

# What Happens When an Employer Sponsors Someone for a Green Card?

*An Overview for Alien Employees*

*Compliments of*

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## **Introduction**

You or your employer (or prospective employer) has consulted with us concerning your becoming a lawful permanent resident of the United States. The following is a brief outline of the process required to obtain an immigrant visa (also known as a “Green Card”). It is intended to help you understand the overall process.

Within this document the term “employee” refers to the foreign national (alien) worker. The steps described in this document are the same whether you already work for your sponsoring employer or not. Please note that this is general information and is not case specific. It is provided for informational purposes only and an attorney/client relationship has not been formed as a result. If we discussed your need to obtain a labor certification as part of your immigration process, this document describes that process.

Obtaining your green card through an offer of employment consists of three steps: 1) obtaining an Alien Labor Certification from the United States Department of Labor (DOL); 2) obtaining an approved immigrant visa petition from United States Citizenship and Immigration Services (USCIS); and 3) applying for and ultimately being issued an immigrant visa at a USCIS office in the United States or at an American Embassy or Consulate abroad.

## **Obtaining a Labor Certification**

An Alien Labor Certification is a formal finding by the United States Department of Labor (DOL) that a full-time job opening exists where the employer offers the prevailing wage and cannot find a United States citizen or permanent resident alien who is qualified, willing and able to fill the position. In order to establish this, the employer must test the local job market through a convoluted and complex process that only a government bureaucrat could love. While the process is onerous and often appears to have no relation to the “real world,” failure to strictly comply with applicable regulations will result in denial of the application. In general, the processing of a labor certification application proceeds as follows:

1. We will work with your employer to prepare the appropriate applications;
2. Once the case is preliminarily ready for filing, we shall review any recruitment efforts your employer has previously undertaken to determine if they are acceptable for labor certification purposes. If they are not acceptable, we will assist your employer in undertaking recruitment efforts that comply with DOL regulations. Please note that recruitment efforts must include, but are not limited to, the following:
  - a. Two (2) Sunday print advertisements in the local newspaper of general circulation. In lieu of one newspaper advertisement, an employer can place an advertisement in an appropriate professional journal if 1) the job requires

- experience and an advanced degree and 2) a professional journal would normally be used to advertise the job opportunity;
- b. On-site posting of the employment opportunity for ten (10) consecutive working days or notice to the union bargaining representative if appropriate; and
  - c. Placement of a 30 day job order with the State Workforce Agency responsible for where the job is located.
3. If the position is professional in nature, the employer must also undertake at least three (3) of the following:
- a. Job fair recruitment;
  - b. Posting the job on the employer's web site;
  - c. Posting the job on a job search website (e.g. [www.monster.com](http://www.monster.com));
  - d. On-campus recruiting;
  - e. Professional or trade organization searches;
  - f. Listing the job with private employment firms or placement agencies;
  - g. Employee referral programs with verifiable incentives;
  - h. Campus placement offices;
  - i. Publication of advertisements in local and/or ethnic newspapers; or
  - j. Radio and/or television advertisements.
4. Once recruitment efforts have concluded, we shall assist your employer in preparing the appropriate recruitment reports; and
5. We will compile all documentation and file the case with the U.S. Department of Labor.

The Department of Labor will review the application and determine whether a good faith effort to recruit U.S. workers was undertaken and that no willing, able and otherwise qualified U.S. workers were available for employment. If the employer satisfies the requirements, DOL will issue a labor certification certifying that the U.S. job market will not be adversely affected by the permanent hiring of foreign labor (in other words, you!). The approved labor certification is valid for six months.

DOL regulations require the employer to pay all costs associated with a labor certification application including the payment of any legal fees incurred and all recruitment costs such as advertising, filing fees, etc. It is unlawful for employers to attempt to recoup these funds from the alien worker either through direct reimbursement or a *quid pro quo* of some other type.

## **Filing an Immigrant Visa Petition**

Once the employer obtains the approved labor certification from the Department of Labor, the employer must file an Immigrant Visa Petition with United States Citizenship and Immigration Services (USCIS). This petition requests that USCIS classify the alien employee eligible to receive an immigrant visa (green card) due to the fact that U.S. workers are not available. Prior to USCIS approving the petition, the following requirements must be satisfied:

1. Submission of the original approved labor certification within its six month validity period;
2. Reference letters from the employee's previous employers verifying any claimed relevant prior work experience; and
3. Financial documentation establishing that the employer has the financial ability to pay the proffered wage established in the approved labor certification application. This is usually established by submitting copies of the employer's personal or corporate tax returns.

Alternatively, documentation establishing that the employer already pays the employee the proffered wage such as IRS Form 941, W-2, state payroll withholding reports, cancelled payroll checks or the like may be utilized. Employers who have 100 or more employees may submit a letter from the Chief Financial Officer attesting to the fact that the company has the financial ability to pay the proffered wage.

Assuming the above conditions are satisfied, USCIS will approve the immigrant visa petition and the alien will be formally accorded a "priority date". Your priority date will be the day that the labor certification was filed with the Department of Labor.

