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Policy Manual

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A. Employer Requirements

A significant percentage of Immigrant Petitions for Alien Workers ([Forms I-140](#)) are based on permanent labor certification applications approved by the U.S. Department of Labor (DOL). When adjudicating a permanent labor certification application, DOL does not generally review the beneficiary's qualifications for the position; this authority and responsibility rests with USCIS. Therefore, officers must assess these petitions to ensure that the position offered is the same or similar to the position that the DOL certified and that the beneficiary meets the qualifications for the position.

1. Applicability

Employment-based 1st preference (EB-1)^[1] beneficiaries are not required to be the beneficiaries of approved permanent labor certifications issued by the DOL. Beneficiaries seeking employment-based 2nd preference (EB-2)^[2] or 3rd preference (EB-3)^[3] immigrant visas, however, generally must be the beneficiaries of approved permanent labor certifications.

2. Individual Permanent Labor Certifications

In general, petitioners filing EB-2 and EB-3 petitions must first obtain an approved permanent labor certification application from DOL on behalf of the beneficiary. An approved permanent labor certification application demonstrates that:

- The petitioner tested the labor market in the geographic area where the permanent job offer is located to establish that there are no able, qualified, and available U.S. workers who are willing to accept the permanent job offer; and
- The employment of the beneficiary will not adversely affect the wages and working conditions of similarly employed U.S. workers.

Transition to the PERM Labor Certification System

DOL implemented the permanent labor certification system (PERM) on March 28, 2005, effectively eliminating the previous permanent labor certification system, whereby petitioners had an option to file permanent labor certification applications under supervised recruitment or reduction in recruitment rules.

The DOL PERM final rule, published on December 27, 2004 and effective on March 28, 2005, amended the procedures for obtaining permanent labor certification.^[4] DOL approves and issues permanent labor

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certification applications only after the petitioner has complied with DOL advertising and recruiting requirements and has established that there are no able, qualified, and available U.S. workers for the position and has rejected any U.S. job applicants for valid job-related reasons.

Permanent Labor Certifications filed with DOL on or after March 28, 2005^[5]

The Application for Permanent Employment Certification ([ETA Form 9089 \(PDF\)](#)) replaced the Application for Alien Employment Certification (ETA Form 750) in most cases, effective March 28, 2005.^[6] ETA Form 9089

details the specifics of the job offer and the beneficiary that were contained in the ETA Form 750 Part A and Part B. The ETA Form 9089 can be filed electronically or by mail.^[7]

For the application to be valid, the petitioner, the beneficiary, and the form preparer (if any) must sign the ETA Form 9089. It must also contain the DOL certification stamp and bear the DOL certifying officer's signature and the certification date.

An approved permanent labor certification is not evidence that DOL has certified that the beneficiary named on the permanent labor certification qualifies for the position. Only USCIS has the authority to determine qualifications for nonimmigrant and immigrant classifications.^[8] An approved permanent labor certification

means that the petitioner made a good faith effort to test the labor market and demonstrated to DOL that there were no qualified, able, and available U.S. workers for the position.

USCIS determines whether the beneficiary met the minimum education, training, and experience requirements of the permanent labor certification at the time the petitioner filed the application for permanent labor certification with DOL. An immigrant petition for a preference classification is not approvable if the beneficiary was not fully qualified for the classification by the filing date of the permanent labor certification (the petition's priority date).^[9]

B. Validity of Approved Permanent Labor Certifications

1. Validity Period

The validity period for individual permanent labor certifications approved on or after July 16, 2007, is 180 days.^[10] Petitioners have 180 calendar days after the date of the approval of the permanent labor

certification application by DOL within which to submit the permanent labor certification in support of a petition with USCIS.^[11]

USCIS rejects petitions that require an approved permanent labor certification if the permanent labor certification has expired or if the petition is filed without the approved permanent labor certification. USCIS denies a petition that was inadvertently accepted without a required, valid permanent labor certification.

2. Exceptions

USCIS continues to accept amended or duplicate petitions that are filed with a copy of a permanent labor certification that is expired at the time the amended or duplicate petition is filed, if the original permanent labor certification was submitted in support of a previously filed petition during the permanent labor certification's validity period. These filings may occur when:

- There is a successor-in-interest employer change, which requires a new or amended petition;
- The petitioner wishes to file a new petition subsequent to the denial, revocation, or abandonment of the previously filed petition, and the permanent labor certification was not invalidated due to material misrepresentation or fraud relating to the labor certification application;
- The petitioner files an amended petition to request a different immigrant visa classification than the classification requested in the previously filed petition; or
- USCIS or U.S. Department of State (DOS) determines that the previously filed petition has been lost.

