




SEP 15 2004

MEMORANDUM FOR: ELLIOT P. LEWIS  
Assistant Inspector General  
for Audit

FROM: EMILY STOVER DeROCCO   
Assistant Secretary for Employment  
and Training

SUBJECT: OIG Audit of ETA Foreign Labor  
Certification Program – Section  
245(i) Review

Thank you for the recent draft report of the Office of Inspector General (OIG) titled, "Restoring Section 245(i) of the Immigration and Nationality Act Created a Flood of Poor Quality Foreign Labor Certification Applications Predominantly for Aliens without Legal Work Status." The Employment and Training Administration appreciates the opportunity to comment on the draft report and generally agrees with the report's findings and offers several comments.

ETA concurs with the finding that reinstatement of Section 245(i) of the Immigration and Nationality Act (INA) resulted in dramatic increases in applications for permanent labor certification creating a major backlog in the processing of applications. We note that ETA has attempted to eliminate the large backlog through administrative means available to the agency; however, additional resources are necessary and have been partially appropriated in order to fully eliminate the entire backlog.

With respect to the two (2) recommendations as a result of your audit, ETA offers the following information.

First, you recommend ETA process the current backlog of applications in accordance with applicable laws and regulations and utilize Notice of Findings (NOFs) and approve applications only if the alien has sufficient qualifying experience not earned with the petitioning employer.

ETA has always required, and will continue to require, foreign labor certification applications to be processed in compliance with all applicable statutes, regulations, and policies. The utilization of NOFs is specific to the substance of the individual case being adjudicated; these are routinely issued, as warranted, by ETA Certifying Officers. The question of whether an alien has earned experience with the petitioning employer is addressed in ETA policy and is routinely reviewed during the certification adjudication process.

Second, you recommend ETA verify an employer's current in-business status prior to certification and refer to OIG Office of Labor Racketeering and Fraud Investigations any applications where the employer is determined not to be a *bona fide* employer.

ETA is in the process of establishing central processing centers where the majority of the permanent program backlog cases referenced in your report will be reviewed and adjudicated. We agree with your recommendation and have already built this verification process into the case management software we intend to utilize in processing cases.

We look forward to continuing our productive relationship. Please feel free to contact me if you have any questions regarding our response.