## **Applying for an Immigrant Visa/Green Card**

The final step in obtaining an immigrant visa consists of two parts: 1) having a "current" priority date; and 2) once the priority date is current, filing an application with a USCIS office in the United States or consular processing at an American Embassy or Consulate abroad.

The United States utilizes a system known as the "preference system" when issuing immigrant visas. For purposes of simplification, think of each preference as a category. There are various

categories, each with their own quota for the number of visas that may be issued in any given year. Each month, the U.S. Department of State publishes the *Visa Bulletin* which announces the cut-off dates for each category. If the employee's priority date is earlier than the cut-off date, the employee may then apply for an immigrant visa. This is referred to as having a "current" priority date

Unfortunately, for most categories there are more people applying than there are available visas. Some categories have extensive backlogs and a significant delay of many years may ensue before a visa will become available. It is therefore entirely possible that we will get to this particular point in the process and you will have to wait until your priority date becomes current.

In general, there is a shorter backlog for more highly-skilled positions, although this is not always true. When we initially prepare a case, we attempt to place you in the category that you qualify for with the smallest backlog and therefore the shortest wait. It is important to note, however, that just because you have qualification for a higher category, if your employer does not formally require such extensive credentials you will be placed in the lower category as DOL regulations require that your employer must recruit for minimally acceptable candidates, not the best qualified candidate. While it is impossible to predict with any certainty the exact amount of time this process may take, we attempt to set realistic expectations for both the employer and employee during our initial review of the case.

Once your priority date is current, you may apply for permanent residence in the United States. If you are in the United States legally, you may file an application for permanent residence (adjustment of status) with USCIS. This is generally the preferred method for those already in the country. If you are in the United States unlawfully, in most cases you must return to your home country to apply for an immigrant visa at the American Embassy or Consulate. However, depending upon the length of time you have been in the country illegally, the law may prevent issuance of an immigrant visa and your return to the U.S until you have spent a significant amount of time outside the country. This should be taken into consideration before the employee departs.

While there are exceptions to these general rules (such as allowing an employee illegally in the United States to apply with USCIS under certain circumstances), the employee's specific situation should be evaluated at the start of the case and continuously thereafter. This will allow the attorney to determine any potential complications and to be able to communicate them to the employer and employee.

## **What Are the Employer's Liabilities?**

Aside from the financial costs mandated by the Department of Labor (the employer must pay all legal fees and recruitment costs associated with the labor certification application but the employee may pay all or part of the remaining legal fees and costs), there are no liabilities for a business, organization or person who undertakes this process. Since the process is commenced by the employer, the employer may change his mind at any time and terminate the process without prejudice. The employee assumes all the risk.

## **Working With An Attorney**

Since the employer, employee and attorney will all be working together, the employer and employee should be confident in the ability and qualifications of the attorney. As detailed above, this is a complicated process which will take a considerable amount of time and has many pitfalls for the unwary. There is much more to the practice of immigration law than just completing forms. As one USCIS spokesman has stated: "Immigration law is a mystery and a mastery of obfuscation, and the lawyers who can figure it out are worth their weight in gold".

While a client should feel free to consult with multiple attorneys prior to retaining counsel, a client should question an attorney who quotes a low fee in comparison to others about his experience and what services are included so that a fair comparison can be made. Questions to ask include: How much assistance will the attorney be providing? Will the attorney help in drafting the required advertisements and make sure the other recruitment requirements are satisfied or does he leave the employer to handle it on his own? Does the attorney charge for every phone call or office conference? Additionally, since the employer and/or employee may be providing sensitive documentation to the attorney, the employer and/or employee should feel confident that they will not be viewed by unauthorized personnel and will otherwise remain confidential.

Some attorneys will quote a fee for only the labor certification and not discuss the immigrant visa portion of the case until after the labor certification is approved. The client is then surprised to learn that there are additional fees and costs to continue on with the case (especially when the employer has paid the legal fees and costs related to obtaining the labor certification). On its own, a labor certification is a worthless piece of paper which expires six months after it is issued. It is only one piece of the puzzle. Representation by a competent immigration attorney is not inexpensive. Succinctly stated, one should not retain counsel based upon price alone.

While attorneys are generally prohibited from providing the names and contact information of current and past clients as references due to attorney/client privilege, the attorney should be able to provide you with his biography setting forth his qualifications and experience. While membership in the American Immigration Lawyers Association (AILA) is not a *per se* indicator

of competence, AILA is a voluntary bar association whose members are committed to the practice of immigration law and membership may be taken as a positive sign. Conversely, prior discipline by a state bar association may be an indicator of historically poor performance and unsatisfied clients.

The Florida Bar makes it easy for you to select an immigration attorney by certifying attorneys as specialists in immigration law. These Board Certified specialists must pass a rigorous examination, have the requisite amount of experience and be favorably rated by their colleagues. Ask the attorney if he is Board Certified. Devore & Devore, P.A. is the only law firm in Palm Beach County, Florida with two Board Certified Immigration Attorneys on staff

## **Conclusion**

The foregoing is brief synopsis of the immigration procedures involved in obtaining a green card through employment. Please feel free to contact us to discuss the specifics of your case and obtain answers to any questions you may have.