

LABOR CERTIFICATION - PERM PROCESSING

General Information for Employment Based Permanent Residency

To be sponsored for a Labor Certification, the Employer must have a bona fide job offer, which it intends to offer to the Prospective Employee/Beneficiary on a "Permanent Basis". The position must set forth the regular and normal job requirements, and the Employer must agree to pay the prevailing wage for the position, upon final approval of the employee's permanent residence in the USA. The Employer must also demonstrate that it has the necessary ability to pay the proffered salary.

The general purpose of this process is to demonstrate to the US Department of Labor whether there are qualified and available U.S. workers for the position in which the Labor Certification is being sought. If there are qualified and available workers that apply for the position, the certification will not be issued. With Cooper and Kolko, we divide processing into the following 5 steps:

STEP 1 Initial Evaluation and Preparation of Labor Work Up and Job Description, Determination and Approval of Prevailing Wage Determination with State DOL; General Preparation of Filing with Dept. of Labor.

The job description consists of the educational, work experience, special skills or other job requirements and training which are reasonably necessary and required by the Employer for the position. The Beneficiary/Employee must have the necessary education/experience/skills to perform the job. (Except in very limited situations, any work experience required for the position cannot be obtained from actual prior work experience with the sponsoring Employer).

STEP 2 Advertisement Preparation and Plan; Publication, Job Posting and Job Order

There are different requirements for advertising which depends upon whether the position is defined as "professional". If the position is not professional, advertising must only be run on two Sundays in a newspaper of general circulation. If the position is professional, the advertising must be run on two Sundays in a newspaper of general circulation and in three (3) alternative sources. The advertising period is open for at least 30 days after the last advertisement has been published.

The Employer must also comply with certain job posting requirements (10 business days at work site or union notification), and a Job Order must be placed with the State Employment Office.

STEP 3 Recruitment Procedures and Applicant Evaluation, and Electronic Filing with PERM.

If applicants respond to any of the advertisements, they must be evaluated with respect to all of the qualifications required of the position. Any applicants who may be qualified will then have to be interviewed (telephone or in person) by the employer to make the determination as to whether they are qualified and/or available to take the position. If there are qualified applicants, the case will end at this point as certification is not possible. If there are no qualified applicants for the position, the case may then be filed online via the PERM Electronic System. Most applications for Labor Certification will be completed in 45-90 days. However, some cases may be audited by the Department of Labor to assure that complete and accurate information has been included in the submission. If an Audit requirement is issued by the Department of Labor, additional attorney fees may apply.

If the U.S. Department of Labor approves the Labor Certification, the employer may then file with the U.S. Immigration Service an Immigrant Visa Petition on behalf of the Sponsored Employee.

IMMIGRANT VISA PETITION AND ADJUSTMENT OF STATUS OR CONSULAR IMMIGRANT VISA PROCESSING

(IF THE "PRIORITY DATE" IS CURRENT, THE FOREIGN WORKER MAY BE ELIGIBLE TO FILE CONCURRENTLY FOR THE IMMIGRANT VISA (Step 4) AND ADJUSTMENT OF STATUS (Step 5))

STEP 4 Immigrant Visa Petition with USCIS (Visa Approval)

Based upon the approval and issuance of the Labor Certification from the U.S. Department of Labor, the Employer may now file the Immigrant Visa Petition with the U.S. Immigration Service on behalf of the foreign worker. At this part of the process, the foreign worker must determine if they are going to file for Adjustment of Status in the United States, if eligible, or whether they are going to elect consular visa processing overseas.

In addition to properly completing and filing the Immigrant Visa Petition, two issues of particular concern at this stage of the process include:

- A. Since the filing of the labor certification, the employer must demonstrate that it has had and continues to have the ongoing ability to pay the foreign worker the certified prevailing wage. The employer will need to demonstrate this requirement by providing financial data and documents including tax returns, bank statements and/or other documentation to confirm the ability to pay.
- B. The Immigration Service will also require proof that the foreign worker is qualified for the certified position. The foreign worker must demonstrate they have all the necessary education (degree and transcripts, credential evaluation) and work experience (prior employment verification letters) required for the certified position.

STEP 5 Adjustment of Status OR Consular Immigrant Visa Processing (Visa Issuance)

Adjustment of Status involves filing individual Adjustment Applications with Immigration for each person in the family that is eligible to adjust status in the United States (spouse and children under 21). Each person that applies for Adjustment of Status may also be eligible for temporary Employment Authorization (Work Cards) and/or Advance Parole Visas (Travel Documents).

If **Consular Processing** is selected, once the Immigrant Visa Petition (Step 4) is approved, processing will then be forwarded from the Immigration Service through the National Visa Center, for eventual processing at the US Embassy in their home country. The Beneficiary/Employee and family will then be scheduled for an Interview, final processing and issuance of the Immigrant Visa in their home country.

There are certain advantages and/or disadvantages for either type of processing at Step 5 which will be evaluated and discussed based upon the specific facts and circumstances of each case.

For all people this process, it is critical that all applicants and family members maintain their legal temporary non-immigrant status if present in the USA, and not work without proper authorization. In addition, the filing of a Labor Certification, may impact a persons ability to receive a non-immigrant visa to temporarily enter the United States. The Labor Certification and Immigrant Visa Process are very complicated and generally involve procedures which require competent legal advice. Further, the filing of an Application for Labor Certification with the Department of Labor does not provide the Beneficiary any legal authorization to remain in the USA. The Beneficiary must have and/or maintain their valid non-immigrant status until at least reaching Step 5. **This Memorandum is only intended as a general outline of this process and each case must be fully evaluated. Legal Representation by Kolko & Associates, PC requires a written Fee Agreement.**