

Old Labor Cert Process Era Ends

Earlier this month, the U.S. Department of Labor announced that the permanent foreign labor certification program backlog is nearly eliminated, with roughly ninety-nine percent of cases completed and the remainder awaiting responses from employers. For almost three years, more than 300 workers in two Backlog Elimination Centers (“BEC”) reviewed approximately 363,000 pending labor certification applications – a backlog created as a result of the legislative changes in 1997 and 2000. The former labor certification process was ultimately replaced by the current PERM labor certification process.

Statutory changes to the Immigration and Nationality Act in 1997 and 2000 led to a dramatic increase in paper labor certification applications. As a result, processing times rose, and applications sometimes languished for several years before adjudication.

Attempts to curb the growing backlog began immediately in 2001 and included regulatory and non-regulatory steps. Those efforts culminated with the November 2004 opening of temporary BEC facilities in Dallas and Philadelphia, dedicated solely to eliminating the backlog.

Both of the BEC facilities have started a transition and shutdown phase that will continue through December 2007. The actual elimination of the backlog will be a symbolic landmark, representing the end of the former labor certification process.

Today, our current PERM labor certification process (“PERM”) involves a job recruitment period, wherein the prospective employer must determine whether there are any U.S. workers available to fill the position being offered to the prospective foreign employee. PERM specifically states what types of advertising must be conducted during this recruitment, depending upon the type of employment being offered. If after this recruitment period, the employer determines there is no such available U.S. worker, then a PERM application may be filed with the U.S. government. After the PERM application is approved, the foreign worker may then apply for any immigration benefits that they may be eligible for, such as an immigrant visa, employment authorization document, and/or US lawful permanent residency – more commonly known as “green card” status.

There must be a strong commitment between both the employer and the employee before beginning the PERM process. This commitment is important for many reasons, but maybe most importantly, because the relationship of these two parties may last for an extended period of time. Also, the employer must understand that its involvement in this process is essential if a labor certification approval is to be obtained, and – eventually – a “green card.” The recruitment must be done properly, in order to withstand any possible audit by the U.S. Department of Labor.

There are financial costs to consider before beginning the PERM process. Recruitment costs such as advertising in newspapers and/or trade journals can cost several hundred dollars – depending upon the advertiser and frequency. Also, possibly

hundreds of dollars must be budgeted to cover immigration petition and application filing fees. Because this entire process is so complex, an attorney is typically retained.

In the end, PERM has made the labor certification process more efficient. Similar to the U.S. Department of Labor H-1B visa labor condition application process, PERM labor certification applications may someday soon be approved instantaneously via the internet. Indeed, PERM allows many foreigners to secure employment and obtain US lawful permanent residency in record time.

This article quickly touched upon the major parts of a complex US Department of Labor and Citizenship and Immigration Service process. We hope that this article provided enough general information for you to identify the major steps and issues concerning this process.

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