



Permanent Labor Certification Program

Final Regulation

Frequently Asked Questions

MAY 4, 2005

EFFECTIVE DATE:

Question: Are any PERM regulation provisions applicable to applications filed under the regulation in effect prior to March 28, 2005?

No, while many provisions in the PERM regulation are the same as, or similar to, the provisions found in the regulation in effect prior to March 28, 2005, the PERM regulation can not be applied to applications filed under the former regulation. At this point, all provisions of the PERM regulation are applicable only to applications filed on or after March 28, 2005, under the PERM regulation.

FILING

REFILE

Question: How must the employer save and/or store the documentation necessary to support a labor certification application?

- ☞ No one method for saving and/or storing necessary documents is prescribed, nor is any particular method proscribed. The burden of establishing the validity of any documentation provided in support of a labor certification application rests with the employer. In establishing a method by which to save/store supporting documentation, the employer must remember that the responsibility for producing valid and defensible documentation in the event it is requested by a Certifying Officer rests solely with the employer. Such documentation must be retained by the employer for five years from the date of filing.

Question: In the event an employer wanted to refile a reduction-in-recruitment (RIR) conversion application, what date would be considered the original filing date (priority date), i.e., is the filing date of the original application the date the traditional recruitment application was filed with the State Workforce Agency (SWA) or the date the application was accepted as a RIR conversion application?

- ☞ The original filing date (priority date) is the date the original application was initially accepted for processing by the SWA under the basic labor certification process; it is not the date the application was accepted as a RIR conversion application.

Question: Is it possible to refile an application under the PERM optional special recruiting provision for college and university teachers if eighteen months or more have passed since the selection of the alien was made pursuant to a competitive recruitment and selection process?

- ☞ No, an application can not be refiled under the PERM optional special recruiting provision on behalf of an alien selected pursuant to a competitive recruitment and selection process if eighteen months have passed since the selection of the alien.

RECRUITMENT

ADVERTISEMENT

TIMEFRAMES

Question: When must the advertisement for the job opportunity be placed in the national professional journal under the optional special recruitment provision?

- ☞ The national professional journal advertisement for the job opportunity as required under the optional special recruitment provision must have been placed during the recruitment period prior to the selection of alien.

PREVAILING WAGE

Question: Must a prevailing wage determination be obtained from the State Workforce Agency (SWA) even if the employer is filing an application under the optional recruitment for college and university teachers and/or Schedule A provisions?

- ☞ Yes, a prevailing wage determination must be obtained from the SWA even if the employer is filing an application under the optional recruitment for college and university teachers and/or the Schedule A provisions.

COLLEGE AND UNIVERSITY TEACHERS

Question: Must a prevailing wage determination be obtained from the State Workforce Agency (SWA) if the employer is filing an application for a college or university teacher under the optional recruitment and documentation procedures provision?

- ☞ Yes, a prevailing wage determination must be obtained from the SWA even if the employer is filing an application for a college or university teacher under the optional recruitment and documentation procedures provision. The attestation provision of the PERM regulation requires the employer certify that the offered wage equals or exceeds the prevailing wage determined pursuant to the prevailing wage provision which, in turn, requires the employer to obtain a prevailing determination from the SWA having jurisdiction over the proposed area of intended employment.

Question: When must the advertisement for the job opportunity be placed in the national professional journal under the optional special recruitment provision?

- ☞ The national professional journal advertisement for the job opportunity as required under the optional special recruitment provision must have been placed during the recruitment period prior to the selection of alien.