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## Summary of Procedures to Obtain Labor Certification for Permanent Employment of Aliens in the United States

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### Introduction

In most cases, the employment-based permanent residence ("green card") process includes three steps:

1. Application for Labor Certification
2. I-140 Petition for Immigrant Worker
3. I-485 Application for Adjustment of Status OR Immigrant Visa Application

This summary addresses only the procedures and requirements for step one, the labor certification process. Generally speaking, the application process is intended to protect American workers by requiring that any employer who wishes to sponsor a foreign worker for permanent residence first demonstrate that:

- A. There are not sufficient U.S. workers who are "able, willing, qualified and available" for the job at the time the application for labor certification is submitted.
- B. The employment of a foreign worker in the position will not adversely affect the wages and working conditions of U.S. workers similarly employed.

On December 27, 2004 the U.S. Department of Labor (DOL) announced major changes to the labor certification application process. The changes went into effect on March 28, 2005 and are commonly known as PERM (Program Electronic Review Method).

After receipt of an approved labor certification, the employer can file the I-140 petition on behalf of the worker. In some cases, the I-485 Application for Adjustment of Status can be filed at the same time as the I-140. The processing times to finish these two steps and obtain permanent residence range from one or two to several years total.

**PLEASE NOTE:** This summary is intended to provide *general* information about the requirements and procedures of the labor certification application process in effect after March 28, 2005. Due to the wide variations present in the labor market, it is not possible to address every possible situation. Specific questions should be addressed to the Hernandez Law Firm, PLLC via the email address listed above.

### I. Pre-filing Recruitment Requirements

Before an employer can file an application for labor certification on behalf of a foreign worker for a full-time position, some recruitment steps are required. The steps are intended to bring the job to the attention of any U.S. workers who might be able, willing, qualified and available.

**A. Non-Professional Jobs** – Jobs for which the attainment of a bachelor's or higher degree is not a usual requirement for the occupation:

- (1) Placement of a job order with the State Workforce Agency in the area of intended employment

- (2) Two advertisements in newspaper – Newspaper ads must be in two different Sunday editions. The ads should contain, at a minimum, a descriptive job title, the job location, the name of the employer and the means for interested persons to contact the employer. Salary is not required but if it is included it must meet the level required by DOL for the occupation.

→ Note: Newspaper ads should be submitted to the Hernandez Law Firm, PLLC for review before publication to confirm with the legal requirements regarding the content of the ads.

→ Additional Note Regarding Job Description and Requirements: DOL expects the job requirements to be those normally required for the occupation. Requirements that DOL considers to be overly restrictive and potentially in favor of the foreign worker will not be allowed. In addition, the foreign worker may not count experience gained with the employer to meet minimum experience requirements listed for the job unless the position in which the experience was gained is not “substantially comparable” to the job for which certification is sought.

**B. Professional Jobs** – Jobs for which the attainment of a bachelor’s degree or higher is a usual education requirement:

- (1) Placement of a job order with the State Workforce Agency in the area of intended employment for a period of 30 days
- (2) Two advertisements in newspaper or professional journals – Newspaper ads must be in two different Sunday editions. One journal ad may be substituted for one of the newspaper ads in certain circumstances.

→ See Note above regarding content of print advertisements

- (3) Three additional recruitment steps – The employer must conduct at least three additional recruitment steps. The options that qualify as additional steps are:
  - (a) Job fairs
  - (b) Employer’s Web site
  - (c) Job search Web site other than the Employer’s
  - (d) On-campus Recruiting (interviewing) at colleges/universities
  - (e) Trade or Professional Organizations
  - (f) Private Employment Firms
  - (g) Employee Referral Program with Incentives
  - (h) College and/or University Campus Placement Offices (notice of job opening)
  - (i) Local and Ethnic Newspapers
  - (j) Radio and television advertisements

### **C. Recruitment Results Report**

The employer must prepare and sign a recruitment report, which describes at a minimum:

- (1) The recruitment steps undertaken
- (2) The results achieved
- (3) The number of hires
- (4) The number of U.S. workers rejected categorized by the lawful job related reasons for such rejections

→ **NOTE:** A U.S. worker is considered to be able and qualified for the job if he or she can acquire the skills necessary to perform the job duties during a *reasonable* period of on-the-job-training (emphasis added).

### II. Pre-filing Notice to Other Employees

At least 30 days but no more than 180 days prior to filing the application on behalf of the foreign worker, the employer must provide notice of the intent to file the application to its other employees.

A. For positions covered by a collective bargaining agreement, a letter must be sent to the collective bargaining representative.

B. For positions NOT covered by a collective bargaining agreement:

(1) A notice must be posted for 10 business days. The notice must be clearly visible and unobstructed while posted. The area where wage and hour and occupational safety notices are posted would be an appropriate place.

(2) The employer must publish the notice in any and all internal publications (electronic or printed) that would normally be used to recruit internally for similar positions.

➔ PLEASE NOTE: Due to legal requirements regarding the content of the notice, it should be prepared or reviewed by the Hernandez Law Firm, PLLC prior to posting.

### III. Audit Procedures and Documentation

The Department of Labor will be conducting audits of selected applications for labor certification filed through the PERM system. Certain cases will be selected at random while others will be selected based on criteria determined by DOL.

The supporting documentation for the application should be prepared prior to filing the application with DOL. In the event of an audit, all documentation must be submitted to the appropriate DOL office within 30 days. Failure to provide the documentation may result in denial of the application and possibly the requirement to conduct recruitment for future applications under the supervision of DOL. All documents related to the application must be retained for five years.