



Key Terms:

PERM: Program Electronic Review Management

DOL: Department of Labor

PWR: Prevailing Wage Request

PWD: Prevailing Wage Determination

USCIS: U.S. Citizenship and Immigration Services

PD: Priority Date

DOS: U.S. Department of State

An Introduction to PERM Labor Certification, the First Step toward Employment-Based Permanent Residency

Step 1 *1–2 weeks, dependent on client* **Gather Information**

- Employer retains ImLaw for the case (review, sign, and return contract to ImLaw with payment of retainer fee).
- ImLaw opens new file and begins legal representation.
- Employer and Foreign National each complete ImLaw's PERM questionnaires and send questionnaires with stated required documents to ImLaw.
- ImLaw reviews questionnaires and documents to confirm that the Foreign National meets the criteria for filing a PERM application.
- ImLaw works closely with Employer to strategically draft the PERM ad that serves as the foundation for all required PERM recruitment. Careful thought, evaluation, and discussion with employers precedes the drafting of the PERM ad, which contains the minimum required education, experience, training, and/or skills as well as the job duties for the offered position.

Step 2 *6–8 months* **Submit Prevailing Wage Request & Await Response**

- ImLaw prepares and submits a Prevailing Wage Request (PWR) to the Department of Labor (DOL).
- Processing times fluctuate often and may take 8 months or longer. DOL posts processing times at flag.dol.gov/processingtimes
- While the PWR is pending, ImLaw will send instructions to employer to create a PERM account with DOL and a subaccount for ImLaw.

Step 3 *1–2 weeks, dependent on client* **Review Prevailing Wage Determination with Employer**

- ImLaw receives the PWD from DOL and reviews with Employer to ensure the prevailing wage can be paid to the Foreign National at the time the entire green card process is completed.
 - If the wage is too high, ImLaw will discuss and explore with Employer possible amendments to the offered job requirements, duties, etc.
 - If the wage is too high, ImLaw can discuss and explore with Employer the potential use of alternative wage surveys, if available, that meet DOL's strict criteria under law.
 - If the wage is acceptable, ImLaw will provide to Employer detailed instructions to begin PERM recruitment.

Step 4 *1–3 months, dependent on client* **Start Recruitment**

- ImLaw schedules a detailed call with Employer to provide an overview of the PERM recruitment process and requirements, including detailed guidance on placement of the PERM recruitment ads and proper retention of required evidence of each recruitment effort. (Note, Employer may also retain ImLaw to manage and handle all required PERM recruitment steps and retention of mandated evidence of each step for a small additional fee.)
- Employer posts a Notice of Filing prepared by ImLaw at the intended worksite for a minimum of 10 business days or, if applicable, provide the Notice of Filing to the Collective Bargaining Unit representative.
- ImLaw works with Employer to post the PERM ad on the required State Workforce Agency (SWA) website for a minimum of 30 calendar days.
- Employer places PERM ad in two Sunday editions of an appropriate newspaper of largest general circulation for the worksite location.
- Employer selects and conducts three additional recruitment steps out of a list of 10 options.
 - For certain permanent in nature, long-term college and university professor positions, the process is known as “Special Handling” and the PERM recruitment rules are slightly different from the standard PERM process. The Notice of Filing is posted at the intended worksite for 10 business days or, if applicable, provide the Notice of Filing to the Collective Bargaining Unit representative. The PERM ad must be placed in the Chronicle of Higher Education (one edition only) before Employer selects the best qualified candidate for the position. For such positions, the PERM application must be filed with DOL within 18 months of the selection of the candidate.

Step 5 *concurrently with Step 4* **Review Resumes from Applicants**

*(within 2 weeks or
less from receipt)*

- Employer receives resumes from applicants responding to PERM recruitment. Ideally, Employer should evaluate applicants within seven days of receiving these resumes and make a determination of whether the applicant meets the minimum stated requirements in the PERM ad based on the face of the resume.
 - If an applicant clearly meets or appears to meet the stated minimum requirements in the PERM ad, Employer should schedule a preliminary interview, during which real world questions can be asked of applicants to determine whether they are minimally qualified, able, and willing to do the job. Employer should use ImLaw’s PERM Employer Applicant Evaluation questionnaire as a guide. If Employer interviews an applicant and it is discovered that s/he cannot perform the job, that applicant can be “lawfully rejected”.
 - If an applicant clearly does not meet the stated minimum requirements, the applicant can be “lawfully rejected” for purposes of the PERM process and the resume should be set aside and stored in a folder labeled “Lawful Rejections” for this PERM case. Employer can reject U.S. applicants for legitimate job-related reasons only.
 - Note, the legal standard for traditional PERM cases is only that U.S. applicants must be minimally qualified to perform the position. Applicants for Special Handling PERM cases must be the best qualified candidate for the offered position, not merely minimally qualified.
 - Note, applicants responding to PERM recruitment must be U.S. workers, which includes U.S. citizens, U.S. lawful permanent residents (LPR or “green card” holders), U.S. nationals, asylees and refugees.

