

FAQ: First Steps to an Employment Based “Green Card” – The Labor Certification Process

Employers seeking to obtain permanent residence for a foreign worker generally have to obtain a “labor certification” (LC) from the Department of Labor (DOL) as the first step in the process. DOL uses a system known as “PERM” to allow employers to file applications for such LC.

What is PERM?

PERM (Program Electronic Review Management) is a system through which employers submit an electronic application to DOL to attest that they have taken the required steps to recruit U.S. workers and that they have been unable to find a qualified U.S. worker for the position. Employers are responsible for keeping documentation of the recruitment and the documentation is submitted to DOL as a result of an audit.

Is an employer required to pay a certain wage in connection with the LC position?

Yes. An employer must file and obtain a Prevailing Wage Determination Request (PWDR) form with the DOL before filing the LC. The DOL uses its Online Wage Library to provide a wage level based on the employer’s job description and requirements. The employer has the option to suggest a qualifying wage survey, which must meet DOL’s criteria to be considered acceptable. The employer must attest that it will pay 100% of the prevailing wage at the time that the foreign national beneficiary obtains permanent residence on the basis of the LC.

What can an employer do if it does not agree with the PW determination?

An employer can submit additional information to persuade the DOL to change the skill level or the job classification or submit an alternative survey.

Does the PW have a validity period?

Yes. The PW is typically valid for at least 90 days and no more than one year from the determination date on the form. Employers must either begin the recruitment process, or file their PERM applications within the validity period on the PWD.

Where and how are the LC applications processed?

PERM centralizes processing of LC applications in its Atlanta national processing center.

How long does it take DOL to process a PERM application?

Currently, “clean” applications are taking 5 to 6 months to adjudicate. If the case is audited, processing times can extend to over a year. Of note, it takes approximately 4 to 5 months to undergo the pre-PERM filing required steps including obtaining a PWD and undergoing recruitment.

Are some employers prevented from filing PERM cases?

Yes. To file a PERM case, the employer must complete a specific recruitment during the 180 days prior to filing the application and document that the recruitment did not identify a qualified U.S. worker.

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Employers that have undergone layoffs, are seeking entry-level jobs, or are not actively hiring, may not be able to complete the required recruitment.

Can the sponsored employee pay for the PERM application process?

No. DOL’s regulations state that PERM is an employer business expense, and that payment for PERM by the sponsored alien is prohibited.

Does the LC expire?

Yes. The LC expires 180 days after it is certified by DOL and within its validity the employer must file an I-140, Immigrant Petition on behalf of the foreign national.

Can the employee file for the “green card” after the LC is certified?

It depends. The PERM application is only the first step in the “green card” process. After obtaining the LC, the employer must file Form I-140 with USCIS. If the “priority date” (the date the PERM application was filed) is current, the employee might be able to file an adjustment of status (AOS) application concurrently with the I-140 Petition.

If the priority date is not current, the foreign national will be in a “waiting line” for a visa. His or her place in this line is determined by the priority date, preference category and country of birth. An immigrant visa is considered available when the applicant has a “priority date” that is earlier than the date listed in the Department of State’s Visa Bulletin for the applicant’s particular “preference category” and country of birth. The priority date is not “locked in” until the I-140 immigrant petition is approved. Preference categories are based on the educational and experience requirements for the position as listed on the LC or on the category of immigrant petition filing.

What happens if a LC is selected for an audit?

The employer is required to respond to the audit and provide supporting documentation within 30 days of the request by a Certifying Officer (CO). After the documentation has been submitted, the CO can approve the application, request additional evidence or deny the application. The CO may also require that the employer undertake additional supervised recruitment. The supervised recruitment involves new recruitment directed by the CO.

To begin assisting you, we recommend that you review the many free resources available on our immigration site [here](#). To schedule an analysis, please email ImmigrationGroup@marksgray.com.

*For more information about your Marks Gray Immigration team led by **Giselle Carson** may assist you today, please visit our [website](#).*