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Overview

A permanent labor certification issued by the Department of Labor (DOL) allows an employer to hire a foreign worker to work permanently in the United States. In most instances, before the U.S. employer can submit an immigration petition to the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS), the employer must obtain a certified labor certification application from the DOL's Employment and Training Administration (ETA). The DOL must certify to the USCIS that there are not sufficient U.S. workers able, willing, qualified and available to accept the job opportunity in the area of intended employment and that employment of the foreign worker will not adversely affect the wages and working conditions of similarly employed U.S. workers.

To improve the operations of the permanent labor certification program (PERM), ETA published a final regulation on December 27, 2004, implementing a new, re-engineered permanent labor certification program, effective March 28, 2005. This new electronic program has improved services to our various stakeholders.

As of March 28, 2005, ETA Form 750 applications were no longer accepted under the regulation in effect prior to March 28, 2005, and instead new ETA Form 9089 applications had to be filed under the new PERM regulation at the appropriate National Processing Center (NPC). Applications filed under the regulation in effect prior to March 28, 2005, continued to be processed under the rule in effect at the time of filing at an appropriate Backlog Elimination Center until such time as the backlog was eliminated. Where an employer chose to withdraw an application filed under the regulation in effect prior to March 28, 2005, and still in process, and to refile an application for the identical job opportunity under the refile provisions of the PERM regulation, the employer was permitted to use the previously filed ETA Form 750 application filing date.

DOL processes Applications for Permanent Employment Certification, ETA Form 9089, with the exception of Schedule A and shepherd applications filed under 20 CFR §656.16. The date the labor certification application is received by the DOL is known as the filing date and is used by USCIS and the Department of State as the priority date. After the labor certification application is certified by DOL, it should be submitted to the USCIS service center with a Form I-140, Immigrant Petition for Alien Worker. The certification has a validity period of 180-days and expires if not submitted to USCIS within this period.

Qualifying Criteria

- Applications filed on or after March 28, 2005, must comply with the new PERM process and adhere to the new [PERM Regulation](#).
- There must be a bona fide, full-time permanent job opening available to U.S. workers.
- Job requirements must adhere to what is customarily required for the occupation in the U.S. and may not be tailored to the foreign worker's qualifications. In addition, the employer shall document that the job opportunity is described without unduly restrictive job requirements, unless adequately documented as arising from business necessity.
- The employer must pay at least the prevailing wage for the occupation in the area of intended employment.

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Process for Filing

1. **Application.** The employer must complete an Application for Permanent Employment Certification, [ETA Form 9089](#). A completed application will describe in detail the job duties, educational requirements, training, experience, and other special skills the employee must possess to perform the work, and outline the foreign worker's qualifications.
2. **Signature requirement.** Applications submitted by mail must contain the original signature of the employer, foreign worker, and preparer, if applicable, when they are received by the NPC. Applications filed electronically must, upon receipt of the labor certification issued by ETA, be signed immediately by the employer, foreign worker, and preparer, if applicable, in order to be valid.
3. **Prevailing wage.** Prior to filing ETA Form 9089, the employer must request and obtain a prevailing wage determination from the National Prevailing Wage Center (NPWC). The employer is required to include on the ETA Form 9089 the NPWC provided information: the prevailing wage, the prevailing wage tracking number, the SOC (O*NET OES) code, the occupation title, the skill level, the wage source, the determination date, and the expiration date.
4. **Pre-Filing Recruitment Steps.** All employers filing the ETA Form 9089 (except for those applications involving Schedule A occupations and shepherders filed under 20 CFR §656.16) must attest, in addition to a number of other conditions of employment, to having conducted recruitment prior to filing the application.

When filing under 20 CFR §656.17, the employer must recruit using the standards for professional occupations set forth in 20 CFR §656.17(e)(1) if the occupation involved is on the list of occupations published in Appendix A to the preamble of the final PERM regulation. The occupations listed have been deemed to be professional occupations, as they normally require a bachelor's or higher degree. For all other occupations not normally requiring a bachelor's or higher degree, employers can simply recruit under the requirements for nonprofessional occupations at 20 CFR §656.17(e)(2). Employers are not prohibited from conducting more recruitment than is required by the regulations.

The employer must prepare a recruitment report in which it categorizes the lawful job-related reasons for rejection of U.S. applicants and provides the number of U.S. applicants rejected in each category. The recruitment report does not have to identify the individual U.S. workers who applied for the job opportunity, however, if requested by the Certifying Officer, the employer must submit the resumes.

5. **Audits/requests for information.** Supporting documentation may not be filed with the ETA Form 9089, but the employer must provide the required supporting documentation if the employer's application is selected for audit or if the Certifying Officer otherwise requests it.
6. **Retention of records.** The employer is required to retain copies of applications for permanent employment certification and all supporting documentation for five years from the date of filing the ETA Form 9089. For example, the NPWC prevailing wage determination documentation is not submitted with the application, but it must be retained for a period of five years from the date of filing the application by the employer.

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7. **Online filing.** The employer has the option of filing an application electronically ([using web-based forms and instructions](#)) or by mail. However, DOL strongly recommends that employers file electronically. Not only is electronic filing, by its nature, faster, but it will also ensure the employer has provided all required information, as an electronic application can not be submitted if the required fields are not completed. Additionally, when completing the ETA Form 9089 online, the preparer is provided prompts to assist in ensuring accurate data entry.