Step 6 *1–2 months,
dependent on client*
**Prepare PERM
Application, Form
ETA 9089**

- Employer completes ImLaw’s PERM Employer Recruitment Results Summary and sends to ImLaw with copies of all resumes received, reviewed, and evaluated by Employer.
- ImLaw reviews the completed PERM Employer Recruitment Results Summary.
- ImLaw prepares and finalizes the PERM application, Form ETA 9089, for Employer and Foreign National’s review.
- Once the PERM recruitment is completed, there is a mandatory 30-day quiet period before a PERM application may be submitted to DOL.

Step 7 *6–7 months*
**Submit PERM Application
& Await Response**

*Processing time fluctuates,
currently 6-7 months for non-
audited cases. DOL posts
processing times at [flag.dol.gov/
processingtimes](http://flag.dol.gov/processingtimes)*

- Employer, Foreign National, and ImLaw review the draft PERM application and after receiving signed ImLaw PERM attestations, ImLaw will submit the application online to DOL.
- After filing, Employer will receive from DOL a brief employer online sponsorship questionnaire, which must be completed within 30 days. The purpose of the questionnaire is for DOL to verify that Employer has indeed sponsored the Foreign National in question for PERM labor certification.
- Employer must indicate on the sponsorship questionnaire that there is one (1) opening for the position in question, even if the only opening for the position is to the Foreign National in question. Employer may be tempted to state there are no openings for the position, but the correct answer is one (1). In the event there are multiple openings for the position, i.e., Employer would love to find additional qualified candidates and would hire two or more qualified candidates for the permanent position, that number can be indicated on the sponsorship questionnaire as well.
- At this point, the PERM application will remain pending with the DOL and will ultimately be certified (approved), denied, or a PERM Audit Notification may be issued, which requires a response to be submitted to DOL within 30 days of receipt.
- A PERM Audit Notification is commonly triggered by certain items in the PERM application itself including, but not limited to, the minimum stated education and/or experience requirements, foreign language requirements, and the foreign national’s ownership of the employing entity.
 - In the PERM Audit Notification letter, DOL can request evidence of each PERM recruitment effort and a summary of the recruitment results, which includes the lawful reasons for rejection of U.S. applicants. In such letter, DOL can also request copies of the resumes themselves.
- Processing times for the PERM application fluctuate. It may take five to seven months or longer for a decision. If a PERM Audit Notification is issued, it can take an additional few months or longer for DOL’s decision.

Step 8 1–2+ years

Next Steps (Stages 2 and 3 Following PERM)

Time dependent on client and processing times at USCIS. USCIS posts processing times at egov.uscis.gov/processing-times

- If DOL certifies (approves) the PERM labor certification application, the next step is to file the I-140 immigrant petition with USCIS (Stage 2 of the three-stage PERM green card/employment-based permanent residency process), followed by the I-485 adjustment of status application (Stage 3). If the Foreign National is physically outside the U.S. at the time Stage 2 is being prepared, then Stage 3 is an immigrant visa process with National Visa Center (NVC) and the U.S. consulate in the Foreign National's home country (or country where Foreign National is permanently residing if not located in the home country), as opposed to the I-485 adjustment of status within the U.S.
- The purpose of the I-140 immigrant petition (Stage 2) is for USCIS to generally to determine whether Employer has the "ability to pay" the stated offered salary to the Foreign National and whether the Foreign National is qualified to perform the position (i.e., possessed all stated minimum requirements for the position prior to the filing of the PERM application with DOL).
- The purpose of the I-485 adjustment of status application or immigrant visa application is to generally to determine whether the Foreign National is individually eligible for green card status.
 - While the I-140 (Stage 2) can be prepared and filed immediately following PERM certification or approval, the I-485 or immigrant visa processing (Stage 3) can only be prepared and filed if there is an available green card/immigrant visa number for the applicable employment-based (EB) category. In other words, the Foreign National's Priority Date (PD), which is established by the filing of a PERM application with DOL, must be "Current" in order for Stage 3 to be filed with the government.
 - The Department of State (DOS) issues a "Visa Bulletin" monthly that explains the five employment-based (EB) categories (EB-1, EB-2, EB-3, EB-4, and EB-5), the total number of available green card/immigrant visa numbers for each of the EB categories under law, and the cutoff date for determining whether a green card/immigrant visa number is available and whether a Foreign National's Priority Date (PD) is "Current" for that particular month. The monthly DOS' Visa Bulletin can be found here: [The Visa Bulletin \(state.gov\)](https://www.state.gov/visabulletin)
- Regular processing of I-140 petitions at USCIS is approximately several months to over 1 year. Premium processing, which requires USCIS to take action on the I-140 within 15 days, is available for these type of I-140 petitions for an additional \$2,500 DHS filing fee.
- Processing of I-485 applications is approximately 1 to 1.5 years. There is no premium processing available for I-485 applications.
- Where the Foreign National is located outside the U.S., it is taking a whopping 1-2 years for the individual to be scheduled for an immigrant visa interview at a U.S. consulate in the home country due to COVID-19 related delays and restrictions.

Questions? Contact Us

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