



U.S. Department of Labor Employment & Training Administration

Permanent Labor Certification

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 an approved labor certification request from the DOL's Employment and Training Administration (ETA). The DOL must certify to the USCIS that there are no qualified U.S. workers able, willing, qualified and available to accept the job at the prevailing wage for that occupation in the area of intended employment and that employment of the alien 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, ETA published a final regulation on December 27, 2004, which required the implementation of a new re-engineered permanent labor certification program by March 28, 2005. We believe the new program will improve services to our various stakeholders.

Applications filed under the regulation in effect prior to March 28, 2005, will continue to be processed at the appropriate Backlog Elimination Center under the rule in effect at the time of filing. As of March 28, 2005, applications (Form 750) will no longer be accepted under the regulation in effect prior to March 28, 2005, and instead new applications ([ETA Form 9089](#)) will need to be filed under PERM at the appropriate National Processing Center. Only if an employer chooses to withdraw an earlier application and refile the application for the identical job opportunity under the refile provisions of PERM will a previously filed application be processed under the PERM regulation.

The DOL processes applications for Alien Employment Certification (ETA Form 9089). The date the labor certification application is filed 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 approved by the DOL, it should be submitted to the USCIS service center with an I-140, Immigrant Petition for Alien Worker. You may access the [State Department Visa Bulletin](#) to learn which priority dates are currently being processed.

Qualifying Criteria

- Applications filed on or after March 28, 2005, must file using the new PERM process and adhere to the new [PERM Regulations](#);
- The employer must hire the foreign worker as a full-time employee;
- There must be a bona fide 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 worker's qualifications. In addition, the employer shall document that the job opportunity has been and is being 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.

Process for Filing

1. **Application.** The employer must complete an Application for Permanent Employment Certification ([ETA Form 9089](#)). The application describes in detail the job duties, educational requirements, training, experience, and other special capabilities the employee must possess to do the work, and a statement of the prospective immigrant's qualifications.
2. **Signature requirement.** Applications submitted by mail must contain the original signature of the employer, alien, and preparer, if applicable, when they are received by the processing center. Applications filed electronically must, upon receipt of the labor certification issued by ETA, be signed immediately by the employer, alien, and preparer, if applicable, in order to be valid.
3. **Prevailing wage.** Prior to filing [ETA Form 9089](#), the employer must request a prevailing wage determination from the State Workforce Agency (SWA) having jurisdiction over the proposed area of intended employment. The employer is required to include on the ETA Form 9089 the SWA provided information: the prevailing wage, the prevailing wage tracking number (if applicable), 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 college or university teachers selected pursuant to a competitive recruitment and selection process, Schedule A occupations, and shepherders) **must** attest, in addition to a number of other conditions of employment, to having conducted recruitment prior to filing the application.

The employer must recruit under 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, for which a bachelor's or higher degree is a customary requirement. 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). Although the occupation involved in a labor certification application may be a nonprofessional occupation, the regulations do not prohibit employers from conducting more recruitment than is specified for such occupations.

The employer must categorize the lawful job-related reasons for rejection of U.S. applicants and provide 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.

Audits/requests for information: Supporting documentation need not be filed with the application, 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.

5. **Retention of records.** The employer is required to retain all supporting documentation for five years from the date of filing the Application for Permanent Employment Certification. For example, the SWA 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.
6. **Refiling.** If a job order has not been placed pursuant to the regulations in effect prior to March 28, 2005, an employer may refile by withdrawing the original application and submitting, within 210 days of withdrawing, an application for an identical job opportunity which complies with all requirements of the new PERM regulation.
7. **Online filing.** The employer has the option of filing an application electronically ([using web-based forms and instructions](#)) or by mail. However, the Department of Labor 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.

The employer can access a customer-friendly web site (www.plc.doleta.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, you will be able to:

- Save time by pre-populating your general information
 - View the status of your labor certification applications online
 - Update your profile information online
 - Track newly submitted labor certification applications
 - Email saved labor certification applications to others within the company
 - Add new users to your account
 - Withdraw labor certification applications no longer needed
8. **Filing by mail.** National Processing Centers have been established in Atlanta and Chicago. Employers submit paper applications to the processing center with responsibility for the state or territory where the job opportunity is located.

The address and contact information for each National Processing Center and the states and the territories within their jurisdictions are provided on our [Contact Information](#) page.

9. **Approvals.** If the appropriate National Processing Center approves the application, the ETA Form 9089 is "certified" (stamped) by the Certifying Officer and returned to the employer/agent who submitted the application.

The USCIS Petition

After approval of the labor certification, the employer must file an "Immigrant Petition for an Alien Worker" with the U.S. Citizenship and Immigration Services (USCIS), [Form I-140](#). The employer then attaches the certified ETA Form 9089 to a completed USCIS Form I-140, along with the appropriate fees, and submits the package to the appropriate USCIS Service Center. The petition is filed by the employer on behalf of the foreign worker and must include the approved labor certification and other USCIS specified documentation.

Schedule A Occupations

Schedule A is a list of occupations, set forth at 20 CFR 656.15, for which the Department 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:

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 in 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.
3. 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.
4. 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 shall apply for a labor certification for a Schedule A occupation by filing an ETA Form 9089, in duplicate with the appropriate [USCIS Center](#), NOT with the Department of Labor or a SWA.