

## PERM FOR EMPLOYEES | FREQUENTLY ASKED QUESTIONS

**Background:** The U.S. Department of Labor (DOL) published regulations on December 27, 2004 establishing an electronic-based filing system for alien employment certification (“AEC” or “labor certification”) applications, officially entitled Program Electronic Review Management (“PERM”). This FAQ addresses many questions that sponsored employees may have about the PERM process and labor certification. For more details on recruitment, filing, and the validity of labor certification approvals, please see our General PERM Labor Certification FAQ, <https://www.jackson-hertogs.com/jh/P0522.pdf>.

### 1. What is PERM – is it the same as a labor certification?

PERM is the DOL’s program to process labor certification applications. Employers submit labor certifications via the PERM system. While some individuals refer to the labor certification as a “PERM”, technically, PERM is only the process. The PERM approval is a labor certification, which must be submitted to USCIS with the I-140 immigrant visa petition by the employer.

### 2. My employer’s labor certification for me is approved – what does this mean?

After a labor certification has been approved, your employer may file the Form I-140 immigrant visa petition to sponsor you. The original labor certification approval must be submitted to USCIS with the I-140 Petition. Please note that only the employer may file the I-140 Petition. Once we have approval from your employer to proceed with the I-140, we will send you a link to the questionnaire for the immigrant visa petition. The I-140 immigrant visa petition must be filed with the USCIS within 180 days of the labor certification being approved. If the I-140 petition is not timely filed, the labor certification will expire and the entire process would have to be started again.

For more on whether a visa number will be available to you after your labor certification case has been approved, see question # 8.

### 3. Can I check on the status of a pending labor certification at DOL?

No. Unlike the USCIS online case status check, there is no way the sponsored employee can check the status of his or her PERM case online.

Jackson & Hertogs makes regular status checks on pending cases at DOL – we will notify you when there is any change in case status.

### 4. A PERM application has been filed on my behalf. How long will it take to process by DOL?

DOL’s processing times are subject to change, and there is no mandated processing time that DOL must meet. When the PERM system began in 2005, DOL’s goal was to process all applications within 45 to 60 days of filing; however, this processing time was never guaranteed. In 2008, processing times for many PERM cases were 6 months or longer. Cases selected for audit or supervised recruitment will generally take longer to process.

DOL does not publish processing times for PERM applications.

### 5. Can I change positions with my employer after the labor certification process has begun?

Yes, but if your new position is substantially different from the position described in the existing application, you will not be able to use the same labor certification application. A labor certification application lists a specific position with specific duties, specific minimum requirements and a specific worksite. In order to immigrate based on an approved labor certification application, the beneficiary of the case must agree to work in that particular position once the permanent residency process is complete. Also, the position described on the labor certification application must still exist – if your employer moves to a new geographic location, or if the job no longer exists at your employer – a new PERM filing for a new labor certification would be required.

Please notify your attorney at Jackson & Hertogs if you may be changing jobs at your present employer. Please also notify Jackson & Hertogs if you may be moving to a new worksite with the same employer.

### 6. Can I change employers after a PERM case has been filed on my behalf?

Yes, but you will not be able to take a pending or approved labor certification approval with you – your new employer must file another application under PERM to sponsor you for your new job.

When an employer files a labor certification application, it is essentially asking the DOL to confirm that the employer has a particular position for which it cannot find a qualified U.S. worker who meets the minimum qualifications for that particular position. If DOL approves the PERM application, it is

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approving that position at that employer – not the person named as the beneficiary on the PERM application. If you leave your employer after an application has been filed under PERM, that application is the property of the employer. There is no way a foreign national can take a labor certification application with him/her when changing employers.

However, if you are the beneficiary of an approved I-140 immigrant visa petition, it is possible to transfer the priority date from that I-140 to a subsequent PERM-based I-140 immigrant visa petition. Please advise your Jackson & Hertogs attorney if a prior employer filed an I-140 immigrant visa petition on your behalf. Please note that you will need to be able to provide a copy of the petition approval notice to our office.

