

Road to the Green Card through PERM

THE GREEN CARD PROCESS THROUGH PERM

(THREE-STEP PROCESS)

I.) FIRST STEP (approximately six to nine months, including recruitment period; 10 to 13 months if there is an audit)

ALIEN LABOR CERTIFICATION APPLICATION

• Testing the U.S. labor market in the area of intended employment

• Program Electronic Review Management (PERM) (effective March 28, 2005) allows employers to submit an application for permanent employment certification directly with the U.S. Department of Labor (DOL), online or by mail, and receive an approval within 45 to 60 days if there is no DOL audit.

• While supporting documentation (e.g., evidence of recruitment, business necessity for special requirements) will not be submitted with the application, such documentation must be maintained for five years and supplied if requested by the certifying officer.

• DOL will conduct audits of certain PERM applications according to internal criteria designed to identify questionable applications, as well as at random.

• Under PERM, the employer must obtain a prevailing wage determination from the State Workforce Agency (SWA). Employers will be required to pay 100 percent, rather than 95 percent, of the prevailing wage. In addition, DOL will offer a four-level wage system in place of the current two-level system.

• As was the case with reduction in recruitment (RIR) applications, PERM requires an employer to recruit for the job BEFORE the application is filed.

PREFILING RECRUITMENT:

Posted Notice

The employer must post notice of the job opportunity for at least 10 consecutive business days. The notice period must be between 180 and 30 days before filing. The notice must contain the salary, but may express it as a range, so long as the lower end of the range meets or exceeds the prevailing wage. The primary purpose of the posted notice is to give employees an opportunity to comment on the application and that the posted notice is not another way to recruit U.S. workers.

Use of Other In-House Media

In addition to printed posted notice, the employer must use any and all in-house media, whether electronic or printed, in accordance with normal procedures used for recruitment for similar positions in the organization.

Job Order

The employer must place a job order with the SWA for a period of 30 days. Form ETA 9089 requires the employer to list the start and end date of the job order. These dates serve as documentation of the job order.

Advertisements

The employer must place two advertisements on two different Sundays in the newspaper of general circulation in the area of intended employment. Both ads must be placed between 30 and 180 days before filing. The ad must list the name of the employer, the geographic area of employment (only if the job site is unclear, e.g., if applicants respond to a location other than the job site or if the employer has multiple job sites), and a description of the vacancy specific enough to apprise U.S. workers of the job opportunity. The employer may include minimum education and experience requirements or specific job duties in the ad as long as those requirements also appear on Form 9089. The ad must direct applicants to send resumes or report to the employer, as appropriate. The employer's physical address is not required. A central office or post office box may be designated for receipt of resumes. The ad need not include the salary or a detailed listing of the job description and requirements. If the ad does include the salary, however, the salary stated must meet or exceed the prevailing wage. If the job requires experience and an advanced degree, the employer may use a professional journal in lieu of one of the Sunday ads.

Three Additional Recruitment Steps for Professional Jobs

The list of permitted additional recruitment steps in the final PERM regulation includes: (1) job fairs; (2) employer's website; (3) job search website other than employer's; (4) on-campus recruiting; (5) trade or professional organizations; (6) private employment firms; (7) an employee referral program, if it includes identifiable incentives; (8) a notice of the job opening at a campus placement office, if the job requires a degree, but no experience; (9) local and ethnic newspapers, to the extent they are appropriate for the job opportunity; and (10) radio and television advertisements. Further, a webpage generated in conjunction with a print ad now counts as a website other than the employer's. The additional recruitment steps must take place no more than 180 days before filing. The employer is not required to take different steps each month. Only one of the additional recruitment steps may take place within 30 days of filing. Alternative recruitment steps only require employers to advertise for the occupation involved in the application rather than for the job opportunity as is required for the newspaper ads.

II.) SECOND STEP

IMMIGRANT VISA PETITION FILING

(processing time: approximately four to six months)

Assuming the DOL certifies the alien labor certification application, the employer must then file an immigrant visa petition (Form I-140) with the U.S. Citizenship and Immigration Services (USCIS) Service Center having jurisdiction over the work location of the foreign national.

