

Navigating the PERM Process

By Kirk A. Carter, Esq.

The employment-based green card process (also known as “PERM” or “labor certification”) enables an employer to sponsor a foreign national for permanent residence in the United States. The process requires the employer to demonstrate that there are no “US workers” available for the job being offered to the foreign national.

STEP ONE - Foundation of PERM Success

The first step to a successful PERM application is to properly craft the job description for the position. This must be done with great care as this will dictate the wage that must be paid and the standards by which all candidates will be measured, including the individual you are seeking to sponsor.

STEP TWO - Assuring the Salary Meets the “Prevailing Wage”

The PERM regulations require that an employer submit a request for a prevailing wage determination prior to initiating recruitment under the PERM program and before filing an application for labor certification on-line. The Department of Labor maintains wage data for more than 1,200 job categories in every metropolitan area in the country. Anticipating what that wage might be while crafting the job description is an important part of the PERM process.

STEP THREE - Recruitment is conducted for 60 Days

Once we are certain that the wage being offered falls within the prevailing wage we next move on to strategizing a plan of recruitment. This plan must follow the strict guidelines which dictate where advertisements must be placed, as well as the duration and permissible language of advertisements.

Once the recruitment has been completed, we contact the employer to determine whether a qualified candidate has been found as a result of the recruitment conducted. To be disqualified, an Applicant must fail to meet all of the minimum requirements of the position as outlined in the job description. Assuming that a minimally qualified candidate has not been found, we prepare a recruitment report which details the steps that have been followed to date.

STEP FOUR - Filing the PERM Application with the U.S. Department of Labor

The PERM Application, which is submitted electronically, contains a series of questions which are geared towards testing whether or not the employer properly tested the labor market. Strict adherence

to the regulations is required in order to successfully achieve an approved labor certification. Some cases are subject to audit, but most are processed within a three to six month period of time.

STEP FIVE - Filing the Immigrant Petition

Once the U.S. Department of Labor has certified that the position qualifies as a shortage occupation the next step is for the employer to sign that Certification and then file a Petition for Immigrant Worker with the U.S. Citizenship & Immigration Service. The purpose of this Petition is to establish that the Employer is a legitimate business entity that has the financial ability to pay the wage offered in the PERM application.

In addition, the Petition seeks to qualify the employee in one of the employment-based preference categories – typically Employment Based 2 (EB-2) or Employment Based 3 (EB-3). The employment-based category for which an employee qualifies usually dictates how long they will have to wait for an available visa, as employment-based visas are distributed through a preference based system.

STEP SIX - Applying for Green Card

Assuming that we have an approved Labor Certification, an approved Employer Petition (I-140) and an available visa number, we may now file the employee’s and their family’s individual Applications for Permanent Residence. In order to file these here in the U.S., the employee must be in the U.S. in valid status. If they are not in the U.S. they may be processed for their green card through the U.S. Consulate in their home country.

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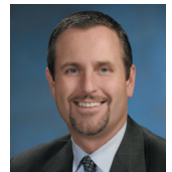
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