1B temporary workers as a proportion of their overall workforce)
- Jobs requiring a degree where the employee entered the US with no papers or with an H2 (skilled worker or agricultural worker) visa
- Employers who recently issued layoffs (only SOME of these cases are now audited)
- Employers with a history of roving employees (employees with no fixed worksite)

Note that despite this helpful list, the vast, vast majority of DOL audits are totally random, and usually have nothing to do with an audit "trigger" or any mistake on the application. It should also be noted that we have filed many cases which might fit within one or more of the foregoing audit "triggers," which were never audited. So, in the final analysis, despite these new revelations, one never knows exactly what will happen when filing a labor certification!

The DOL document may be viewed at the following link:

<http://www.foreignlaborcert.doleta.gov/pdf/OFLCAuditPlan.pdf>

## **USCIS Released New Form N-400 Application for Naturalization**

US Citizenship and Immigration Services (USCIS) announced the release of a new form N-400, Application for Naturalization. According to USCIS the revised Form N-400 contains:

- Clearer and more comprehensive instructions which highlight general eligibility requirements and specific instructions on how to complete the application;
- 2D barcode technology used for each page on the revised Form N-400, which will enhance our ability to quickly and accurately process the application; and
- New questions based on legal requirements related to national security and good moral character.

The eligibility requirements for naturalization and the filing fee for the application remain unchanged. USCIS will continue to accept previous versions of the form until May 5, 2014. After

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May 5, USCIS will only accept the revised version of the Form N-400.

## Attorney Speaking Engagements

Our attorneys frequently present on a wide range of immigration issues at no charge to diverse professional and community groups, institutions of higher education, and many types of businesses.

If you are interested in attending a presentation or inviting one of our attorneys to speak to your group, institution or business, please contact Yolanda Mata to discuss available dates and topics of interest.

[Here](#) are some of the upcoming engagements.

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