

New Labor Certification Program For Permanent Residency - PERM

PERM is the Program Electronic Review Management system developed by the U.S. Department of Labor to replace the current labor certification program. The new program was proposed with the goal of creating a more streamlined system to verify that there are no U.S. workers able, willing and qualified to fill a permanent position that is being offered to a foreign national. PERM's aim is to significantly expedite the foreign labor certification process. Also, under the new regulations, the U.S. Department of Labor will no longer supervise or review the prior recruitment by the employer. The employer will have to attest to conducting good faith recruitment efforts in accordance with PERM. PERM rules must be followed for all labor certification applications filed on or after March 28, 2005.

There are major differences between the current applications in which U.S. employers file for a labor certification through the traditional method or through "Reduction in Recruitment" (RIR), and PERM. Under the current method, employers provide the State Workforce Agency (SWA – the state Department of Labor agency) with the wage offered, duties for the position, minimum educational requirements, training and/or work experience required and special skills required. After the recruitment period is completed, the SWA forwards the application to the U.S. Department of Labor for certification. Under RIR, employers may conduct recruitment for the position first and then file for a labor certification.

PERM will eliminate both the traditional and RIR labor certification procedure to create one process for labor certification that is based primarily on the current procedures for RIR filing. Under PERM, employers will be required to obtain a prevailing wage determination from the SWA in the state where the foreign national will be employed; post a notice of the filing of an application for certification at the worksite and an in-house electronic or print media; engage in their own recruitment; and attest that no qualified U.S. workers were available.

Additionally, under PERM, employers will be required to publish the job advertisement in the newspaper and/or trade journals, where appropriate, and inform SWA of the job order. For positions that are considered "professional occupations", employers will have to conduct at least three additional forms of recruitment. Acceptable forms of recruitment include: attending job fairs; on-campus recruitment; use of private employment firms; recruitment from professional or trade organizations; and advertisement of the job on the employer's website or on a job search website.

Once the recruitment period has ended, the employer will have to file an application for labor certification with the office of the U.S. Department of Labor. Thereafter, the application will then be entered into a computer system that checks for completeness and whether additional information may be required.

Employers will not be required to submit any documentation with their application, but are expected to maintain the supporting documents specified in the regulations. However, certain applications may be randomly audited. In such case, the employer will be required to provide supporting documents in the event the application is selected for audit and as otherwise requested by the Certifying Officer.

If selected for an audit, the employer will be sent a letter requesting the additional documentation to support its attestations. Following an audit, a case will either be approved or denied within a reasonable time.

The U.S. Department of Labor has set the goal for making decisions on the electronically filed PERM applications at 45–60 days. If the U.S. Department of Labor is successful in reaching its goal, the current backlog of several years that exists under the RIR or the traditional labor certification procedures will become a thing of the past.

Once the labor certification application is certified by the U.S. Department of Labor, the next stage of the permanent residency procedure is to file Form I-140 with the U.S. Citizenship and Immigration Services. In addition to the certified labor certification application, the employer must provide a copy of its most recent Federal Income Tax return and prove the foreign national's work experience in the field that the job was offered.

The third and final stage of the permanent residency procedure is the preparation and filing of documents to comply with a consular processing procedure for foreign nationals who are outside the United States or adjustment of status for foreign nationals who are in the United States.

In either event, a personal interview of the foreign national may be required by an immigration or consular officer, where documentation evidencing the completion of stages 1 and 2 will be presented together with a job offer letter from the employer, confirming the employer's desire to hire the foreign national at the conditions previously established in the labor certification application with respect to salary, position, work schedule, work experience, and other factors.

The PERM process for labor certifications will most likely expedite the approval of a foreign national's permanent residency case. It promises to be a fast and efficient procedure that could eliminate years of backlog. For those foreign nationals interested in applying for a green card based on the newly established PERM program, it is important to have an attorney evaluate his or her ability to apply for permanent residence, so that the process may be completed swiftly and competently.

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