

Employment Based Immigration Immigrant Visa Consular Processing

U.S. businesses can petition for permanent residence for current and prospective employees. Current 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 (Masters and Ph.D.)
- 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. PERM Employment-Based Immigrant Worker petition prevailing wage determinations are obtained from the State Workforce Agency. In Texas, it is the Texas Workforce Commission (TWC). Employers must pay 100% of the prevailing wage at the time Permanent Residence is approved. A four-tier wage scale will be implemented.

PERM requires an employer to conduct a recruitment campaign up to six months prior to electronically filing the labor certification with the Department of Labor (DOL). 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 from the State Workforce Agency, two (2) Sunday newspaper ads, and a job posting 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.

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.

Step 2. Immigrant Visa Petition (I-140)

This step is the employer filing an employment-based immigrant visa petition with the USCIS Regional Service Center having jurisdiction over the place of employment. The employer must show that they are offering a permanent job and are financially able to pay the wages offered from the date of filing 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 enter the U.S. to work. For this reason, it is important to maintain nonimmigrant status if the alien intends to work in the U.S. until the priority date is current.

Step 3. National Visa Center (NVC) processing

The USCIS will send the approval to the National Visa Center (NVC) to assign a case number. The NVC determines if visa numbers are available based on the *priority date* of the case. A priority date is determined by the date the PERM labor certification, or I-140 petition was filed. The immigrant visa for entry to the U.S. as a permanent residence may be filed when the U.S. Dept. of State indicates, in the DOS Visa Bulletin that there are visa numbers available. A link to the Visa Bulletin is at www.Fonglegal.com.

If a visa number is available, the NVC forwards the approval to the consulate noted on the petition. If a visa number is *not* available, the NVC keeps the case until a visa number is available at which time, they forward the approval to the consulate.

When the priority date is close to current, the NVC sends the *Instructions Package for Immigrant Visa Applicants*. Once the applicant notifies the NVC that all documents ready, the NVC will forward the case to the Consulate to schedule interview appointment.

If a visa number is *not* available, the Immigrant Visa Petition filing establishes a priority date, unless the case required labor certification, which established the priority date as of the date of submission to the US Department of Labor (DOL), and when a visa becomes available, the immigrant visa application may be submitted.

During the period between the approval of the I-140 petition and the issuance of the immigrant visa, applicants should maintain any applicable non-immigrant visa stamp (B-2, H-1B, L-1, E-2, E-1, TN, O-1, etc.).

Step 4. Immigrant Visa Consular processing (DS-260)

Filing for an immigrant visa for permanent residence **outside the United States** is called *immigrant visa consular processing*. The spouse and unmarried minor children *under* the age of 21 may file for immigrant visas at the same time as the principal.

Each consulate has different procedures and visa interview appointments vary, but are usually scheduled within 90 days. The Consulate will send the *Appointment Package for Immigrant Visa Applicant*, which advises the Applicant and accompanying family members regarding the medical examination and immigrant visa interview. Processing times are available at www.travel.state.gov. The immigrant visa for the principal and dependent family members allows for entry to the US as an immigrant (green card).

When permanent residence (green card) is approved at entry to the U.S., the CBP officer will annotate the passport with temporary evidence of permanent residence. It may take some time for you to receive your Permanent Resident Card. The Service is not required to give you any other temporary evidence of your permanent residence. We advise you to wait for issuance of the card prior to any international travel.

U.S. Permanent Residents enjoy many rights and have many responsibilities, including paying or filing US income taxes, notifying the USCIS of address changes and maintaining certain physical presence in the United States.

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 the immigration laws can help your business goals or with your staffing needs, please contact our office at 713.772.2300.