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## Application for Permanent Residence from a Job Offer Labor Certification Application

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Foreign nationals who are skilled or educated and who have job offers have the possibility of immigrating to the United States. The prospective employer must first obtain a Labor Certification and approval of a petition. The Labor Certification process is one of the most complex of all immigration-related procedures. This reading will make you aware of some of the hurdles and procedures in this process.

### What Is a Labor Certification?

An approved Labor Certification (LC) is a document issued by the United States Department of Labor (DOL) certifying that:

- An employer needs the foreign worker's skills and abilities.
- The employer has tried to recruit U.S. workers for the position. The employer must advertise and perform other recruitment efforts to try to find someone who is already a U.S. citizen or permanent resident who is qualified, able, available, and willing to fill the open position.
- The employer has offered the position at the normal or prevailing wage.
- The employer has found no qualified U.S. workers. Candidates who respond to the recruitment are presumed to qualify. The employer must convince the DOL that they do not. IF DOL is not convinced, the Labor Certification will not be issued and the foreign national will not be able to immigrate to the United States.

### The Labor Certification Process

**Establish a valid employee/employer relationship.** Although the Labor Certification (LC) application process can be done for persons who are outside the United States, most LCs are begun for persons in the United States who are already working for an American employer.

**Determine the minimum requirements.** The key to the LCA process is to decide what are the true minimum requirements for the position. The requirements generally must be normal to the occupation and not more than the worker had when hired to the job offered.

**Determine the prevailing wage.** The salary offered must be at least the prevailing wage, as determined by the DOL.

**Pre-filing Recruitment Steps.** The employer has the burden of showing that it recruited through sources normal to the occupation or industry and that it believes that further recruitment will be futile. To meet this burden, an employer must demonstrate that the employer conducted extensive recruitment through sources normal to the occupation or industry. All recruitment must be done between 180 and 30 days immediately preceding the date the labor application is filed with DOL. There are several ways in which an employer may meet this burden. The required avenues are:

**Posted Notice:** The employer must post notice of the job opportunity for at least ten consecutive business days. The comments clarify that the primary purpose of the posted notice is to give employees an opportunity to comment on the application and that the posted notice is not another way to recruit US workers.

**Use of Other In-House Media:** In addition to printed posted notice, the employer must use any and all in-house media, whether electronic or printed, in accordance with normal procedures used for recruitment for similar positions in the organization.

**Job Order:** The employer must place a job order with the State Workforce Agency (SWA) for a period of no less than 30 days.

**Advertisements:** The employer must place two advertisements on two different Sundays in the newspaper of general circulation in the area of intended employment. Both ads must be placed more than 30, but not more than 180 days before filing. The ads may be placed on consecutive Sundays. Placement of the ad under an inappropriate heading or keyword would be considered a failure to make good-faith efforts to recruit U.S. workers. A copy of the newspaper page or proof of publication supplied by the newspaper can provide documentation of the ad. If the job requires experience and an advanced degree, the employer may use a professional journal in lieu of one of the Sunday ads.

**Three Additional Recruitment Steps for Professional Jobs:** Applications for professional jobs must have additional recruitment. The list of permitted additional recruitment steps include: 1) job fairs; (2) employers web site; (3) job search web site

other than employer's; (4) on-campus recruiting; (5) trade or professional organizations; or (6) private employment firms; (7) an employee referral program, if it includes identifiable incentives; (8) a notice of the job opening at a campus placement office, if the job requires a degree but no experience; (9) local and ethnic newspapers, to the extent they are appropriate for the job opportunity; and (10) radio and television advertisements. Further, a web page generated in conjunction with a print ad now counts as a website other than the employer's. The additional recruitment steps must take place no more than 180 days before filing and no less than 30 days before filing.

***Distinguishing between Professional and Non-Professional Jobs.** A professional job is a job for which the attainment of a bachelor's or higher degree is a usual education requirement.*

**Analyze responses:** Any response to the recruitment must be evaluated carefully. The employer can reject applicants only for lawful, job-related reasons. Applicants that apply for the position appearing to meet the minimum requirements of the position must be contacted for an interview within two weeks of receiving the resume. Upon request, guidelines on interviewing for labor certification purposes will be provided.

## **What Is PERM?**

PERM is the new labor certification system that will allow employers to file labor certification petitions online. Employers will not need to submit supporting documentation with the cases and will instead retain all documentation for inspection in the case of an audit. It is the goal of DOL to approve most applications within 45 to 60 days.

The certifying officer may grant certification when it is clear that the U.S. labor market has been adequately tested within six months prior to filing the application at prevailing wages.

## **Labor Certification Value**

An approved LC is valid for six months from the date of approval and is valid for a specific employer, position, or job and location. If any of these factors change, the LC may become a useless document.

- It does not give authorization for a foreign national to remain in the United States.
- It does not "legalize" anyone's stay in the United States.
- It does not grant permission to work in the United States.

- It does not guarantee permanent residence.

As alluded to earlier, the LC is the first, albeit most tedious, step towards receiving permanent residency through a job offer. The foreign national does not become a permanent resident until the U.S. Citizenship and Immigration Services (“USCIS”) permits the individual to adjust his or her current status to that of a permanent resident or until admitted as a permanent resident following visa processing. The time in which this occurs will vary depending on the foreign national’s country of origin, the foreign national’s qualifications, the minimum qualification of the certified position, and the processing times for DOL and USCIS.

