

Electronic PERM Labor Certification for Permanent Residence

The Department of Labor approved regulations to allow for electronic filing of Labor Certification Petitions. Summary of steps:

PHASE I: The Labor Certification ('PERM') petition is started with the Department of Labor by the American employer. The Department of Labor conducts a review of the job offer being made, and the recruitment efforts made by the employer, to evaluate if same are within normal market parameters, in terms of the salary being offered, work hours, duties, and experience required. If within parameters, the Department of Labor issues a Certification that the position may be permanently filled by a qualified foreign professional. With the new PERM electronic filing regulations, processing may be reduced to 45 days (after all mandatory recruitment steps completed) from the time a properly filed petition is entered into the system.

PHASE II: The employer can file the Petition for Permanent Residence with the Immigration Service after certification of the position by the Labor Department. The Service reviews the employer's financial ability to pay the salary offered. For smaller employers, it is advisable to review the financial situation before starting the petition to make sure there is financial capacity. This phase may be processed in 2 or 3 months.

PHASE III: Together with Phase II (the petition for permanent residence), the qualifying foreign worker and his/her immediate family members (spouse and single children under 21) can apply for Adjustment of Status to become permanent residents of the United States, or request a consular interview at an American Consulate abroad (after phase II completed). This is the personal part of the petition, where criminal, medical and immigration background checks are conducted for the family. Employment Authorization and Social Security cards can be issued for all qualifying family members. This final phase may be processed in 4 to 6 months for issuance of the Permanent Residence Cards (Green Cards). (*) (**)

(*) **Waiting List:** In order to be able to file the last phase (Adjustment of Status or Consular Processing), the Priority Date of the petition (the initial filing date of the Labor Certification) must be current (not backlogged). Most of the EB-1, 2, 4 and 5 (EB= employment based) categories are not backlogged, and most of the EB-3 category is currently significantly backlogged. Please contact us for further information.

(**) **Expired Status:** Individuals whose authorized stay in the U.S. has expired over 6 months ago will need to qualify for a special paragraph of law, called '245(i)' to become permanent residents. This paragraph of law was suspended on April 30, 2001. Many individuals who tried to start petitions under the last period 245(i) was in force, (until 4/30/2001) may qualify to transfer or "grandfather" 245(i) rights to a new petition, started now, even if they were only accompanying family members in the original petition (started by a parent, spouse, ex-spouse, etc). Therefore, we recommend that individuals who are out of status seek the advice of an immigration attorney for an in-depth analysis of possible qualification under paragraph 245(i).

Do not use any of the above information to make decisions. This is only a generic informational text. Always seek the advice of a qualified Immigration Attorney of whom you have references to analyze your individual situation.