



## **Employment Based Immigration**

The Immigration Act of 1990 (IMMACT 90) created five employment based preference categories for permanent residence.

### **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 million dollar investor or \$500,000 in a targeted employment area

Some employment based preference categories require a first step referred to as "labor certification" through the state workforce agency and the U.S. Department of Labor (DOL). Some preference categories do not require a labor certification.

The 1st preference; 4th preference and 5th preference do not require labor certification.

The 2nd preference requires labor certification unless a "national interest waiver" approved by CIS.

The 3rd preference requires labor certification. There is no waiver of the labor certification requirement.

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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 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 Petition** The next step is for the employer to file an employment based immigrant visa petition with the CIS Regional Service Center having jurisdiction over the place of employment. The employer must show that they are offering the job to the alien and that they 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 the particular 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 alien intends to work in the U.S. until the priority date is current.

## Step 3.

**Application for Permanent Residence** The application for permanent residence may be filed at the same time as the Immigrant Visa Petition if the U.S. Dept. of State indicates, through the DOS Visa Bulletin, that there are visa numbers available. A link to the Visa Bulletin is at [www.Fonglegal.com](http://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. CIS processing times are available through [www.Fonglegal.com](http://www.Fonglegal.com).

If a visa number is not available, the Immigrant Visa Petition will be filed, establishing a priority date, unless the case requires labor certification, which establishes the priority date, and when a visa becomes available, the permanent residence applications will be filed. If the beneficiary is outside the U.S., the CIS forwards the immigrant petition approval to the National Visa Center, which forwards it to the American Embassy or Consulate a few months before they anticipate that a visa number will be available.

If the applicant entered the U.S. legally; continuously maintained legal status in the U.S.; and has always worked with authorization, the applicant can file the application for permanent residence at the CIS Regional Service Center in the U.S. If these conditions are not met but the alien was physically present in the U.S. on December 21, 2000 and a labor certification application or visa petition

was filed by April 30, 2001, an additional \$1,000 penalty fee, in addition to the filing fee, may be paid to allow the alien to adjust status in the United States.

During the period between the filing of the application and the interview, 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 the permission of the CIS will constitute an abandonment of the application. The alien will then have to remain outside the U.S. until immigrant visa processing is completed at an U.S. consular post outside the U.S.

If the foreign national is not eligible for adjustment of status or chooses to complete immigrant visa processing at an U.S. consular post, this should be indicated on the immigrant visa petition. Upon approval, the immigrant visa petition with the original labor certification will be sent to the National Visa Center (NVC) for registration and filing with the designated U.S. consular post, usually in the applicant's country of citizenship or last residence abroad. Consular processing times vary and usually take at least six months depending on the backlog at that consular post.

### **Document List**

- DOL labor certification application, ETA 9089
- Proposed salary, detailed job description with minimum requirements
- Resume, Educational degrees; transcripts and educational evaluations
- Company information
- Employment experience letters
- Professional licenses if applicable (health care professionals; pharmacist; etc.)