Petitioners may not appeal a USCIS decision to deny a petition that is filed with an expired permanent labor certification issued by DOL.^[12]

3. Validity Periods Ending on Weekends or Federal Holidays

The petitioner must file a petition supported by an approved permanent labor certification during the certification's validity period as established by DOL. Where the last day of a validity period falls on a Saturday, Sunday, or federal holiday, USCIS considers the petition to be timely if USCIS receives it by the end of the next business day.^[13] As such, when the last day of the filing period falls on a Saturday, Sunday, or federal holiday,

the deadline is extended until the end of the next business day that is not a Saturday, Sunday, or federal holiday.

USCIS considers electronically-filed petitions to be received immediately upon submission; therefore, these filings are not affected by USCIS mailroom closures.

C. Original and Duplicate Permanent Labor Certification Requirements

While photocopies of other initial supporting documents are generally acceptable, the petitioner must submit the original permanent labor certification unless it has already been filed with another petition.^[14]

Issuance of a Duplicate Permanent Labor Certification

If the original permanent labor certification has been lost, DOL does not issue a duplicate permanent labor certification to the petitioner but issues a duplicate directly to DOS or USCIS for ETA Form 9089 permanent labor certifications.^[15] DOL only issues these duplicates for permanent labor certifications filed on or after

March 28, 2005^[16] and only at the request of DOS or USCIS.

A beneficiary, petitioner, or a beneficiary's or petitioner's attorney or agent must therefore explain the need for a duplicate to USCIS and USCIS may then request that DOL issue a duplicate. DOL retains permanent labor certification information for 5 years and can only issue duplicates during that time frame. The USCIS request must include documentary evidence that a visa application or petition has been filed and must include the U.S. embassy or consulate or USCIS case tracking number that is associated with the visa application or petition.

DOL only sends the duplicate permanent labor certification to DOS or USCIS, regardless of who makes the request.^[17] An officer should only make the request to DOL if it is in conjunction with a petition filed with

USCIS where the original permanent labor certification has been irretrievably lost or destroyed. The duplicate permanent labor certification must be retained as part of the record of the petition after it is received from DOL and should not be forwarded to the petitioner or the petitioner's representative.

An officer should not make such a request to DOL if the petitioner's attorney requested a duplicate permanent labor certification in general correspondence to USCIS, merely because he or she would like a copy for his or her records.

If another beneficiary has used or been substituted on a permanent labor certification that the petitioner claims has been lost or denied, the officer should deny the request for a duplicate permanent labor certification.

D. New Approval of Permanent Labor Certification Required

1. In General

The list of conditions that require the submission of a new original permanent labor certification in support of the petition includes, but is not limited to:

- The successor entity (petitioner) has not established that a successor-in-interest relationship exists between the successor and the predecessor in accordance with the three successor-in-interest factors;

[18]

- The permanent labor certification is not valid for the new geographic area of the beneficiary's proposed employment; or
- There has been any other material change in the job opportunity covered by the original permanent labor certification.

2. Permanent Labor Certification Substitution Changes

As of July 16, 2007, DOL regulations prohibit the alteration of any information contained in the permanent labor certification after the permanent labor certification application is filed with DOL, including the substitution of beneficiaries on permanent labor certification applications and resulting certifications.^[19]

E. Revocation of a Permanent Labor Certification

DOL may take steps to revoke the approval of a permanent labor certification if a subsequent finding is made that the certification was not justified.^[20] In such instances, DOL provides notice to the employer in the form

of a Notice of Intent to Revoke (NOIR) that contains a detailed statement of the grounds for the revocation of the approved permanent labor certification and the time period allowed for the petitioner's rebuttal.^[21]

The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. If rebuttal evidence is not filed by the petitioner, the NOIR becomes the final decision of DOL.

If the petitioner files rebuttal evidence and DOL determines the certification should nonetheless be revoked, the petitioner may file an appeal within 30 days of the date of the adverse determination.^[22] If the

permanent labor certification is revoked, DOL also sends a copy of the notification to USCIS and DOS.

Permanent labor certifications remain valid unless and until they are revoked. Officers should provide notice to the petitioner in the form of a Notice of Intent to Deny (NOID) or NOIR if the record reflects that the underlying permanent labor certification has been revoked.^[23] This notice gives the petitioner an

opportunity to supplement the petition with a valid permanent labor certification. If the rebuttal evidence provided in response to the NOID or NOIR does not include a valid permanent labor certification, USCIS denies or revokes the approval of the petition.

Footnotes

^[^ 1] See [INA 203\(b\)\(1\)](#).

^[^ 2] See [INA 203\(b\)\(2\)](#).

^[^ 3] See [INA 203\(b\)\(3\)](#).

