

PERM Overview

Program Electronic Review Management (PERM):

On December 27, 2004, the Department of Labor (DOL) issued regulations implementing PERM. It is a new, expedited way to obtain a Labor Certification based on an employment job offer. The goal of PERM is to shorten the processing time of Labor Certification Applications from 2-3 years to only 45-60 days.

PERM will take effect on **March 28, 2005**.

Pre-filing Steps:

A. Recruitment

Between 30 to 180 days before filing, the employer must:

- 1) Post a notice of the job offer; and
- 2) Place a job order with the State Workforce Agency (SWA), e.g. EDD in California; and
- 3) Place two Sunday advertisements in a newspaper of general circulation in the area of intended employment; and
- 4) Use in-house media, if used in similar positions.

For professional jobs, three additional recruitment steps must be taken, such as: job fairs, employer's website; job search web site (other than the employer's); on-campus recruiting; trade or professional organizations, or private employment firms; employee referral program, with identifiable incentives; notice of job opening at a campus placement office; local and ethnic newspapers; or radio and television advertisements.

B. Prevailing Wage

The employer must obtain from the SWA office a prevailing wage determination prior to filing the PERM application. The employer must pay 100% of the prevailing wage from the time permanent residency is granted or from the time the alien is admitted to take up the certified employment.

Occupations that Qualify as PERM:

- 1) Non-professional/skilled jobs; and,
- 2) Professional jobs requiring attainment of a bachelor's or higher degree, or a combination of both education and experience.

Bona Fide Job Opportunity

To demonstrate that a "bona fide" job opportunity exists, the employer must have employees on payroll, a Federal Employer Identification Number, and no adverse factors, such as a closely-held corporation, alien's partnership or familial relationship.

How and Where to File PERM:

The Application for Permanent Employment Certification is filed either electronically or by mail with the appropriate Employment and Training Administration Processing Center.

Conversion of a Pending Labor Certification Application to PERM:

PERM regulations allow the withdrawal and re-filing of a pending case only for an identical job opportunity. A pending Labor Certification must be withdrawn, and another re-filed within 210 days under PERM's new procedures. A Labor Certification pending under the regular processing can only be withdrawn prior to the placement of a job order by the SWA.

A re-filed case must comply with all requirements of the new PERM final rules. It is highly recommended that you consult with your attorney to see if converting your case will be appropriate for you.

Preserving your old Priority Date:

An employer who successfully withdraws and re-files a pending application will preserve the priority date. An application, which cannot be successfully re-filed, is treated as a new application with a new priority date. Applications that are not withdrawn will continue to be processed in Backlog Processing Centers under current rules.

The Audit Request:

The Certifying Officer (CO) can request an audit of any Labor Certification Application either for cause or at random. Upon receipt of the employer's response, the CO may also request additional information and/or document(s) or require that the employer conducts supervised recruitment.

How Labor Certifications are approved:

The decision to certify a labor certification is based on whether the employer meets the requirement that there is no U.S. worker who is able, willing, qualified and available for the job opportunity. The CO must also consider whether the wages or working conditions of U.S. workers similarly employed will not be adversely affected by the employment of the alien.

Immigrant Petition and Green Card:

Upon approval of the labor certification, you are eligible to file for the Immigrant Petition and Green Card simultaneously. In certain situations, they would have to be filed separately. Included in the filing of the Green Card application, is the application of employment authorization (work permit) and in some cases, an application for a travel visa.