A. The purpose of this petition is to satisfy USCIS that (i) the foreign national is qualified to fill the position and (ii) the employer has the financial ability to pay the offered wage to the foreign national.

NOTE: THE FILING OF THE APPLICATIONS OR PETITIONS DESCRIBED IN STEPS I AND II ABOVE DO NOT, IN AND OF THEMSELVES, LEGITIMIZE THE PRESENCE OR WORK AUTHORIZATION OF THE EMPLOYEE IN THE U.S. THE EMPLOYEE NEEDS TO MAINTAIN VALID NONIMMIGRANT (E.G., H-1B OR TN-1) STATUS TO REMAIN AND WORK IN THE U.S. LEGALLY. THE FILING OF THE ADJUSTMENT OF STATUS APPLICATION IN STEP III LEGITIMIZES THE FOREIGN NATIONAL'S STAY IN THE U.S. AND HE/SHE IS ELIGIBLE FOR WORK AUTHORIZATION 90 DAYS AFTER FILING SUCH APPLICATION.

III.) THIRD STEP

"GREEN CARD" FILING

(a) If the foreign national is in the United States in legal nonimmigrant status, the application (Form I-485) is filed with the USCIS Service Center that has jurisdiction over the foreign national's place of residence. This procedure is described in section A below.

(b) The applicant may opt to apply for an immigrant visa at the U.S. Consulate having jurisdiction over his/her last foreign residence. This procedure is described in section B below.

NOTE: If the applicant opts for section A below, the second and third steps of the green card may be filed simultaneously.

A. ADJUSTMENT OF STATUS OR "GREEN CARD" APPLICATION (processing time: six to eight months)

Pending adjudication of the application and the issuance of a green card, the foreign national, his or her spouse and minor children are granted work authorization 90 days after the filing of the green card application.

1. THIS APPLICATION MAY BE FILED ONLY IF THE FOREIGN NATIONAL HAS A CURRENT PRIORITY DATE (THAT IS, THERE IS AN IMMIGRANT VISA NUMBER AVAILABLE FOR THE ALIEN BASED ON AVAILABLE QUOTAS ESTABLISHED BY CONGRESS).

2. The application is generally biographical in nature, requiring photographs, fingerprints and a medical examination. An interview is generally waived in employer-petitioned cases once the examining officer determines on the basis of the filed application that the foreign national is not excludable from the U.S. under the law (e.g., has not committed any serious crimes and is not carrying certain diseases).

OR

B. IMMIGRANT VISA APPLICATION WITH U.S. CONSULATE ABROAD
(processing time abroad: four to six months)

1. THIS APPLICATION MAY BE FILED ONLY IF THE FOREIGN NATIONAL HAS A CURRENT PRIORITY DATE (THAT IS, THERE IS AN IMMIGRANT VISA NUMBER AVAILABLE FOR THE ALIEN BASED ON AVAILABLE QUOTAS ESTABLISHED BY CONGRESS).

2. The application is generally biographical in nature, requiring photographs, police records and a medical examination. An interview is required to determine that the foreign national has a job offer consistent with the immigrant visa petition and that he/she is not excludable from the U.S. under the law (e.g., has not committed any serious crimes and is not carrying certain diseases).

IV. TIMING CONSIDERATIONS ON THE PROCESS

Six-year limit on H-1Bs (but can be extended (a) so long as alien labor certification is filed prior to start of the sixth year; or (b) an immigrant visa petition (Form I-140) has been approved and an immigrant visa number is not available for the applicant.

Five-year limit on L-1B (specialized knowledge individuals)

V. OTHER IMPORTANT CONSIDERATIONS

Promotion of employee during the process

A substantial change in job duties will generally require the filing of a new alien labor certification application (but see portability provision below).

Termination of employee during the process

If the employee is terminated, the employee will have to start the green card process from the beginning, unless he/she is portable (see below).

Green card portability

Employee may keep his/her green card application viable, if he/she moves to a position similar to that set forth in the alien labor certification (PERM) application (but only 180 days after filing I-485 (Step 3) and provided Form I-140 (Step 2) is approved)

Contact our office to speak with a member of our Immigration Group.