### **Why does it take time to obtain the green card after Labor Certification approval?**

Section 201 of the Immigration and Nationality Act (INA) sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. The dependent area limit is set at 2%, or 7,320.

The Visa Bulletin summarizes the availability of immigrant numbers. Allocations are made, to the extent possible under the numerical limitations for the demand received in the chronological order of the reported priority dates. If the demand cannot be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive is deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date earlier than the cut-off date may be allotted a number.

Section 203 of the INA prescribes preference classes for allotment of immigrant visas for employment-based preferences as follows:

**First:** Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

**Second:** Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

**Third:** Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "Other Workers".

**Schedule “A” Workers:** Employment First, Second, and Third preference Schedule A applicants are entitled to up to 50,000 “recaptured” numbers.

**Fourth:** Certain Special Immigrants: 7.1% of the worldwide level.

**Fifth:** Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of P.L. 102-395.

Approximately the 15<sup>th</sup> of each month the Department of State posts the Visa Bulletin for the following month. You may view the current Visa Bulletin by going to our web site located at [www.karamlaw.com](http://www.karamlaw.com) then click on "Visa Bulletin".

## **To Get The Process Started:**

Please return a completed questionnaire packet to this office with a signed retainer agreement and initial payment of legal fees to Karam & Associates, P.A. **Include all available contact information including phone numbers (home, work, cell and fax) and an e-mail address.** An appointment will be scheduled to review the contents of the forms together and also answer any questions you may have.

### **Step 1: Below is a list of what you need to return to our office to get started:**

- 1) Signed retainer agreements and initial payment for legal fees as per the retainer agreements. Should the foreign worker be responsible for any costs associated with this green card process, the employer and the foreign worker must sign separate retainer agreements. A different retainer agreement is available if the employer will pay all legal fees.
- 2) Part II of the questionnaire packet. **Request that your employer return Part I directly to our office.**
- 3) The completed Form 9089 Questionnaire.
- 4) A copy of your current J-1, H-1B, L-1A, L-1B, B or TN approval notice
- 5) A copy of your I-94 from last date of entry to the U.S.
- 6) A copy of each degree certificate and transcripts (mark sheets) for each degree (include translations if necessary)
- 7) A copy of an education evaluation if available. DOL and USCIS will require an education evaluation if highest degree was obtained outside of the United States. *If you do not currently have an education evaluation, this office will obtain one for you.*
- 8) A copy of all employment verification letters from previous employers you have at this time. If you do not currently have any letters, you will be advised at a later time what letters will be needed.

**Step 2: Documents & Information Needed After the Labor Application is Approved  
for the I-140, Immigrant Petition, Application**

- 1) All degree certificates, transcripts, education evaluations and employment verification letters not provided earlier or in need of updated information
- 2) A copy of your most recent I-94 card, with date and place of entry
- 3) All W-2 tax forms received since Labor Certification filing
- 4) Most Recent Pay Slips
- 5) If married, your spouse's name, date of birth, place of birth including city and country, marriage certificate and most recent I-94
- 6) If you have children, their name, gender, place of birth, and birth certificate
- 7) Your permanent address in your home country
- 8) Your city and province/state of birth
- 9) Your updated residence address and daytime phone number
- 10) An updated foreign worker questionnaire Part II

**Step 3: Documents needed to complete the final process – Consular processing or  
Adjustment of Status to Permanent Resident in the US**

When your priority date is current, there are two separate processes to obtain your immigrant visa or “green card”. Depending on your eligibility, location, and personal preference, you may visa process at the US consulate in your home country or adjust status via the US immigration office. There are several additional documents that will be needed for either of these processes. In addition to the documents listed below, a separate retainer agreement (Part 3 of 3) will be needed and payment of such legal fees as per the retainer agreement.

**Documentation you and your dependents applying will need for the last step of the process. (NOTE: This list is a sample list and may not be representative of all cases.**

**Some documents are time sensitive - do not obtain all until advised)**

- \_\_\_\_\_ Passport valid 8 months beyond the issue date of the immigrant visa
- \_\_\_\_\_ Birth certificate(s)—long-form (with translation)
- \_\_\_\_\_ Adoption certificate(s), if applicable (with translation)
- \_\_\_\_\_ Marriage certificate(s), if applicable (with translation)
- \_\_\_\_\_ Evidence of termination of prior marriage(s)\*, if applicable (with translation)
- \_\_\_\_\_ Police certificate(s) (consular process only)
- \_\_\_\_\_ Court and prison records, if applicable

# KARAM & ASSOCIATES

IMMIGRATION AND NATURALIZATION LAW

- \_\_\_\_\_ Form I-212 – Prior deportation papers, if applicable
- \_\_\_\_\_ Military record (s), if applicable
- \_\_\_\_\_ All W-2s received since entering the U.S
- \_\_\_\_\_ All I-20, IAP-66/DS-2019, & I-797 Forms for all stays in the U.S., if applicable
- \_\_\_\_\_ All degree certificates, transcripts and work permit cards obtained in the U.S.
- \_\_\_\_\_ I-693 Medical examination and vaccination supplement (**Do NOT initiate until instructed by our office as Medical exams are valid for only 1 year.**)
- \_\_\_\_\_ Signed retainer agreement and payment of legal fees payable to Karam & Associates

If you have concerns about retrieving certain documents, please visit this website for country specific information: <http://travel.state.gov/visa/reciprocity/index.htm>.

Thank you in advance for your cooperation in this matter. We are looking forward to working with you on this next step of your immigration process.