

Permanent Residence Based on Employment

Obtaining lawful permanent residents (green card) on the basis of employment is a three-step process:

1. **Labor Certification**
2. **The Visa Petition**
3. **The Permanent Residence Application**

1. Labor Certification

A labor certification is an approval by the US Department of Labor that a shortage of qualified US workers exists to fill the job by a foreign national. The labor certification verifies certain minimal job requirements are met in the prevailing wage is paid to the foreign national employee. The key to successful labor certification approval is based on a correct and proper determination of the minimal requirements needed to perform the job. Labor certification applications must correctly specify the minimum requirements for the job why these requirements are necessary.

Under the PERM process (Program Electronic Review Management Systems), employers must assemble supporting documentation such as newspaper ads, other forms of recruitment, justification of the job requirements, prevailing wage, among others requirements and must retain these documents for three to five years. The PERM documentation is submitted to the Department of Labor or state workforce agency upon their request.

PERM classifies that the petitioner is either Professional or Nonprofessional and each has different recruitment requirements. The requirements are as follows:

a. Both Professional or Nonprofessional classifications require two Sunday newspaper ads and a 30 day job posting with the State Workforce Agency or State Department of Labor.

b. Professional occupations require the employer to comply with the minimum of three of the 10 listed steps:

1. Job fairs;
2. Employer;

3. Job search website of the employer's;
4. On-campus recruiting;
5. Trade or professional organizations;
6. Private employment firms;
7. Employee referral program with incentives;
8. Campus placement offices;
9. Local and ethnic newspapers;
10. Radio or television advertisements

The PERM labor certification does not obligate the employer to hire a specific employee. The employer is free to dismiss the employee or higher that employee at their discretion. The employer may withdraw the labor certification application at any time. Similarly, the employee is not bound to the employer at any time during a labor certification process.

Labor Certification Procedures

Some preferential categories require a labor certification by Department of Labor. A labor certification will require a US employer who is "sponsoring an immigrant to obtain labor verification from the secretary of the Department of Labor that there are an insufficient available, qualified, and willing US workers to fill the position that the employment will not have an adverse effect on wages and working conditions similarly situated US workers". The Labor certification process is established through Program Electronic Review Management (PERM). We provide assistance all stages of the labor certification process and try to streamline the process for employers, Human Resources Departments, and the foreign national employee so they can concentrate on their businesses and jobs.

2. Visa Petition

Once the labor certification is approved the employer must submit a visa petition to the U. S. Citizenship and Immigration Services (USCIS). The visa petition demonstrates to the USCIS that the job is certified by the Department of Labor, the immigrant employee meets all the criteria listed on the labor certification and the employer has sufficient finances to pay the employee's salary. This step also determines and establishes the preference classification.

The USCS categorizes employment-based visas into three classifications, they are:

1. **Preference I**: Foreign nationals with extraordinary ability in arts, sciences, education, business or athletics. Qualifications for this subcategory require the employee to show he is one of that small percentage of very top persons in their field and must demonstrate that the contribution to the United States would be substantial. Subcategories also included in this preference level are outstanding professors and researchers and certain multinational

executives and managers.

2. **Preference II**: This classification requires a person to have at least a master's level education and demonstrate a level of exceptional ability in the sciences, arts or businesses that will benefit the national cultural educational interests of the United States.

3. **Preference III**: This classification is for those persons with less than a master's degree in education. Subcategories of this classification include

- i. Skilled workers for those with at least two years training experience;
- ii. Professionals or those with bachelor's degrees and;
- iii. Other Workers - These workers include those persons performing unskilled labor that are not temporary seasonal nature.