

OUR PRACTICE

Employment Sponsorship

One of the most important paths to permanent residence is through employment, and there are many categories (called "preferences") for employment-based immigration. We can help determine the best preference(s) to pursue and then work the parties through the steps to permanent residence.

The Steps

In most instances the following steps apply:

1. Prove to the U.S. Department of Labor that there are no *minimally* qualified U.S. workers through the permanent labor certification process with the U.S. Department of Labor. This is one of the most deceptively complex areas of immigration law, requiring formulations of job duties and requirements that are not natural for employers, who normally want the most qualified person. Several types of positions below do not require labor certification at all, which makes those categories much more attractive than the others.
2. File an immigrant petition to show that, based on the labor certification or some exemption from it, the foreign national worker fits one of the preference categories discussed below and is therefore one of the types of workers whom the U.S. generally wants to become permanent residents.
3. Wait until the foreign national's case, marked by the date of initial filing of the labor certification application or immigrant petition, moves to the top of any waiting list, as charted in the State Department's Visa Bulletin disseminated each month.
4. Show that the worker, spouse, and unmarried children under 21 are not any of the types of people who are inadmissible to the U.S., either through adjustment of status to permanent residence within the U.S. or through processing for an immigrant visa at a U.S. consulate outside the U.S. and entering as a permanent resident.

The Preference Categories

The law divides employment-based immigrants into 5 preference categories ("EB-1" through "EB-5"), each with its own requirements, potential backlogs, and sub-categories, which preference one fits into matters a great deal.

EB-1: Needs no labor certification. It includes:

- Aliens of **Extraordinary Ability**, who may even sponsor themselves, usually showing they meet at least 3 of 10 criteria.
- **Outstanding Professors or Researchers**, including researchers in private companies with research staffs, who meet at least 2 of 6 criteria.
- **Executives and Managers of Multinational Businesses**, explained on a separate page of this site.

EB-2: Labor certification, or "national interest waiver," required. It includes:

- Professionals with Advanced Degree, or B.S. plus at least 5 years experience, and the job requires advanced degree or equivalent.
- Persons with Exceptional Ability in the Arts, Sciences or Business, showing at least 3 of six factors less demanding than extraordinary ability.

EB-3: Labor certification always required. It includes:

- Skilled workers or professionals, requiring at least 2 years of specific education, training, and/or experience. Nurses and physical therapists are uniquely exempt from labor certification under DOL's Schedule A.
- Unskilled workers, requiring less than 2 years reparation. Certain common positions on schedule B are more difficult to certify, but still possible.

EB-4: [Religious workers](#), and other "special immigrants" constituting a hodge podge of qualified groups not much related to employment except for employees or former employees of the U.S. government abroad.

EB-5: [Investors](#) of \$1 million or \$500,000 in a business creating at least 10 jobs for U.S. workers.

National Interest Waivers

An EB-2 position may by-pass the burdensome labor certification process if the foreign national can prove that her immigration would be in the U.S. "national interest." At one time just about anyone working on a government grant project could show national interest proving national interest; however, has become more difficult since 1999, when a controversial new 3-part test was announced:

- the foreign national's endeavor has "substantial intrinsic merit," meaning it will improve such things as the U.S. economy, wages and working conditions, education and training programs, health care, housing for the poor, or the environment. It helps if a U.S. government agency will express an interest directly;
- the activity "will be national in scope" in a geographical sense, impacting more than just a particular locality or region; and
- the foreign national has a "track record of success" justifying avoidance of the labor certification process.

There is a special arrangement for [physicians](#) who will be practicing medicine in "underserved" area of the U.S.

Labor Certification

Labor certification is the process by which the prospective employer (who may also be the foreign national's existing employer) demonstrates to the U.S. Department of Labor (DOL) that there are insufficient minimally qualified U.S. workers available and willing to perform the job at the normal wage rate (i.e. the "prevailing wage") for that occupation in the geographic area of intended employment. DOL's website provides a good summary of the labor certification [rules and process](#).

In short, the employer articulates with care the duties and requirements of the job and undertakes a recruitment campaign and maintains meticulous records about the campaign following arcane DOL rules. After the campaign is completed, a Form ETA-9089 is submitted to the DOL applying for the Labor Certification. This application is then either approved or audited by the DOL, at which time a complete package of the recruitment campaign must be submitted to the DOL. Finally, the DOL may reject the case or require more evidence or recruitment. A DOL denial may be appealed to the Board of Alien Labor Certification Appeals (BALCA).

In order to qualify, the job must be permanent (that is, having no definite end), full-time, and bona fide. The actual job requirements must be what is traditionally required for the position. The employer cannot tailor the job requirements to fit the special skills of the foreign national, and often a language requirement will be considered to be unduly restrictive unless it can be objectively shown a business necessity. In addition, as mentioned above, the employer must pay the "prevailing wage" for that occupation the geographic area of employment, as determined by DOL.

A surprising amount of analysis and strategy is needed in preparing the seemingly simple application forms, because numerous complex DOL rules exist about the determination of the prevailing wage, the requirements a particular type of job can justify, the types of education and experience that can be counted, the types of requirements that will slow the process down or jeopardize it, the types of advertising required, the manner by which U.S. candidates may be contacted and evaluated, and the grounds on which U.S. candidates may be rejected. As experienced immigration attorneys, we can be particularly helpful in crafting the ads and applications and helping the employer to manage the process with higher chances for success the first time.

How We Can Help

Immigration through an employer can be multifaceted, involving multiple government agencies and sophisticated interpretation of highly complex statutes, regulations, and evidence. We assist employers and foreign workers daily to achieve their immigration goals through one of the 5 employment-based preferences listed above. Where it is possible, we strive to avoid the burdensome course of labor certification. We work with experts in the foreign national's field and with the foreign national herself to craft presentations about EB-1 or national interest waiver eligibility. Where labor certification is the only option, we successfully navigate employers each day through this intricate process. Meanwhile, we help the foreign national maintain temporary employment authorizing status.

Important Links

- [DOL: Permanent Labor Certification](#)
- [State Workforce Agency contacts](#)
- [DOS: Visa Bulletin](#)
- [USCIS: Immigration Through Employment](#)