



University at Buffalo
The State University of New York

Office of International Education
Immigration Services

REGULAR PERM LABOR CERTIFICATION OVERVIEW

General Overview

The regular PERM Labor Certification permanent residency process has three stages:

- (1) the labor market recruitment to determine whether there are any minimally qualified U.S. workers available for the position and submission of the PERM Labor Certification Application by the employer to the U.S. Department of Labor
- (2) the submission by the employer of the Immigrant Petition to the U.S. Citizenship and Immigration Services (the "USCIS")
- (3) the submission by the employee of the Adjustment of Status Application to the USCIS

STEP 1: The PERM Labor Certification

Under U.S. immigration laws, a U.S. employer may hire a foreign worker on a permanent basis if the U.S. employer can obtain a "PERM Labor Certification" from the U.S. Department of Labor ("DOL"). The Labor Certification is a declaration by the DOL that no sufficiently qualified U.S. workers exist to fill the position being offered to the foreign worker.

Job Opportunity

Immigration Services must first prepare a job description for the offered position. The job description must be reasonable and not unduly restrictive, unless the restrictions can be justified by preparing evidence of business necessity. The job must also be "permanent," which is defined as a position that is not intended to be temporary, or a position that is for an indefinite term as opposed to a definite term. Additionally, the foreign national must be paid at least the minimum wage rate prevalent for the job in the geographical area of employment.

As a first step in this process, Immigration Services will submit a PERM Prevailing Wage Request to the New York State Department of Labor to obtain an official wage rate determination for the offered job opportunity in the geographical area of employment.

Demonstrating Scarcity of Minimally Qualified U.S. Workers

Unavailability or scarcity of qualified U.S. workers is demonstrated by testing the labor market to see whether there are any minimally qualified U.S. workers (comprising of U.S. citizens and permanent residents) available for the position. Generally, the following is required by the DOL:

- (1) A job order must be placed in the State Job Service Recruitment System for 30 days;
- (2) A job notice must be posted for ten consecutive business days at the employer's location or with an appropriate labor union or bargaining representative (if the job is a union position);
- (3) Advertisement must be made for the offered position in two Sunday editions of a newspaper of general circulation or in one Sunday and in an industry, professional or trade journal;
- (4) Additionally, for professional positions (those requiring a minimum of a Bachelor's degree as a minimum for entry), THREE of the following methods must also be used to recruit:
 - Job fair
 - Employer's web site
 - Job search web site other than the employer's (copies of web pages generated in conjunction with the online advertisements are required)
 - On-campus recruiting
 - Trade or professional organizations
 - Private employment firms
 - Employee referral program with incentives
 - Campus placement office
 - Local and ethnic newspapers
 - Radio and television advertisements

What is Required of the Employer

The U.S. employer is required to make the job opportunity available, establish the ability to pay the offered wage and preserve supporting documents that are prepared during this process. As part of this process, the U.S. employer is required to screen the resumes received.

If qualified U.S. workers are found, this does not mean that the U.S. employer is bound to hire him or her. The U.S. employer can choose not to hire the worker, but, in that case, the PERM Labor Certification has to be terminated. The recruitment process may, however, be resumed at a later time.

Lastly, the recruitment process and the submission of the PERM Labor Certification Application must be submitted within 180 days of its commencement (if no minimally qualified U.S. workers have been found). Upon submission, the DOL will adjudicate the case and if certified, Immigration Services will proceed to the second step.

STEP 2: The Employer's Immigrant Petition

Once the PERM Labor Certification is certified by the DOL, Immigration Services will draft the necessary documentation associated with the Immigrant Petition and submit it to the USCIS.

In essence, the Immigrant Petition acknowledges to the USCIS that, after being unable to find minimally qualified U.S. workers for the position (through the PERM Labor Certification), the U.S. employer intends to extend permanent employment to the foreign national.

The offer of permanent employment does not bind the employer to contractually employ the foreign national forever. In essence, this is an extension of employment for an indefinite duration. The employer reserves the right to terminate the employee for cause, and the employee also has the ability to quit his/her employment at any time.

STEP 3: The Employee's Adjustment of Status Application

Once the Immigrant Petition has been approved by the USCIS, the foreign national employee proceeds to the final step of the permanent residency process, the submission of an Adjustment of Status Application to the USCIS. Once approved, the Adjustment of Status Application will change (or adjust) the foreign national's temporary nonimmigrant status to permanent status (Lawful Permanent Residence).

As part of the AOS, applicants need to undergo a medical examination by a designated U.S. Citizenship and Immigration Services' civil surgeon (who can be found at https://egov.uscis.gov/crisgwi/go?action=offices.type&OfficeLocator.office_type=CLV), as well as provide his/her biometrics (fingerprints and other identifying information) after the case is submitted. The USCIS will send you a notice for the biometrics appointment.

Upon approval of the AOS Application, the foreign national will be conferred permanent residency and receive the so-called "green card".

Filing Fees

The U.S. Department of Labor does not currently charge a filing fee for the submission of the PERM Special Handling Labor Certification.

The U.S. Citizenship and Immigration Services, however, charges a filing fee of \$475 for the submission of the Immigrant Petition. Filing fees of \$1,010 for anyone 14 years or older and \$600 for anyone under the age of 14 are also required for the Adjustment of Status application.

Checks should be made payable to the "U.S. Citizenship and Immigration Services".

Legal Services Fee

To cover the costs associated with the preparation and submission of the PERM Certification Application and related stages (Immigrant Petition and Adjustment of Status Application), Immigration Services charges a legal service fee of \$6,000. Of this fee, \$3,000 for the PERM Labor Certification stage must be paid by the employer. There is also a \$500 charge for the preparation of any Adjustment of Status Applications on behalf of the principal applicant's dependents.

8/07