The employer can access a customer-friendly Web site ([www.nlc.dol.eta.gov](#)) and, after registering and establishing an account, electronically fill out and submit an Application for Permanent Employment Certification, ETA Form 9089.

Registration. To better assist employers with processing the Application for Permanent Employment Certification, the electronic Online Permanent System requires employers to set up individual accounts. An employer must set up a profile by selecting the appropriate profile option in the Online System. By completing an Employer Profile, the employer is able to:

- Save time by pre-populating its general information.
 - View the status of its labor certification applications online.
 - Update its profile information online.
 - Track newly submitted labor certification applications.
 - E-mail saved labor certification applications to others within the company.
 - Add new users to its account.
 - Withdraw labor certification applications no longer needed.
8. **Filing by mail.** Employers can submit paper applications to the Atlanta NPC. The address and contact information are provided on our Contact Information page.
 9. **Approvals.** If the Atlanta NPC approves the application, the ETA Form 9089 is signed by the Certifying Officer and returned to the employer/employer representative who submitted the application.

Contact Us

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Are there any employment-based immigration fees?

Most programs administered by the DOL do not charge fees for a foreign labor certification. Every program does, however, require fees be paid to the USCIS upon filing an application for a visa or green card. See the individual programs ([H-2A](#)) for details regarding DOL fees. See the [USCIS](#) site for details regarding USCIS fees.

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How long will the PERM application take?

Depending upon the nature of the program, the process for filing could vary between months and years. The process to obtain an employment based permanent labor certification can sometimes take up to several months after completing the necessary recruitment steps and filing the application with the National Processing Center. To be of assistance, we have provided the PERM Processing Times, which are updated monthly, for view at <http://scert.dol.eta.gov>.

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How do I find the status of my permanent case?

An employer should pro-actively and regularly, advisably once a month or less, monitor the status of an electronically filed labor certification application via the Permanent Case Management System, and compare its filing date, i.e., the date the application was submitted for processing, to the PERM processing times posted on the SCERT Visa Portal System (<http://scert.dol.eta.gov>). If there is more than a 30-day difference between the employer's filing date and the PERM processing time, the employer may contact the National Processing Center (NPC) for a status update.

An employer who filed a labor certification application via mail may contact the National Processing Center's Help Desk at 404-893-0101 for a status update.

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What do I do now that the permanent labor certification is approved?

Within 180 days of the date an application is certified, the employer must file an Immigrant Petition for an Alien Worker, [Form I-140](#), with the USCIS. The employer must attach the certified ETA Form 9089 to the completed USCIS Form I-140, along with other USCIS specified documentation and applicable fees, and submit the package to the appropriate USCIS Service Center.

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Frequently Asked Question (FAQs)

To view the FAQs, click [HERE](#).

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Schedule A Occupations

Schedule A is comprised of certain occupations, as set forth at 20 CFR 656.15, for which DOL has determined there are not sufficient U.S. workers who are able, willing, qualified and available. In addition, Schedule A establishes that the employment of aliens in such occupations will not adversely affect the wages and working conditions of U.S. workers similarly employed.

The occupations listed under Schedule A include:

Group I

1. Physical Therapists - who possess all the qualifications necessary to take the physical therapist licensing examination in the state in which they propose to practice physical therapy; and
2. Professional Nurses - the alien (i) has a [Commission on Graduates of Foreign Nursing Schools](#) (CGFNS) Certificate, (ii) the alien has passed the National Council Licensure Examination for Registered Nurses (NCLEX-RN) exam, or (iii) the alien holds a full and unrestricted (permanent) license to practice nursing in the state of intended employment.

Group II

1. Sciences or arts (except performing arts) - Aliens (except for aliens in the performing arts) of exceptional ability in the sciences or arts including college and university teachers of exceptional ability who have been practicing their science or art during the year prior to application and who intend to practice the same science or art in the United States. For purposes of this group, the term "science or art" means any field of knowledge and/or skill with respect to which colleges and universities commonly offer specialized courses leading to a degree in the knowledge and/or skill. An alien, however, need not have studied at a college or university in order to qualify for the Group II occupation.
2. Performing arts - Aliens of exceptional ability in the performing arts whose work during the past 12 months did require, and whose intended work in the United States will require, exceptional ability.

An employer must apply for a labor certification for a Schedule A occupation by filing an ETA Form 9089, in duplicate, with the appropriate [USCIS Service Center](#), and NOT with DOL.

For more information about the Permanent regulation that went into effect on March 28, 2005, and details regarding filing, please review our FAQs [HERE](#).

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Forms & Instructions

- [Appendix A - Professional Occupations](#)
- [ETA Form 9089](#)
- [Instructions for ETA Form 9089](#)
- [Permanent Online System](#)

Program Regulations

- [20 CFR 656](#)
- [Federal Register Vol. 69, No. 247 \(December 27, 2004\)](#)
- [Federal Register Vol. 72, No. 95 \(May 17, 2007\)](#)
- [Federal Register Vol. 73, No. 245 \(December 18, 2008\)](#)

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