

# PERM LABOR CERTIFICATION

BY DAVID FULLMER & MARK IVENER, ATTORNEYS

## AN OVERVIEW

There are several avenues available to foreign nationals who seek to become permanent residents of the United States. Generally speaking, an individual must be a close relative of a U.S. citizen or permanent resident, or have recognized "extraordinary ability" in the sciences, arts, education, business, or athletics, or have a job offer which cannot be filled by a legal U.S. worker. Certain multinational executives or managers, investors, religious workers, and others may also be eligible to obtain permanent resident status. This article will discuss firm job offers which cannot be filled by a legal U.S. worker. This is called Labor Certification processing for permanent residence (also called "Green Card").

## What is a "LABOR CERTIFICATION"?

A Labor Certification application is the official application based on a job offer by a U.S. Employer to assist a foreign national in obtaining permanent resident status. It demonstrates that 1) a valid job exists, and 2) there are no qualified U.S. workers available to fill the position. The Labor Certification application is handled entirely through the U.S. Department of Labor (DOL), independently of the U.S. Citizenship and Immigration Service (USCIS). Once a Labor Certification has been approved by DOL, it is then submitted to the USCIS as the basis for permanent residency.

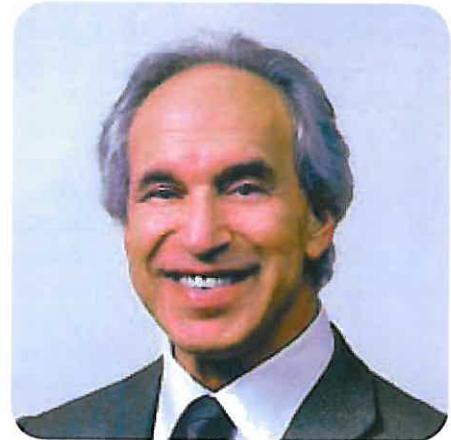
The principle object of the Labor Certification is to ensure that the alien will not displace any U.S. workers. For this reason, the application requires the employer to conduct recruitment or a series of ads for the position.

## What is PERM?

PERM is the new Labor Certification system instituted in 2005 that allows employers to file Labor Certifications online. Since 2005 it has proven to be quicker and more efficient than the previous paper-based systems of Labor Certification. Under PERM, applications are often approved in approximately 60 days which is in contrast to the traditional Labor Certification system in which applications often took years to make their way through the state agencies and the U.S. Department of Labor. With the exception of prevailing wage determinations which are currently handled at the state level, PERM applications are processed solely through the Federal Labor Department in contrast to previous programs in which applications were first fully screened at the state level before being sent on to the DOL. Also in contrast to the older systems, employers do not need to submit supporting documentation with the cases and instead retain all documentation for submission to the Department of Labor (DOL) in the case of an audit.

In the six months prior to filing an application, employers are required to place a job order with the State Workforce Agency and run two newspaper advertisements in Sunday papers. Employers of professionals are also required to conduct three additional types of recruitment from a supplemental list of recruiting methods. Documentation of recruitment is not to be submitted with the application, but must be maintained in a file that must be submitted to the DOL in the case of an audit.

Employers are required to document recruitment results in a recruitment



report. Employers under PERM must prepare a report that describes recruitment steps undertaken and the result achieved, the number of hires and, if applicable, the number of US workers rejected, categorized by lawful job related reasons for such rejections. The report must be complete at the time the employer files the PERM application however it need not be submitted unless it is requested by the DOL in an audit. After reviewing the employer's recruitment report, the DOL may request the US workers' resumes or applications, sorted by the reasons the workers were rejected.

After the Labor Certification has been approved, the next stage of the processing is filing a visa petition (FORM I-140) with the Immigration Service (USCIS).

## What are the responsibilities of the Sponsoring Employer?

It is essential that the employer have a good-faith intent to hire the alien on a permanent basis once permanent resident status is granted. At the outset, of course, the employer must electronically sign the PERM form and provide any information needed concerning the job duties, experience required, etc. The most crucial area of responsibility for the employer is the recruitment effort.

*Cont'd Over*



## LABOR

The employer must notify his employee's bargaining representative that a Labor Certification is being filed. If there is no bargaining representative, the employer must notify his employees by posting notices of the job opening at the place of employment for ten working days, the job posting must contain the job title, a detailed description of the job duties, the education and experience requirements, the salary and hours of the job, and the name and telephone number of the person to contact at the business for more information. In addition, the employer must review the resumes of every individual who applies for the job based on the aforementioned recruitment. If the person is clearly unqualified based on the information revealed on the resume, the employer must document the rejection of the applicant with valid job-related reasons. If upon review of a resume, it is not clear whether or not an applicant is qualified, the employer must conduct an interview and may only reject U.S. applicants for lawful, job-related reasons which must be well documented in the recruitment report discussed above. If, after the recruitment has been completed and all applicants have been screened, there are no U.S. workers who are qualified, willing and available for the position, the employer may electronically submit the PERM Labor Certification.

Assuming that the PERM Labor Certification is ultimately approved, the form is signed by the employer, the employee and the attorney. At that time, the employer will then prepare and sign Form I-140, "Petition for Alien Worker". This form is merely a summary of the job

offer, and the employer will then be asked to provide evidence that the U.S. employer has the ability to pay the wage offered. The evidence will be in the form of copies of annual reports, federal tax returns, or audited financial statements.

The alien will be granted permanent resident status after passing an oral interview with a Consular Officer in a foreign country or after upon adjudication by an Immigration Officer in the U.S. Just prior to the date of interview, the employer will be asked to provide a brief letter verifying his/her intent to employ the alien on a permanent basis according to the terms stated in the Labor Certification application.

Labor Certification is a vital tool for many employers, large and small because it enables them to fill positions in which qualified U.S. workers are not readily available.

**Disclaimer:** Nothing on these pages should be taken as legal advice for any individual case or certain situation. The information is general and should not be relied on upon for any specific situation. For legal advice, please contact one of our attorneys.

All content is copyrighted by © IVENER & FULLMER LLP 2008. All rights reserved. Services relating to immigration and naturalization provided by Ivener & Fullmer LLP are provided by active members of the State Bar of California or by a person under the supervision of active members of the State Bar of California.

