



PERM-BASED GREEN CARD PROCESS

The PERM-based green card process involves three steps through at least two different government agencies. The entire process can take from a several months to several years, depending on many factors, including: the employee's country of birth, the employee's academic and professional qualifications, the job requirements for the position, current government processing times, and immigrant visa quota backlogs.

Step 1: PERM Labor Certification (Current Processing Time Estimate: 10-12+ Months)

The first step in the green card process requires the employer to demonstrate to the Department of Labor ("DOL") that there is an unavailability of qualified, willing and able U.S. workers to perform the job for which the foreign national employee is sponsored. As explained in more detail below, the employer must demonstrate this unavailability of U.S. workers by engaging in a strictly prescribed recruitment program for at least two months, prior to the filing of the PERM application.



A) PERM Questionnaires

Once the employer requests initiation of a PERM-based green card process, we will send questionnaires to the employee and the employee's manager. The employee questionnaire asks for detailed work history, including exact dates of employment, employer addresses, previous supervisor's names and phone numbers, etc. The employer questionnaire also asks for details regarding the duties and requirements for the position, including an explanation as to why each of the specific job requirements are necessary to perform the job. This information is necessary because the DOL may audit the application and request this information later on in the process.



B) Confirm Job Description and Job Requirements

Once the questionnaires have been obtained, we will prepare a draft job notice which details the job description and job requirements. In most cases, we will arrange a call with the employee's manager to go over the PERM process, and discuss any issues, such as audit triggers, prevailing wage issues, etc. Following this call, the draft job notice will be sent to the manager for approval.



C) Obtain Employment Verification Letters

Upon approval of the draft job notice, we will contact the employee to confirm that he/ she will be able to verify that he/she meets all the requirements for the position as indicated on the job notice. Note that in most cases, the employee will be required to show that the requirements were met before joining the sponsoring employer. If work experience is required for the position, the employee will be given a sample employment verification letter that he/she will need to have signed by previous employers. Note that we will not be able to move forward with the process until the employee either provides the required verification evidence, or confirms in writing that he/she can obtain this evidence within 3 months.



D) Prevailing Wage Determination (16-19 Weeks)

Once the job notice has been confirmed, and experience verification obtained, and prior to starting the PERM recruitment campaign, we will file an application for a prevailing wage determination (PWD) with the DOL. The purpose of this application is to ensure that the employer is recruiting for the position at or above prevailing wage for the area of intended employment. Unfortunately, prevailing wage determinations are severely backlogged, and are currently taking over 3 months. Because the DOL's methodology for determining prevailing wage is not entirely consistent with "real world" data, and because it tends to misclassify certain positions into categories with higher prevailing wages, obtaining an appropriate PWD is often challenging, and may take significantly longer than 3 months. We will alert the employer at the outset of the process if we believe that obtaining a prevailing wage determination is likely to be a problem.



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E) Pre-Filing Recruitment (2-6 months)

In most cases, the 'pre-filing' recruitment stage of the PERM process requires advertising the job opportunity in two Sunday newspapers in the area of intended employment, posting the job opportunity for 30 days with the state workforce agency for the state in which the employee will work, and conducting three additional 'selective' recruitment steps over a 30-day period. The employer will also be required to give notice to other workers by posting information about the job opportunity at the intended worksite during this 30-day period. The employer must then wait at least another 30-day 'cooling off' period before the PERM application may actually be filed.

Prior to placing the ads, we will send instructions and tracking spreadsheet to the employee's manager to help evaluate resumes submitted during recruitment.

PERM advertising guidelines are very strict in terms of content and timing requirements, and the DOL is unforgiving in determining whether these requirements are met. Unfortunately, some of the requirements are not found in the regulations or any other published policy guidance; they are communicated solely through the Department's past decisions. A minor technical error or even a typo on a recruitment ad may result in a denial of a PERM application. For this reason, we recommend that employers allow us to place the newspaper and other job advertisements, and handle the state workforce agency posting.



F) Final Recruitment Report

At the conclusion of the pre-filing recruitment period, we will send a recruitment report that must be completed and signed by the employer's designated official. The report will indicate the results of the recruitment effort, including the total number of resumes received, and number of applicants found not be qualified. This report must be returned before we can finalize the PERM application for filing.



G) Processing with Department of Labor (6-8 Months)

If the employer is successful in demonstrating that there are no qualified, willing and able U.S. workers available to do the job for which the foreign national is being sponsored, a PERM labor certification application may be filed with the DOL. The online PERM labor certification application system is attestation-based, meaning that in most cases the DOL does not actually review evidence of the recruitment conducted by the employer, or ask for proof that the employer was unable to find qualified U.S. workers. If the information on the application demonstrates that all of the strict requirements of the PERM program have been met, the application may be certified in as little as a few weeks. However, a significant percentage of applications are "audited" by the DOL, in which case the process will take much longer.



