

# OVERVIEW OF GREEN CARD PERM LABOR CERTIFICATION PROCESS



**MELTZER HELLRUNG**  
IMMIGRATION SOLUTIONS

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The PERM process is fundamentally a labor market test where the employer demonstrates that the employer could not find a U.S. citizen or permanent resident that met all the qualifications of the sponsored position. If this test is successfully completed, the employer can sponsor a foreign national for the offered position if he/she meets all the requirements for the position.

Individuals sponsored through the PERM fall into the EB-2 and EB-3 green card categories. EB-2 positions require a Bachelor's degree and 5 years of experience, or a Master's degree or higher. EB-3 positions require lesser qualifications. If an individual has a Master's degree but is sponsored for a position that requires a Bachelor's degree and three years of experience, the petition will still fall in the EB-3 category because EB classification is based on the position's hiring requirements and not the employee's personal qualifications.

The green card is an offer of future employment. Any individual can be sponsored, regardless of whether the person works for the company at the time of sponsorship or not. The individual must be offered a job at the time of the I-485 filing.

### 1 Opening a case and preparing a job description (1–3 months)



**STEP 1:** Employer chooses to sponsor individual for a green card, the position they'd like to sponsor the individual for, and opens a case. We encourage the company to speak with us before opening a case.

#### IN ORDER TO OPEN A CASE, WE NEED THE FOLLOWING INFORMATION:

- Job title
- Work location
- Offered salary
- Job duties (at least 4–6 specific job duties)
- The degree(s) required for the position
- The years of experience required for the position
- The specific skills, certifications, and experience necessary for the position
- Whether any travel is involved and whether telecommuting is an option
- The title of the position's supervisor
- Whether the position supervises other employees, and if so the number of employees and their titles

**STEP 2:** We conduct a phone call (if needed) with company representative and/or sponsored individual to go over the application process, the job title, job duties, and experience requirements.

**STEP 3:** After solidifying the job title, job duties, and hiring requirements, we ask the sponsored individual to prove he/she meets those requirements. The individual must acquire letters from former employers, co-workers, or professors, demonstrating that he/she meets all the stated requirements. At this time we provide templates for these letters to the sponsored individual. We discourage sponsored individuals from collecting letters before we draft the template.

Please note that experience gained with the sponsoring company generally does not count towards the qualifications for the sponsored green card position.

## 2 Prevailing Wage Determination from the Department of Labor (3–5 months)



When a company chooses to sponsor an individual for a green card through the PERM process it must pay a prevailing wage as determined by the Department of Labor. The company is not responsible for paying this wage until the employee has the green card.

**STEP 1:** To determine this prevailing wage we must file a Prevailing Wage Request with the Department of Labor. The Prevailing Wage Request lists the position title, location of the position, responsibilities of the position, requirements for the position, and a suggested occupational category to base the wage on.

**STEP 2:** The Department of Labor returns a Prevailing Wage Determination. This process generally takes 3–5 months. The Department of Labor has discretion over the occupational category for which it chooses to place the sponsored position, which sometimes results in higher than expected wage determinations. Other factors that may impact a wage determination are the number of years of experience required as well as travel and supervision requirements for the sponsored role.

If the position's prevailing wage comes back higher than the candidate's current salary, we will reach out to the employer to make sure the assigned prevailing wage fits within the company's compensation plans for the candidate.

## 3 Recruitment (3–6 months)



To demonstrate that the employer cannot find a qualified U.S. or permanent resident worker, the employer must advertise the position in a variety of media. For most clients, this process takes 3–4 months.

**STEP 1:** We file the job order with State Workforce Agency. This job order must run for a minimum of 30 calendar days.

**STEP 2:** We provide templates for recruitment materials and conduct necessary recruitment depending on the arrangement with employer. The employer must conduct a recruitment process that takes as little as two and as long as six months.

