

Employment Based Immigration

U.S. businesses can petition for permanent residence for current *and* prospective employees. Immigration laws include **five employment-based preference categories** for permanent residence. Most classifications require an offer of employment and PERM labor certification from the U.S. Department of Labor (DOL)

1st Preference: Priority Worker

- EB-1(1) Aliens of extraordinary ability
- EB-1(2) Outstanding professors and researchers
- EB-1(3) International executives and managers

2nd Preference: Advanced Degree Professional & Alien of Exceptional Ability

- EB-2(1) Professionals holding advanced degrees
- EB-2(2) Aliens of exceptional ability

3rd Preference: Professional and Skilled Worker

- EB-3(1) Job requiring a minimum of 2 years of training, education, or experience
- EB-3(2) Job requiring a minimum of a bachelor's degree
- EW Job requiring less than 2 years of training, education, or experience

4th Preference: Special Immigrant

- EB-4 Religious occupations

5th Preference: Employment Creation Investor

- EB-5 Employment creation investor. \$1.8 million dollar investor or \$900,000 in a targeted employment area

PERM labor certification through the state workforce agency and the U.S. Department of Labor (DOL) is required as follows:

- 3rd preference **requires** PERM labor certification.
- 2nd preference **requires** PERM labor certification *unless* a “national interest waiver” is approved by USCIS.
- 1st preference, 4th preference and 5th preference do **not** require PERM labor certification.

Employment-Based Immigration

There are three steps required for *most* employment-based immigration for a U.S. employer to petition an alien for U.S. permanent residence: (1) labor certification; (2) immigrant visa petition; and (3) application for permanent residence by adjustment of status in the U.S. **or** consular processing outside the U.S. These steps are for positions that *require* labor certification. Preference categories that do not require labor certification start at the Immigrant Visa Petition (Step 2).

Step 1. Labor Certification (ETA 9089)

Prevailing Wage Determination. The PERM Employment-Based Immigrant Worker petition starts with the prevailing wage determinations from the U.S. Department of Labor (DOL). Employers must pay 100% of the prevailing wage at the time Permanent Residence is approved. A four-tier wage scale will be implemented.

PERM recruitment. The employer is required to conduct a recruitment campaign as noted below, prior to electronically filing the labor certification with the DOL. This. Applications will be processed and then either certified (approved), denied, or selected for audit.

Basic (non-professional) Positions require a prevailing wage determination and a job order (state database referrals) from the State Workforce Agency, two (2) Sunday newspaper ads, and a job posting notice at the job site.

Professional Positions require a prevailing wage determination and a job order from the State Workforce Agency, two (2) Sunday newspaper ads (may substitute a professional journal ad for one of the newspaper ads), a job posting at the job site **and** three additional recruitment activities, such as company website posting, employee referral programs, internet job search posting, journal, radio and television ads, private employment firms, campus placement recruitment, job fairs, and other recruitment efforts.

Ads do not need to include a salary but must identify the employer, job location and sufficient job description. The goal for PERM electronically filed application is for the DOL to have a determination within sixty (60) days, but DOL can take many months to review the application.

Note: DOL approval of the labor certification application is *not* work authorization. Labor certification only indicates that there are no U.S. workers willing, qualified, able, or available to perform the job. This is required before filing the next steps with the USCIS.

Step 2. Immigrant Visa Petition (I-140)

The employer files an employment-based immigrant visa petition with a USCIS Regional Service Center. The employer must show that they are offering a permanent job and are financially able to pay the wages offered from the “priority date” to the date of adjustment of status. The alien must show that he meets the education and experience qualifications required for that position as described in the labor certification application. The alien will be placed in an employment immigrant visa category (Group 2, 3 or EW) according to the education and experience required for that specific position.

Note: The approval of an immigrant visa petition does *not* provide work authorization or permission to remain in the U.S. For this reason, it is important to maintain nonimmigrant status if the employee intends to work in the U.S. until the priority date is current.

Step 3. Application for Permanent Residence (I-485)

The application for permanent residence may be filed at the same time as the Immigrant Visa Petition **if** the U.S. Department of State (DOS) indicates, through the DOS Visa Bulletin, that there are visa numbers available. **Plus**, USCIS will determine which DOS Employment-Based Preference Immigrant Visa Chart to use (“Final Action Dates” Chart A or “Dates for Filing” Chart B) for purposes of filing the I-485. A link to the Visa Bulletin is at **www.Fonglegal.com**. The filing for permanent residence while inside the U.S. is called *adjustment of status*. The spouse and unmarried minor children *under* the age of 21 may file applications for permanent residence at the same time as the principal. USCIS processing times are available through **www.Fonglegal.com**.

If a visa number is *not* available, the Immigrant Visa Petition filing establishes a priority date, unless the case requires labor certification, which established the priority date, and when a visa becomes available, the permanent residence applications will be filed.

During the period between the filing of the I-485 application and the completion of permanent residency, applicants should generally remain in the U.S. Permission to travel can be granted if there is a business or personal matter. Any departure from U.S. *without* permission from the USCIS or without a valid non-immigrant visa stamp (H-1B or L-1) is deemed an abandonment of the I-485 permanent residency application.

Information and Document List

- ❑ Job title and detailed job description
- ❑ *Minimum* job requirements (education, training, experience, licensing)
- ❑ Proposed salary, detailed job description
- ❑ Terms of employment (U.S. worksite address, hours, required travel)
- ❑ Résumé, educational degrees; transcripts and educational evaluations
- ❑ Company information
- ❑ Employment experience letters
- ❑ Professional licenses if applicable (engineering, architecture, medical license)
- ❑ Draft of the DOL labor certification application, ETA 9089

EB-5 Information and Document List

- ❑ Passport and visa pages
- ❑ Completed Investor Visa Questionnaire (IVQ)
- ❑ Source of funds (SOF) documentation

Fong•Ilagan, LLP works with U.S. businesses to simplify the employment-based immigrant visa process. To discuss how immigration laws can help your business goals and your staffing needs, please contact our office at 713.772.2300.