H) PERM Audit (additional 6 months)

A significant percentage of PERM applications are audited by the DOL prior to final determination. Most audits are triggered by specific 'red flags' in the application, such as excessive or unusual job requirements, or labor market data indicating high unemployment for a certain type of occupation. On the other hand, some audits are purely random. Where an application is audited, the DOL sends a letter to the employer's counsel asking for proof that the employer complied with the recruitment steps, and no qualified U.S. workers were found. The audit letter may also ask for evidence justifying the necessity of certain job requirements, and/or evidence about the employee's professional or education background. If the audit turns up even a very minor technical error, or perceived error, the application will be denied, and the employer will have to start the process from the beginning.



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Step 2: The I-140 Immigrant Petition (Current Processing Time Estimate: 2 Weeks - 5 Months)

Although the PERM labor certification is the most difficult step in the green card process, it is only a preliminary step to petitioning for a foreign worker to get a green card. Once the PERM application is certified, the employer must file an I-140 immigrant petition with the United States Citizenship and Immigration Services (USCIS). Whereas the PERM focuses on the job opportunity, the I-140 is focused on the employer, and the foreign worker's qualifications. The employer must show that it has the ability to pay the employee the salary indicated on the PERM application by submitting corporate tax returns, audited financial statements, and/or payroll records. At the I-140 stage, we must also show that the employee meets the minimum education, and experience requirements for the position offered by submitting copies of academic degrees, transcripts, and experience verification letters, as applicable.



A) Confirm Employer's Ability to Pay

The employer must show that it has the ability to pay the employee salary indicated on the PERM application by submitting corporate tax returns, audited financial statements, and/or payroll records.



B) Confirm Employee's Education and Experience

We must also show that the employee meets the minimum education, and experience requirements for the position offered by submitting copies of academic degrees and transcripts and experience verification letters, as applicable.

Step 3: Adjustment of Status Application (Current Processing Time Estimate: 8-12+ Months)

The third and final step of the PERM-based green card process is the I-485 adjustment of status application. While Step 1 and Step 2 are filed by the employer, the I-485 application is filed by the employee, and the employee's immediate family members (if applicable). Through this step, the USCIS determines whether there are criminal offenses, past immigration violations, political affiliations, medical conditions or other factors that would make the employee or his or her family members ineligible for a green card. Each applicant must undergo a medical examination by a USCIS-approved physician, and each applicant's fingerprints and biographic information are run through FBI and other law enforcement databases.



A) Adjustment of Status Questionnaires (1-3 weeks)

We will send the employee and any qualifying family members a questionnaire and document checklist. Applications for employment authorization document (EAD) and Advance Parole document applications are also prepared to provide the employee and his or her family members with work and travel authorization while the I-485 application is pending.



B) File Application with USCIS

Upon receipt of all required materials, we will submit the I-485 adjustment of status application with the appropriate USCIS Service Center. In some cases, the employee may not be able to leave the United States once the application is filed. We will advise of any travel or work authorization restrictions while the adjustment is pending.



C) Attend Biometrics Appointment

Within 3-4 weeks of filing, the USCIS will schedule the applicant and any dependents to have their fingerprints and photographs taken at a local application support center.



D) Receive Employment Authorization / Advance Parole Card

Within 90 days or so of filing, the applicant will receive an Employment Authorization Document (EAD), valid for two years, and Advance Parole document, valid for one or two years. These are typically issued as a single combo card.



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E) Receive Green Card

Green card processing times normally range from four to six months, but some cases may take significantly longer depending on the specific facts of the case. Once the I-485 application is approved by the USCIS, the applicant will receive his or her permanent resident card (i.e. green card) in the mail within 2-3 weeks.

Green Card Quota Backlogs & Preference Categories

The immigration law imposes quotas on the different categories of immigrant (green card) visas available each year. Each year, there is a limit of 150,000 employment-based immigrant visas allocated under the law. No more than 7.5% of the total allocation of immigrant visas may be utilized by persons born in a single country, and no more than 28.6% percent may be allocated to a single "preference category." How long your green card process will take may depend on your preference category, and your country of birth. For example, a person born in India, in the "EB-2" preference category may be subject to a quota backlog of over 10 years, while a person born in Canada in the same preference category may not be subject to any quota backlog at all. Generally, persons born in India are subject to the longest backlogs. China is also subject to significant backlogs, and persons born in most other countries are usually not subject to any quota backlogs at all.