### 7. What if I get a raise after a PERM case has been filed on my behalf?

In most cases, a raise will not impact your PERM application or your overall immigration process. However, if the raise is due to a change to a new job that is substantially different than the job on your PERM application, the raise may be one of the factors evaluated in assessing the two positions and whether they are similar. Please advise your Jackson & Hertogs attorney if your position changes after the PERM is filed.

### 8. Can I file my I-485 Adjustment of Status (AOS) after my employer's PERM case for me has been approved?

This depends on whether your priority date is current.

By law, there is a quota or limit on the number of people who can be granted permanent residence status (green card) in any given year. For PERM purposes, this quota is based on two things: the employment-based category (EB-1, EB-2, or EB-3, etc.) limits, and the "per country" limits, meaning that every country, no matter how large or small, is given the same percent of the worldwide quota. As a result, nationals of countries like China and India with large populations are then subject to longer waiting times than nationals of neighboring countries like Pakistan or Nepal. The number of spaces (or "visa numbers") for a particular country that are available at any given time, will depend on various factors, for example, how many immigrant visas have been issued at U.S. consulates abroad, how many I-485 adjustment of status applications have been approved for persons from that country in the U.S. during the prior month, etc. Such factors determine the movement of immigrant visa "priority dates" and, in turn, will affect the number of I-485 applications and immigrant visa applications that can be filed during the following month. If the US Department of State's monthly Visa Bulletin chart states "C" for a given category and country, that indicates that the numbers are "current" in the specific employment-based category, and that there is no waiting period for filing the I-485 application. If the Visa Bulletin indicates that numbers are backlogged, there will be a "cut-off date" listed. If the Priority Date is **before** the cut-off date, then the foreign national is eligible to file the Form I-485 adjustment of status application or the consular immigrant visa application during that particular month.

### 9. What is my priority date?

The priority date is the date that the PERM application was filed with the DOL. Jackson & Hertogs will notify you when your PERM case is filed – this date will be your priority date as you move through the process. NOTE: as stated above, in order for the priority date to be fixed, not only does the labor certification need to be approved, but the subsequent I-140 immigrant visa petition also needs to be approved. To read the quota bulletin and determine if your priority date is current, you need to know (1) your priority date; (2) the EB category that you fall under. Please see current priority dates on our website, <https://www.jackson-hertogs.com/?p=5163>.

### 10. What documents will I need for my I-485 AOS application?

Please see the list of documents here, <https://www.jackson-hertogs.com/?p=5127>. Please do not obtain a medical exam or photographs until your priority date is current for filing and the labor certification has been approved. You may gather the other listed documents at any time.

### 11. Can my spouse work after that the PERM application has been approved?

No. An approved PERM application does not entitle your spouse (or you) to employment authorization or status in the United States. Once you are able to file the Form I-485 AOS application, you may submit a Form I-765 application for an Employment Authorization Document (EAD) as well as a Form I-131 application for an Advance Parole (AP) travel authorization document as a pending immigrant. Any dependent family members may do the same. However, it may be prudent to maintain your underlying nonimmigrant visa classification while the Form I-485 application is pending, if possible.

### 12. What is my EB category?

The EB category is determined by the minimum educational and experience requirement stated on the PERM application. All PERM cases are either EB-3 or EB-2; EB-1 cases are not PERM-based.

The EB-3 category is divided into three categories: skilled workers, professionals, and "other workers." How an individual is classified depends on the requirements listed on the employer's PERM application. If the labor certification application states that the requirements are at least a Bachelor's degree,

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then the position will be classified as a “professional.” If the requirements indicate that at least 2 years of employment experience and no degree is required, then the position will be designated a “skilled worker.” If the requirements are less than two years of experience and no degree is required, it will fall into the “other worker” category. The “professional” and “skilled worker” categories are treated the same under the quota bulletin.