**MANDATORY RECRUITMENT STEPS:**

- 30 day posting with state workforce agency (we post on the employer's behalf)
- Two Sunday ads in largest local newspaper (we post on the employer's behalf)
- Internal posting notice at employer's office for 10 consecutive business days (we draft and provide the employer instructions on posting)

**THREE OF THE FOLLOWING DISCRETIONARY RECRUITMENT STEPS (ONLY REQUIRED FOR HIGH SKILLED POSITIONS):**

- Radio or television ad (Preferred and posted on your behalf)
- Employer's website
- Job search website (discouraged)
- Local/ethnic newspaper (Preferred and posted on your behalf)
- Campus recruitment
- Job fair
- Employee referral program (Preferred and advice on drafting and implementation)
- Private employment firm
- Trade or professional organization
- Campus placement office

**STEP 3:** Upon completion of recruitment a required 30-day cooling-off period ensues and the employer reviews any applications received in response to the recruitment. The employer is responsible for reviewing any resumes received. However, we will draft an evaluation form to determine whether candidates meet the requirements. We can advise on this process, but we cannot conduct the actual review. Any applicant that meets the qualifications for the position must be contacted, preferably by email or postal mail, to determine if they in fact meet the position's hiring requirements. The employer should provide copies of all resumes submitted and candidate evaluation form explanations for why each applicant was rejected.

## 4 PERM filing with Department of Labor (3–12 months)



If no qualified candidates are found during the recruitment process the employer can file a labor certification, or Form ETA 9089, with the Department of Labor. We will submit this application on behalf of the employer.

**STEP 1:** We file the PERM with the Department of Labor. The processing time varies depending on the number of cases the DOL is processing at any time. Processing time can be as little as 2 months and as much as 12 months. The DOL may audit a PERM petition for many reasons, including randomly for fraud prevention purposes. If an audit is issued, we will have 30 calendar days to respond. The DOL will then take as much as 12 months to review the audit response and issue a decision.

**STEP 2:** Department of Labor certifies the PERM. A hard copy will be mailed to Meltzer Hellrung's office.

## 5 I-140 filing with U.S. Citizenship and Immigration Service (15 days to 5 months)



Once the Department of Labor issues the labor certification, the employer can file an I-140, demonstrating that it seeks to sponsor the individual for a green card. At this stage, we must demonstrate that the individual qualifies for the sponsored position, by providing the previously collected diplomas and experience letters.

The company must also demonstrate it has the financial ability to pay the wage offered to the sponsored individual. **THE COMPANY CAN GENERALLY DEMONSTRATE THIS IN THE FOLLOWING WAYS:**

- ⇒ The individual is currently employed by the company and makes the offered wage or more.
- ⇒ The company employs 100 or more employees and the chief financial officer asserts it can pay the offered wage.
- ⇒ The company has net assets or net revenue which are equal to or greater than the wage offered to the employee.

**STEP 1:** We prepare Form I-140 and Letter of Support for employer review.

**STEP 2:** Employer reviews I-140 and Letter of Support.

**STEP 3:** We file the I-140 petition with U.S. Citizenship and Immigration Service. Standard processing is about 4–5 months. There is a premium processing option available with the I-140, which guarantees USCIS review within 15 days. The USCIS may issue a request for evidence after its review of the petition. We will be given about three months to respond to any requests.

**STEP 4:** USCIS approves I-140.

## 6 Application for physical green card (3–12 months from the date of application)



When an individual's priority date, which is the date the PERM was filed, becomes current that person can file an application to get the physical green card. There are two ways to file for the green card: first, by adjusting status inside the United States, and second, by filing for an immigrant visa at a consulate outside the United States. The first option is more common, but some employees choose to pursue the second option as it can be faster.

For individuals sponsored in the EB-2/3 categories and born in countries other than China, India, Mexico, and the Philippines, the I-485 to adjust status can typically be filed concurrently with the I-140. Individuals who were previously sponsored for an I-140 and have a priority date that can be recaptured may also be current at the time of the I-140 filing. There may be an additional wait time for EB-2/3 applicants depending on the dates listed on the visa bulletin in any given month.