Preference Categories



For PERM-based green card sponsorship, there are two applicable preference categories. The Employment-Based Second Preference Category ("EB-2") and the Employment-Based Third Preference Category ("EB-3").

Employment-Based 2nd



The EB-2 category is reserved for persons who are being sponsored for positions that require at least a Master's degree or alternatively, a Bachelor's degree followed by five years of progressively responsible experience. Note that even if you have a Master's or Bachelor's and five years of experience, you may not necessarily qualify for EB-2. The position must also require a Master's or Bachelor's and five years of experience, and this requirement must be consistent with the company's actual hiring practices for that position.

Employment-Based 3rd



The EB-3 category is divided into three separate sub-categories: the EB-3 "professionals," reserved for positions requiring at least a bachelor's degree, and EB-3 "skilled workers," which applies to positions requiring at least two years of experience, and EB-3 "other workers," which applies to positions requiring less than two years of experience. Your preference category will be determined by the information provided to us by your manager and/or the company indicating the minimum requirements for your position.

Priority Dates & Cut-off Dates



To simplify how priority dates and cut-off dates work in the green card process, we can think of the process as analogous to waiting in a queue to be served at a lunch counter where there is a pull ticket machine, to establish your place in the queue, and a "Now Serving" screen above the counter to indicate when you are ready to be served.

Similarly, for purposes of the green card quota backlog, your place in the queue is established on the date that your PERM application is filed with the Department of Labor, Step 1 of the green card sponsorship process. This date is called your "Priority Date." You are only eligible to file the final stage of the green card process (Step 3) or actually be approved for a green card when the "cut off" date has been reached. These cut off dates are published by the Department of State's monthly visa bulletin, which, using our analogy, can be thought of as the Now Serving screen above the service counter.



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The Visa Bulletin

Because there are different preference categories that apply differently depending on a person's country of birth, there are actually many different cut off dates published in the bulletin each month. We determine the cut off date that applies to you by finding your country of birth, in the top row of the employment-based Final Action chart, and by your preference category in the first column of the chart, and then finding the exact cut-off date where the corresponding column and row intersect.

Final Action Dates

| EMPLOYMENT-BASED | ALL CHARGEABILITY AREAS EXCEPT THOSE LISTED | CHINA | INDIA | MEXICO | PHILIPPINES |
|------------------|---|-----------|-----------|-----------|-------------|
| EB-1 | 01 MAR 19 | 01 JUN 17 | 01 MAR 15 | 01 MAR 19 | 01 MAR 19 |
| EB-2 | C | 15 AUG 15 | 22 MAY 09 | C | C |
| EB-3 | 01 JAN 17 | 22 MAR 16 | 15 JAN 09 | 01 JAN 17 | 01 JAN 17 |

We can file your I-485 application, and your green card may also be approved if your priority date is before this cut off date. It is at this point that your priority date is considered to be "current." Note that we can always file your I-140 immigrant petition (Step 2) irrespective of whether your priority date is current.

To make matters more complicated, there are actually two different employment-based charts with completely different cut off dates published in the visa bulletin each month. The Final Action chart always determines when your green card may be approved, and sometimes also determines when you are eligible to file the I-485 application (Step 3).



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Dates for Filing

The Dates for Filing chart is sometimes used to determine when the I-485 application may be filed, but is never used to determine when the green card can actually be approved. The Dates of Filing chart has cut off dates that are invariably earlier than the final action chart.

| EMPLOYMENT-BASED | ALL CHARGEABILITY AREAS EXCEPT THOSE LISTED | CHINA | INDIA | MEXICO | PHILIPPINES |
|------------------|---|-----------|-----------|-----------|-------------|
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| EB-3 | 01 JAN 17 | 22 MAR 16 | 15 JAN 09 | 01 JAN 17 | 01 JAN 17 |

Which chart will be used to determine whether we can file your I-485 application in a given month will depend on a directive that is published by the USCIS a few days after the Department of State publishes the visa bulletin each month.

Because there is a limited number of immigrant visas available each year, the USCIS may choose to use the Dates of Filing Chart rather than the Final Action chart to get more applications in process. This is to better control how many green card applications will be approved for that fiscal year.

Keep in mind that the USCIS and Department of State cannot carry over unused visa numbers from one fiscal year to the next.

Prior to the two-chart system, the full annual quota of immigrant visas was sometimes under-utilized, because the USCIS did not have a sufficient pool of applications that were ready to be approved by the end of the fiscal year.

Fortunately, you will not need to determine whether your I-485 is eligible to be filed each month on your own. Goeschl Law monitors the visa bulletin each month and will always notify you when we are eligible to move forward with the final stage of the green card process.