



OVERVIEW OF PERMANENT RESIDENCE PROCESS

The following provides a summary of the employment based permanent residence or “green card” process. The process generally has four steps: (1) the labor certification application filed with the Department of Labor (“DOL”); (2) the immigrant visa petition; (3) waiting for visa availability; (4) and adjustment of status application filed with the U.S. Citizen and Immigration Services (“USCIS”) or consular processing at a U.S. consulate abroad. Steps 2 and 4 can be filed concurrently if there is visa availability.

Labor Certification Process - PERM

Protections for U.S. workers are built into the permanent residence process and U.S. employers must demonstrate a need for the foreign worker. Most employment based permanent residence cases require DOL certification that no U.S. workers are able, qualified or willing to take the position offered to the foreign national. Additionally, the employer must show that admitting the immigrant will not negatively impact the wages and working conditions of similarly situated U.S. workers.

In most permanent residence cases, the employer must first obtain a labor certification from the DOL showing that there are an insufficient number of U.S. workers able, qualified and willing to perform the work for which the foreign national is being hired. Effective March 28, 2005, traditional and reduction in recruitment (RIR) labor certification processing will be eliminated with the implementation of the Program Electronic Review Management System “PERM” process.

Per Department of Labor regulations effective July 16, 2007, employees are **not** allowed to pay for any PERM related expenses. The only exception is payment of legal fees is allowed if the company has retained their own attorney and the employee has retained their own attorney. The employee in that situation is allowed to pay his/her attorney’s fees. The employee is allowed to pay for any fees and costs associated with the immigrant petition and the adjustment of status application.

Under the PERM program, the labor certification process will involve the following procedures: First, the employer would obtain a prevailing wage determination from the SWA. Second, the employer would conduct extensive recruitment for the position within 30 to 180 days of filing. Third, the employer would file the labor certification application directly with the DOL for automated processing.

Prior to filing an application, employers will have to conduct recruitment at least 30 days but no more than 180 days before the filing. The required recruitment depends upon whether the position is classified as a professional one. For non-professional positions, the required recruitment is 2 job advertisements placed on a Sunday in a newspaper of general circulation, a notice of the filing of an application at the worksite for a ten consecutive business days and a job order placed with the state workforce agency (SWA). The print advertisement must state, amongst other information, the employer’s name, and a job description that apprises U.S. workers of the job opportunity. For professional occupations, employers must in addition to the above-mentioned recruitment post the job opportunity in in-house media throughout the company and conduct 3 additional forms of recruitment such as: attending job fairs; employer’s web site, job search web site other than employers, on-campus recruiting, trade or professional



organizations, private employment firms, an employee referral program, notice of job opening at a campus placement office, local and ethnic newspapers and radio and television advertisements. **Note that as the attorney, we are not permitted to assist with determining which applicants are qualified or not for the PERM position. You must come to an independent determination that the individual does or does not meet the requirements and interview or disqualify him/her accordingly.**

The DOL, through the automated processing, will either approve the case in approximately 6 – 9 months or, if the case is selected for audit, request the employer to submit proof of the recruitment. The DOL may select a case for audit based upon either information on the application or on a random basis. The DOL anticipates that approximately 20% of the cases filed will be selected for audit. After the DOL reviews the application pursuant to an audit, it can do one of three things: 1) certify the application; 2) deny the application; or 3) order supervised recruitment. If the DOL orders supervised recruitment the employer will have to conduct further recruitment, similar to the current non-RIR recruitment scheme which consists of an advertisement along with a 30-day job order and a recruitment summary, despite the fact that the employer previously conducted significant recruitment before filing the application. The supervised recruitment under the PERM program will differ from the current recruitment in the basic labor certification case only in that the regional departments of labor rather than the state agencies will supervise the recruitment.

The PERM program would allow the DOL to process applications more quickly and reduce the current backlog. Specifically, the combination of automated processing system for the applications and elimination of SWA's role in the labor certification process would enable the DOL to process an application within 6 – 9 months in cases where the DOL does not order supervised recruitment.

Immigrant Petition and Adjustment of Status Application or Consular Processing

After approval of the labor certification application, the next steps are the filing of the immigrant visa petition (I-140) and application for the green card (either adjustment of status "I-485" or consular processing). The I-140 and I-485 can be concurrently filed with the USCIS if there is visa availability. However, for countries with quota backlogs, the I-140 must be filed first and the I-485 can only be filed once there is visa availability. Due to the current shortage of immigrant visas, especially for nationals of India and China, there may be a delay of several years between the approval of the immigrant petition and the filing of the adjustment of status application. Currently, there have been quota backlogs in the employment based third preference category for all individuals and in the employment based second preference category for individuals born in China and India.

The purpose of the I-140 petition is to prove that: (1) the job has been certified by the DOL; (2) the applicant meets all of the requirements listed on the labor certification; and (3) the employer has sufficient resources to pay the employee's salary. In support of the I-140, the employer is required to submit documentation demonstrating its ability to pay the employee's salary in the form of a federal tax return or an annual report. In addition, documentation is submitted regarding the employee's education and experience in the form of diplomas, transcripts, and letters from previous employers.



If individuals choose to consular process, the I-140 is filed first and once approved, the visa petition is forwarded to the National Visa Center ("NVC") for preliminary processing. Upon completion of processing by the NVC, the visa petition is sent to the U.S. consulate of the applicant's country of residence where the applicant will be interviewed.

The adjustment of status (I-485) application primarily establishes that the foreign national has maintained lawful status in the U.S. and is capable of supporting herself upon being granted permanent residency status. Most applicants for employment based permanent residence status are not required to attend an interview.

Upon the filing of the adjustment of status (I-485) application, the foreign national may legally reside in the U.S. without a nonimmigrant visa. His or her dependents, spouse and children under 21, would also be eligible for a work permit and a travel permit. However, if the foreign national needs to travel abroad during this time, he must have a valid nonimmigrant visa or special travel permission known as "advance parole." The foreign worker must also have employment authorization while the adjustment application is pending in the form of a nonimmigrant visa or EAD. Once the adjustment of status application is approved, the foreign national becomes a permanent resident and obtains a "green card" entitling him to the indefinite right to live and work in the U.S.