### Option 1: Adjustment of Status

**STEP 1:** Collect updated documents and questionnaire information for sponsored individual and his/her dependents (spouse and children under age 21).

**STEP 2:** Prepare form I-485. At this time, the individual can also file an I-131 for travel authorization and an I-765 for work authorization. These filings are particularly valuable for individuals in visa statuses other than H-1B and L-1.

**STEP 3:** File form I-485 with the USCIS. The processing time is unpredictable and can range between 3 and 5 months. The I-765 and I-131, if filed, will be approved in 3–5 months. It is possible that the priority date may retrogress after the time of the I-485 filing, in which case the USCIS will not review the petition again until the priority date becomes current.

**STEP 4:** Scheduled interview at local USCIS office. USCIS will send a notification that an interview is scheduled at a local USCIS office. Typically, notices are mailed about a month before the scheduled interview. The interview may not be scheduled for the local office closest to where the applicant lives. Once the interview is scheduled, the applicant should complete the required medical exam.

We will schedule a phone call with the applicant to prepare for the interview. While the applicant can bring an attorney to the interview, we do not usually recommend paying for this service.

**STEP 5:** The USCIS issues a green card to the applicant. The permanent resident is eligible to apply to become a U.S. citizen after five years of permanent residency.

## Option 2: Consular Processing

**STEP 1:** The National Visa Center will email us and the applicant to state that the application process can begin.

**STEP 2:** We will register as the agent for the process and reach out to the applicant to begin collecting documents and information.

**STEP 3:** Submission of form DS-260 and documents to the NVC.

**STEP 4:** An interview at the consulate is scheduled. At this time a medical exam must be completed by a panel physician outside the U.S. We will prepare the applicant for the consular interview with a scheduled phone call.

**STEP 5:** An immigrant visa is granted. The employee returns to the United States. After entering a physical green card is produced and shipped to the individual.

## DOCUMENT REQUIREMENTS



### DOCUMENTS REQUIRED FROM EMPLOYEE:

- Diploma(s)
- Transcripts
- English translation of diplomas and transcripts if the documents are not in English
- Education evaluation by professional evaluator if degree(s) were earned at educational institutions outside the U.S. Meltzer Hellrung LLC can help procure an appropriate evaluation if one is needed
- Experience letters written by prior employers. Do NOT gather letters from prior employers until instructed to do so by Meltzer Hellrung
- Passport
- I-797 approval notice(s)
- I-94
- I-20 forms if applicant is/was a student in the United States
- EAD card(s) if applicant was ever issued an EAD
- DS-2019 if applicant was ever in J-1 status
- Latest W-2
- Last two pay stubs

### DOCUMENTS REQUIRED FROM EMPLOYER:

- Job Description
- Recent financial statement, such as most recent tax return, audited financial statement, or annual report
- Recruitment documents after the advertisements are completed
- Candidate assessment forms and resumes of applicants who applied for the position



## DOCUMENTS REQUIRED FOR I-485 FILING/CONSULAR PROCESSING



### THE FOLLOWING DOCUMENTS ARE REQUIRED AT THE I-485 FILING STAGE:

- Complete copy of passport including all visa stamps and blank pages
- I-797 approval notice(s)
- I-94
- Last two pay stubs
- Birth certificate
- Passport photographs, in hard copy
- Form I-693 medical exam completed by civil surgeon, in sealed envelope (for adjustment of status only). These exams expire after two years and can only be submitted within 60 days of the completion of the form by the civil surgeon. We recommend not submitting the medical exam with the initial petition, but rather waiting until the interview is scheduled to complete the exam.
- Marriage certificate (if applicable)
- Divorce certificate (if applicable)
- Death certificate of prior spouse (if applicable)
- Military record (if applicable)
- Criminal record (if applicable)
- Police Report (for consular processing only)