

**Immigration Newswire**  
**Volume 5, Issue 12**  
**December 12, 2006**

**DOL to Create Safety Window on RIR Conversions**

As previously reported in [Immigration Newswire](#), the Department of Labor has extended the deadline for RIR conversions and has provided [additional guidance](#) on these conversion requests.

The American Immigration Lawyers Association has reported that the Department of Labor will soon be announcing a "window of safety" for employers who wish to convert pending traditional labor certifications to RIR. This will allow employers to notify DOL that they plan to submit a conversion request, and then have a specified time period during which they can submit that request without being in danger of receiving recruitment instructions and thus wasting the RIR recruitment. AILA states that the window will not be a long period of time.

The announcement from DOL could come as early as this week.

**District Court Upholds Nebraska Service Center's "Single Foreign Degree" Requirement for EB-2 and EB-3 I-140 Petitions**

In a recent District Court decision, the court upheld in part and overturned in part an I-140 decision made by the Nebraska Service Center (NSC) and the Administrative Appeals Office (AAO). The decision, [Snapnames.com, Inc. v. Chertoff](#), 2006 U.S. Dist. LEXIS 87199 (2006), is not binding precedent on the NSC but provides a good argument for use in future I-140 Employment Based Third Preference "Skilled Worker" petitions.

The case came to the District Court on appeal from an AAO decision upholding the NSC's denial of two I-140 petitions filed by the employer. The first I-140 was an EB3 Skilled Worker or Professional petition and the second petition was an EB2 Advanced Degree Professional petition. The alien had a three-year Indian degree plus additional Chartered Accountant coursework. The labor certification required 4 years of high school, 4 years of college, and a "B.S. or foreign equivalent." The NSC denied both I-140 petitions filed on the basis of the approved labor certification, because they determined that the alien did not meet the educational requirements specified in the labor certification.

The issues on appeal to the District Court were (1) whether the NSC and AAO properly concluded that work experience is not properly considered in

determining whether the alien has a “B.S. or foreign equivalent;” and (2) whether a “B.S. or equivalent” requires a single degree. As to the first issue, the District Court held that the NSC did properly conclude that experience should not be considered because the employer had said that a “B.S. or foreign equivalent” was required in the box on Form ETA 750 that says “College Degree Required.” The plain language of the labor certification requirements as written by the employer indicated that a specific educational background was required; therefore experience should not have been considered.

As to the second issue, whether a single degree is required, the District Court said that the word “equivalent” in the employer’s requirements was ambiguous and that in the context of EB3 Skilled Worker petitions, where there is no statutory educational requirement (2 years of experience are the minimum statutory requirement), deference must be given to the employer’s intent. Therefore, where, as in this case, the employer stated in the EB-3 Skilled Worker I-140 petition that by “B.S. or equivalent” it meant any education determined by an evaluation agency to be equivalent to a U.S. Bachelors Degree would suffice, the petition should be approved if such an evaluation is provided. However, in the context of an EB3 Professional petition or an EB2 Advanced Degree Professional petition, in which the beneficiary is statutorily required to hold a baccalaureate degree, the court stated that USCIS has authority to interpret the statutory language and to fill in the gaps. Therefore, NSC properly exercised its authority in concluding that a single foreign degree or its equivalent is required for EB3 Professionals or EB2 petitions.

The EB3 category includes both Skilled Workers and Professionals. There is no apparent advantage to filing an I-140 petition as a Professional rather than a Skilled Worker. The petition will have the same priority date either way. In cases where a LC/ I-140 beneficiary has multiple foreign degrees, then under the logic of [Snapnames.com](http://Snapnames.com), an employer can require a Bachelors Degree “or foreign equivalent” on the labor certification and then submit the I-140 requesting EB3 Skilled Worker classification. USCIS should give deference to the employer’s understanding of its degree requirement.

There is no guarantee that the Nebraska Service Center will accept this argument since Snapnames.com is not binding on it. However, it is a very persuasive argument.

## **DHS Publishes Notice On Background Check Modifications**

USCIS conducts background record checks or security clearances on all applicants for immigration benefits. While the checks are usually conducted in a timely manner, many of our readers are unfortunately aware that in many cases, record checks severely delay the adjudication of benefits applications. In the worst cases, record checks can be delayed for a matter of years.

On December 4, 2006, the Department of Homeland Security published a [Notice](#) in the Federal Register stating that effective January 3, 2007, a new system of record checks will be implemented. The Notice explains that USCIS conducts three different background checks on applicants: an FBI fingerprint check, an FBI name check, and a CBP Treasury Enforcement Communication System/ Interagency Border Inspection System Name Check.

Under the soon-to-be implemented new record check system, called the "Background Check Service," is a centralized repository that contains the consolidated data on all background check requests and results. The new system will purportedly allow USCIS representatives to request background checks and access the stored data during the adjudication process to facilitate informed decision-making. The goal is to speed the adjudication process by preventing the lengthy delays currently associated with background checks.

### **Supreme Court Issues Favorable Ruling on Immigration Consequences of Drug Possession Convictions**

On December 5, the Supreme Court ruled in [Lopez v. Gonzales](#), 549 U.S. \_\_\_\_ (2006) the "aggravated felony" ground of removability does not apply to individuals who are convicted of state drug possession felonies *unless* those same convictions would qualify as felonies if tried under federal law.

While this ruling is very helpful for people who are currently in the United States and would face *removal*, it does not remove the drug-related grounds of *inadmissibility*, which apply whenever an alien applies for admission to the U.S. or adjustment of status. INA 212(a)(2)(A)(i)(II) makes inadmissible to the U.S. anyone who is convicted of, or admits having committed, "a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance." This covers a wide array of drug offenses including such relatively minor offenses as possession of drug paraphernalia.

### **DHS To Change Premium Processing Rules**

According to the Department of Homeland Security Regulatory Agenda published in the Federal Register, USCIS plans to change the rules related to the Premium Processing service, allegedly in order to adjust for inflation.

Currently, Premium Processing guarantees adjudication of a case within 15 calendar days in exchange for a filing fee of \$1000. Under the proposed changes, Premium Processing would be changed to 15 *business days*. In addition, the rule will add additional circumstances that will stop the Premium Processing clock. It is unknown at this point what those additional circumstances are and whether they will result in a refund of the Premium Processing fee. We will provide additional information on these proposed changes as it becomes available.

*~ Disclaimer ~*

*The information contained in this newsletter is for informational purposes only.  
It does not constitute legal advice.*