^[^ 4] See [20 CFR 656](#).

^[^ 5] Before the new PERM regulation became effective on March 28, 2005, U.S. employers filed the Application for Alien Employment Certification (ETA Form 750) in order to obtain an approved labor certification. Petitioners still use the ETA Form 750 for professional athletes and may submit an uncertified ETA Form 750 or 9089 with a petition seeking a national interest waiver of the labor certification. See Part F, Employment-Based Classifications, Chapter 5, Advanced Degree or Exceptional Ability [[6 USCIS-PM F.5](#)] and Chapter 6, Physician [[6 USCIS-PM F.6](#)]. The ETA Form 750 has two parts. Part A focuses on the details of the position being certified and describes the name and address of the petitioner, the location of the job opportunity, the proffered wage for the position and the minimum education, training, or experience requirements to successfully perform the duties of the position. Part B focuses on the beneficiary and contains his or her name, date of birth, address, and describes his or her education, training and work history. A valid, approved ETA Form 750 must be signed by the petitioner in Part A and the beneficiary in Part B, contain the DOL certification stamp, and be signed and dated by the DOL certifying officer in the endorsements section on the front page on Part A of the form.

^[^ 6] See [20 CFR 656.17](#).

[^7] For more information about filing ETA Form 9089, see the [Foreign Labor Certification](#) webpage.

[^8] See *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008-09 (9th Cir. 1983).

[^9] See [Matter of Katigbak \(PDF\)](#), 14 I&N Dec. 45 (Reg. Comm. 1971). See [Matter of Wing's Tea House \(PDF\)](#), 16 I&N Dec. 158 (Act. Reg. Comm. 1977). See the discussions of priority dates at [8 CFR 204.5\(d\)](#) and [20 CFR 656.30\(a\)](#).

[^10] DOL amended its regulations at 20 CFR part 656 on May 17, 2007, with an effective date of July 16, 2007. See [72 FR 27904 \(PDF\)](#) (May 17, 2007).

[^11] See [20 CFR 656.30\(b\)](#).

[^12] The Administrative Appeals Office (AAO) lacks appellate jurisdiction to review denials based on the lack of a labor certification. See DHS Delegation No. 0150.1 para. (2)(U) (Mar. 1, 2003), which delegated the AAO's jurisdiction over the decisions listed in [8 CFR 103.1\(f\)\(3\)\(iii\)\(B\) \(PDF\)](#) (as the regulations appeared February 28, 2003).

[^13] For more information on filing timeframes, see Volume 1, General Policies and Procedures, Part B, Submission of Benefit Requests, Chapter 6, Submitting Requests, Section D, Filing Periods Ending on Weekends or Federal Holidays [[1 USCIS-PM B.6\(D\)](#)].

[^14] See [8 CFR 204.5\(g\)\(1\)](#). In addition, this regulation provides that an officer may request that other original documents be provided when necessary.

[^15] DOL also issues duplicates of lost ETA Form 750 permanent labor certification applications directly to USCIS, upon USCIS' request. DOL replaced ETA Form 750 with ETA Form 9089 on March 28, 2005, however, ETA Form 750 is still used in certain situations. For more information, see Section A, Employer Requirements, Subsection 2, Individual Permanent Labor Certifications [[6 USCIS-PM E.6\(A\)\(2\)](#)].

[^16] Before March 28, 2005, DOL provided duplicate labor certifications only in response to a written request by USCIS.

[^17] See [20 CFR 656.30\(e\)](#).

[^18] See Chapter 3, Successor-in-Interest in Permanent Labor Certification Cases, Section F, Factors for Successorship Determinations [[6 USCIS-PM E.3\(F\)](#)].

[^19] See [20 CFR 656.11](#). Before July 16, 2007, USCIS and DOL allowed U.S. employers to substitute a beneficiary named on a pending or approved labor certification with another prospective beneficiary while maintaining the previously established "priority date." Labor certification substitution could occur either while the labor certification application was pending at DOL or while a petition, filed with an approved labor certification, was pending with USCIS. Starting July 16, 2007, USCIS began rejecting all petitions requesting labor certification substitution. In the event USCIS inadvertently accepts such a petition, it denies the petition based on being filed without a valid approved labor certification naming the beneficiary.

[^20] See [20 CFR 656.32](#).

[^21] See [20 CFR 656.32\(b\)](#).

[^22] See [20 CFR 656.26](#).

[^23] USCIS also provides the NOIR or a Notice of Revocation to beneficiaries who are otherwise eligible and have properly requested to port to a new employer as USCIS considers them affected parties. For more information, see Chapter 8, Decision and Post-Adjudication, Section C, Revocation [[6 USCIS-PM E.8\(C\)](#)].

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