

Bordeau Immigration Law, LLC

9303 W. 75th Street, Suite 210
Overland Park, Kansas 66204
(913)432-9994

ATTORNEYS

Judy Bordeau, *licensed in Missouri and Kansas*

Lisa McBee, *licensed in Missouri*

PERM — Regular Processing

US law allows employers to petition for permanent residency for foreign national employees through several different processes, the most common of which is called “labor certification”.

The foreign national may currently be employed in the position in question or may have been offered the position for a start date in the future. The labor certification requires the employer to demonstrate to the Department of Labor that there are insufficient qualified US workers interested in and available for the job.

The process requires engaging in recruitment in the local labor market to see if US workers apply who meet the minimum requirements of the job. The question of whether a US worker meets the minimum requirements of the position requires an analysis of what education, experience and skills are both “reasonable and essential” to perform the duties. The process does not allow the employer to screen based on who is the best qualified individual or to look for individuals who possess “preferred” skills but rather whether there is a “minimally qualified” US worker available and interested in the position.

The required recruitment is outlined below:

- (a) the position must be advertised on 2 Sundays, in a newspaper of general circulation in the area of intended employment;
- (b) notice of the filing must be posted on in the in-house media that is typically used by the employer for recruitment (e.g. employer website, departmental website, newsletter or other sources of recruitment used by the employer for similar positions);
- (c) the position must be posted at the State Workforce Agency for 30 days (our office will assist with this);
- (d) in addition, the employer must advertise through three of the following recruitment vehicles: (1) the employer web site; (2) job fairs; (3) college recruitment; (4) a trade or professional organization; (5) job search website; (6) private employment search firm; (7) employee referral program; (8) campus placement office; (9) local or ethnic newspapers; or (10) radio and TV ads.

Because the recruitment cannot be more than 180 days old at the time of filing for the labor certification, the employer typically has to do a new recruitment for the position, even if the foreign national is already working for the employer pursuant to temporary H-1B work authorization.

While this seems counterintuitive for many employers, because the H-1B worker is only a “temporary” worker, the 2nd recruitment is to seek a worker who is able to work on a permanent, rather than merely on a temporary basis.

The labor certification process generally is appropriate for positions that are hard to fill because the education, experience and/or skills required for the job are either unusual or are in high demand. The process can also be appropriate for jobs that produce few US worker applicants, perhaps due to the job location, the nature of the work or work schedule, the type of education required, or similar factors that make it difficult to attract qualified US worker applicants.

The labor certification is the first of three steps in the permanent residency process. After the labor certification is approved by the Department of Labor, the employer then petitions the USCIS for an Immigrant Worker (I-140 petition).

At the I-140 stage, the USCIS reviews the position to make sure that the position is *bona fide*, which includes a review of the employer’s financial information to make certain that the employer has the ability to pay the prevailing wage for the occupation.

The third step is the employee’s petition to Adjust Status from nonimmigrant to immigrant in the United States (I-485 petition). At the I-485 stage, the employee can include his or her family members, who also petition for adjustment of status.

The entire process can move relatively quickly or can be delayed by a number of factors. For cases not affected by visa retrogression, we estimate approximately 18-24 months. Cases affected by visa retrogression can take significantly longer, and, in some case, may take up to several years.

(Note: this handout is intended to provide a high level overview of PERM options. It does not provide an exhaustive review of the process nor does it include all information that may be relevant to a particular employee. For additional information, please contact our office or another attorney specializing in immigration matters).