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Permanent Residence Through Employment

Beginning the Process of Permanent Residence Through Employment

- In the following pages, we delineate the process for permanent residence through employment, which includes the PERM Labor Certification process.
- **Obtaining Permanent Residence through Labor Certification is usually a three-step process:**
 - Filing the PERM application for Employment Certification with the DOL (Department of Labor)¹.
 - Filing an immigrant visa petition with the U.S. CIS.
 - Filing for permanent residence through the regional U.S. CIS Service Center or at a U.S. consular office abroad after the immigrant visa petition is approved.

I. Beginning the Labor Certification Process

- To begin the Labor Certification process, an application for PERM must be processed. The PERM is a formal finding by the U.S. Department of Labor (DOL) that a company has a position it cannot fill with a U.S. citizen or permanent resident. The PERM must be approved before an immigrant visa petition can be filed with the U.S. CIS.
- The PERM process requires that an employer complete a substantial amount of recruitment for the position during the six (6) months prior to submission of the application and can document the recruitment efforts.
- The recruitment process for the PERM process begins with the Employer and E&M agree on job title, job description, and job requirements for the position for which employer is seeking labor certification. It is important to note that some strategies may require applying for a position that the employee will fill in the future as opposed to the position he/she holds at the time of PERM filing.
- E&M then files a Prevailing Wage Determination (PWD) with the Department of Labor. The PWD dictates what the minimum salary will be for the position upon greencard approval (this could be several years). Although the employer does not necessarily need to pay the employee that wage at the time of filing, the employer must be able to demonstrate through financial documentation that it had the “ability to pay” the wage.

¹ A Labor Certification Application (known more popularly as a PERM application) is not to be confused with a “Labor Condition Application” (known popularly as the LCA). Although both applications are filed with the Department of Labor, the PERM is related to the greencard process. The LCA is related only to nonimmigrant visa petitions such as the H-1B and E-3.



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- After the Department of Labor approves the PWD, the actual recruitment can begin. Recruitment is optimally conducted in a 30 day time period. During this time, the Employer with E&M assistance conducts the following recruitment steps:
 - 30-day job order placement with SWA
 - Two (2) newspaper advertisements, to run on consecutive Sundays
 - Notice of Application filing, to be posted at employee's worksite for 10 consecutive **business** days

- In addition to the above-listed required recruitment steps, for professional positions the employer must also conduct recruitment through at least three (3) of the following:
 - Job fairs
 - Employer's website
 - Job search website other than employer's
 - On campus recruiting (only for positions that do not require experience)
 - Trade or professional organizations
 - Private employment firms
 - Employee referral programs with incentives
 - Campus placement offices (only for positions that do not require experience)
 - Local and ethnic newspapers
 - Radio and television advertisements

- After 30-day recruitment period ends, employer is required to wait an additional 30-days prior to filing PERM application. During this period E&M:
 - Works with employer to get the employer registered to file PERM applications online
 - Prepares drafts of PERM application for employer review
 - Prepares employment verification letter(s) for employee to provide to prior employers where he/she gained the experience required for the PERM application.

- After the 30-day wait period ends; E&M files the PERM application online with the Department of Labor.



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- U.S. Department of Labor then decides (approves/denies/issues Audit Notice) on PERM application.

II. Filing an Immigrant Visa Petition with the U.S. CIS

- When the PERM labor certification application has been approved or “certified” by the DOL, the next step is to file an immigrant visa petition (Form I-140) with the regional U.S. CIS service center.
- The visa petition is filed with various attachments, including financial documentation from your company demonstrating the ability to pay the prevailing wage and documentation from the foreign worker verifying that the requirements of the labor certification are met (e.g. job experience and knowledge of specialized skills).
- The processing time for the petition approval varies among the U.S. CIS regional offices, ranging from six to twelve months.

III. Filing for Permanent Residence

A. Filing with the Regional U.S. CIS Office

- Once the immigrant petition has been approved and an Immigrant Visa quota number is available to the applicant², the final step in the permanent resident process will be accomplished by filing an “adjustment of status” package with the regional U.S. CIS office.
- It is at this time that documentation such as birth certificates, photographs, and medical examinations will be required.
- U.S. CIS now requires interviews for all adjustment of status applications. An interview will be scheduled with the local USCIS office nearest the applicant’s place of residence.
- Current processing time is approximately 6-12 months.

² Immigrant Visa quotas are subject to availability based on Department of State monthly bulletins. Immigrant visas are allotted based on country of birth and the category of the job position (i.e. whether it is a “skilled worker” or a job that requires “an advanced degree.” Individuals from countries with high demand, including India and China, may have many years to wait before an immigrant visa number becomes available.