

ImmiCore Law

A Professional Law Corporation

Steps in Employment Based Green Card (EB-2 & 3, does not include discussion of special classes):

STAGE 1: PERM

1. **Labor Certification (“LC”) required –**
 - a. Jurisdiction - Must be obtained from the Department of Labor (DOL).
 - b. Recruitment - For the LC to be approved the employer must go through a process of recruitment in order to prove to the DOL that there are no qualified U.S. workers for the position.
 - c. Prevailing Wage - Further the wages must meet the DOL prevailing wage standards.
 - d. Job Requirements –
 - i. The job must be a bona fide job,
 - ii. It must be full-time, and
 - iii. Located in the U.S.
 - iv. The job requirements must be reasonable.
 - v. The job should not involve unlawful discrimination, should not be contrary to law, and should not be available because of a strike or a lock-out.
 - vi. The job must have existed before the alien was hired, or the employer must show that there was a major change in the business that occurred after the alien was hired.
 - vii. An employer-employee relationship must exist.
 - viii. The employer must demonstrate financial viability and the ability to pay the employee

2. **PERM – Program Electronic Review Management (20 CFR 656 et seq.)**
 - a. Drafting the job requirement
 - i. Should be aligned with O*Net

 - b. Obtaining prevailing wage determination (PWD) – this process is currently taking at least 60 days.
 - i. Wage should at least be that of or higher than the “prevailing wage” as determined by the National Prevailing Wage and Helpdesk Center (“NPWHC”).
 - ii. PWD will be valid for the period determined by the NPWHC, which can vary from 90 days to 1 year after issuance.
 - iii. Employer must file its application or commence recruitment within the validity period specified on the NPWHC.

 - c. Place job order with SWA
 - i. Employer must place job order with the state workforce agency (SWA) serving the area of intended employment. The order must be placed for a period of 30 days. This recruitment step must occur at least 30 days but not more than 180 days

before the filing of the application. The 30-day job order timeframe must end at least 30 days prior to filing.

i.e. the earliest that the LC can be filed is 60 day after the ad has been placed.

d. Recruitment –

- i. Time frame: must do recruitment before filing PERM application.
- ii. 2 Print advertisements be run
 1. One ad on two different Sundays in the newspaper of general circulation in the area of intended employment. For professional positions requiring experience and an advanced degree, the second Sunday newspaper ad may be substituted with an ad in a professional journal appropriate for the job offered.
 2. Both ads must be placed at least 30 days, but not more than 180 days, before filing.
 3. The print ads need to include the name of the employer but do not need to include the salary offered.
 4. An advertisement may be used for multiple positions and can be broadly written with few details regarding job duties and requirements, so long as all of the required elements are included.
- iii. In addition, applications for professional positions must include documentation of at least 3 additional recruitment steps, out of a list of 10 possibilities. **Only one of the additional steps may consist solely of activity that took place within 30 days of the filing of the application.** None of the steps may have taken place more than 180 days prior to filing the application.
 1. *Job fairs.* Recruitment at job fairs for the occupation involved in the application, which can be documented by brochures advertising the fair and newspaper advertisements in which the employer is named as a participant in the job fair.
 2. *Employer's Web site.* The use of the employer's Web site as a recruitment medium can be documented by providing dated copies of pages from the site that advertise the occupation involved in the application.
 3. *Job search Web site other than the employer's.* The use of a job search Web site other than the employer's can be documented by providing dated copies of pages from one or more website(s) that advertise the occupation involved in the application. Copies of web pages generated in conjunction with the newspaper advertisements required by paragraph (e)(1)(i)(B) of this section can serve as documentation of the use of a Web site other than the employer's.

4. *On-campus recruiting.* The employer's on-campus recruiting can be documented by providing copies of the notification issued or posted by the college's or university's placement office naming the employer and the date it conducted interviews for employment in the occupation.
 5. *Trade or professional organizations.* The use of professional or trade organizations as a recruitment source can be documented by providing copies of pages of newsletters or trade journals containing advertisements for the occupation involved in the application for alien employment certification.
 6. *Private employment firms.* The use of private employment firms or placement agencies can be documented by providing documentation sufficient to demonstrate that recruitment has been conducted by a private firm for the occupation for which certification is sought. For example, documentation might consist of copies of contracts between the employer and the private employment firm and copies of advertisements placed by the private employment firm for the occupation involved in the application.
 7. *Employee referral program with incentives.* The use of an employee referral program with incentives can be documented by providing dated copies of employer notices or memoranda advertising the program and specifying the incentives offered.
 8. *Campus placement offices.* The use of a campus placement office can be documented by providing a copy of the employer's notice of the job opportunity provided to the campus placement office.
 9. *Local and ethnic newspapers.* The use of local and ethnic newspapers can be documented by providing a copy of the page in the newspaper that contains the employer's advertisement.
 10. *Radio and television advertisements.* The use of radio and television advertisements can be documented by providing a copy of the employer's text of the employer's advertisement along with a written confirmation from the radio or television station stating when the advertisement was aired.
- iv. Posting job notice
1. Employers must give notice of the planned filing of the LC to the employees' bargaining representative in the area of intended employment if there is such a representative. If there is no bargaining representative, employers are required to post a notice about the job opportunity for 10 consecutive business days in a conspicuous place at

the location of employment.

2. Employer must publish the notice in any and all in-house media normally used to fill positions in the organization, in accordance with normal procedures used for recruitment for similar positions in the organization.
 3. The LC can only be filed 30 days after the Job Notice has been placed for 10 consecutive business days. Typically this means that the notice has run for a 2 week period, Monday – Friday, and then starting 30 days from that Friday would be the earliest that the LC is placed.
- v. Lay-Off Analysis
1. Required if layoff by the employer of intended employment within 6 months of the filing of the labor certification application.
- e. Submitting the application and creating the audit file
- i. ETA Form 9089 – Application for Permanent Employment Certification
 - ii. Filed electronically on the DOL Web site
 - iii. Employer (not attorney) initially registers on the DOL website.
 - iv. Employer may then create sub-accounts for its attorney for the purpose of preparing and filing cases on the employer’s behalf.
 - v. No filing fee.

STAGE 2: I-140

1. Once the PERM is certified, then the I-140 can be filed.
2. Must be filed within 180 days of PERM certification
3. Employer must show that it has the Ability to Pay the PERM proffered wage, though the actual wage must only be paid when the Beneficiary joins after adjust status to permanent residence.

STAGE 3: Green Card (I-485 if in the US; or DS-260 / Immigrant Visa if Outside the U.S.

1. This can be filed when the priority date is current for the country of chargeability.
2. The priority date is the date that the PERM is filed.