The PERM-based EB-2 category refers to advance degreed professionals. Generally, the position qualifies under EB-2 if the **employer** requires either (1) a Master’s degree or (2) a Bachelor’s degree and 5 years of progressively responsible experience. These requirements must be specifically stated on the labor certification application. If they are not stated on the PERM application, then the case cannot be processed as EB-2 regardless of the employee’s qualifications. Please note that for EB-2 classification, a bachelor’s degree equivalency cannot be used – individuals must have a Bachelor’s degree or equivalent foreign degree, plus five years of full time, progressively responsible experience after the degree was awarded.

### 13. Can I travel once the PERM process has begun or after the PERM application is approved?

Generally speaking, a PERM application has no effect on your immigration status or on your ability to travel. However, only the H-1B and L-1 nonimmigrant classifications allow for dual nonimmigrant and immigrant intent. Some nonimmigrant classifications actually have the requirement that one not intend to remain beyond the period of authorized stay for that classification. This means that there may be risk in the future if you are in one of these classifications. The most obvious classes that fall under the heightened risk are TN, F-1, J-1 and H-1B1. If you are in one of these classifications, it is not a bar on your starting the permanent residency process, but doing so should be done with caution and you and your employer should consider attempting to change your status to H-1B.

### 14. How will I know that my employer’s PERM application for me has been adjudicated?

We will contact you when we receive a decision from the DOL.

### 15. Can I help review resumes submitted in response to the PERM recruitment?

No. The regulations require that the employer review resumes – the sponsored worker cannot have any involvement in recruitment.

### 16. I have a Master’s degree, will the PERM case for me be EB-2?

Not necessarily. Unless your employer normally requires employees in your position to have a Master’s degree, or can justify why a Master’s degree is essential to performing your job, the employer cannot require a Master’s degree. **Requirements for PERM are always based on what the employer requires for the position, not what the sponsored employee possesses.**

### 17. If approved, does DOL contact the law firm or do they contact me?

The PERM decision is sent to Jackson & Hertogs as the attorneys of record for your employer. DOL also sends an email notification of approval to Jackson & Hertogs and your employer. After we receive the original approval notice, we will send you and your employer the original form to sign.

### 18. Can the employee pay for the PERM application?

No. Under DOL rules, only the employer may pay for the cost of a PERM application, including recruitment costs and legal fees.

### 19. Can I be substituted into a labor certification that was approved for another employee?

No. While labor certification substitution was previously allowed, this is now prohibited by a regulation change that became effective in July 2007.

### 20. What documentation do you need from me to process the PERM case?

Before we can file the PERM case, we will need to include documentation that you possessed all of the requirements for your current position prior to starting your present position with the sponsoring employer. This can be done with employment verification letter (or multiple letters, if more than one is needed to fully document all of the requirements). The letter(s) can be obtained from former employers, or from a University, if no years of experience are required, to document your prior experience/special requirements. When the job description/requirements for your position have been finalized, we will work with you to develop appropriate employment verification letter(s) as needed. If you have already obtained letters from your former employers, please provide copies to our office to review. If you have not yet obtained employment verification letters, please check with our office before you request the letters.

### 21. How long will it take to file the PERM case?

In order to pursue PERM labor certification on your behalf, your employer must provide the US Department of Labor (DOL) with an attestation stating that it has undertaken the necessary recruitment for the offered position during the 180 day period immediately prior to filing, and have found no qualified, willing and available U.S. workers for the offered position. Once the job description/requirements for your current position that forms the basis for your PERM case have been finalized, we will work with your employer to place the necessary recruitment to support a PERM filing on your behalf. The recruitment phase of this process typically takes approx. 2-4 months to complete, depending on the number of resumes received, when the recruitment is placed, and other factors that will depend on the individual employer. During the recruitment phase, we will work with you to obtain the required supporting documentation needed to document that you possessed all of the requirements for your current position.