

## **FILING, WITHDRAWING, REFILING, AND TRACKING PERM CASES**

**By Katherine Lopez Ley and Davis C. Bae**

### **Introduction**

When the Department of Labor first presented the Program Electronic Review Management (PERM) System, there was an immediate but skeptical sigh of relief from attorneys and their clients. Under the old system of labor certifications, attorneys toiled under an archaic system of labor certifications that subjected applicants to years of delay and inconsistencies in adjudication. Attorneys and employers welcomed the innovation of the PERM system, which promised a step-by-step online system that would guide employers and lawyers through a uniform, attestation-based labor certification process. Although PERM started off with the kinks and modifications typical of any new software system, the system is performing in a manner more satisfactory than the previous system for labor certifications.

One major disadvantage to PERM, however, is that it lacks the flexibility and personal service element that was so helpful with the old system. Stricter standards, ambiguous form questions, and poor adjudicator training create a very unforgiving environment where inappropriate denials are all too common. In other words, the benefits increase but so, too, do the risks.

In spite of the online tutorial and other Department of Labor guidance, labor certifications remain one of the hardest applications for an immigration lawyer to prepare. Further, immigration lawyers must be well versed in not only understanding the general rules of PERM, but also in applying “real world” scenarios in order to get multiple cases approved effectively and efficiently. This article is intended to help immigration lawyers assist employers in registering for PERM, as well as to guide lawyers through the process of filing, withdrawing, re-filing, and tracking cases in the PERM system. While the actual preparation of the PERM application (Form ETA 9089) is addressed in other articles, this article seeks to provide the reader with practical pointers on management of the processes that are rarely discussed.

### **Registering with the PERM Online System**

The first step in filing a PERM online application is to register for the PERM online system and obtain a username, password, and Personal Identification Number (PIN). Employers must register with this system first, then add the attorney/agent as a user. Once that is done, the attorney will be able to utilize a sub-account to prepare and submit cases on the employer’s behalf. This step is unnecessary for those submitting a paper application.

The PERM online system allows an employer or attorney/agent to prepare, save, and return to a Form ETA 9089. Many of the employer-specific fields are pre-populated but can be edited. Cases may also be reused, which is helpful if resubmission of a case is

necessary or where the employer is submitting multiple applications for multiple beneficiaries in the same position. The PERM system now also provides a warning mechanism for certain data entry errors, helping to limit the chance of denial due to inadvertent, seemingly harmless errors in preparation of the form. This change was introduced after *Matter of HealthAmerica*, in which the Board of Alien Labor Certification Appeals (BALCA) found that the Department of Labor Certifying Officer in the matter had abused his discretion in denying a case due to typographical errors where the employer had evidence the date listed was a typo.<sup>149</sup> Finally, the home page of the PERM system often provides helpful informational updates and warnings of scheduled system outages.

***Practice Pointer: The employer must complete the PERM registration from the employer's computer. It is unacceptable for the attorney to complete this registration on the employer's behalf from the attorney's computer.***<sup>150</sup>

In order to register with PERM, the employer will need the following information:

- Complete legal name of the company, correct headquarters address, telephone number, and fax number.

***Practice Pointer: Post Office (P.O.) Boxes are not permissible; a physical street address must be listed.***

- Federal Employer Identification Number (FEIN). This number is provided to the employer by the Internal Revenue Service.

***Practice Pointer: Separately incorporated subsidiaries with distinct FEINs must register separately in order to submit applications. Sub-accounts cannot be created for subsidiaries with different FEINs, as the FEIN field is pre-populated on the 9089 and cannot be edited.***<sup>151</sup>

- North American Industry Classification System (NAICS) code. This is a 6-digit classification number assigned based on the employer's industry sector. To determine the proper NAICS code see: <http://www.naics.com/search.htm>. Note that there is also a drop down list and search function on the registration form.
- Year that the company commenced business.

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<sup>149</sup> *HealthAmerica*, 2006-PER-1 (July 18, 2006) (en banc).

<sup>150</sup> U.S. Department of Labor Office of Foreign Labor Certification, *OFLC Frequently Asked Questions, Registration* <<http://www.foreignlaborcert.doleta.gov/faqsanswers.cfm#refile-reg1>> (accessed April 1, 2008).

<sup>151</sup> U.S. Department of Labor Office of Foreign Labor Certification, *OFLC Frequently Asked Questions, Filing* <<http://www.foreignlaborcert.doleta.gov/faqsanswers.cfm#filing8>> (accessed April 1, 2008).

- Contact information, including names, addresses, email addresses, and telephone numbers for the employer (User), employer contact, and attorney/agent (see below for definitions).

The PERM online system is found at <http://www.plc.doleta.gov>. When you enter this site, you will see a “WARNING” window. This is normal. Registration is fairly straight-forward, and a detailed user guide that includes registration instructions may be found at <http://www.plc.doleta.gov/onlinehelp.pdf>, which is also accessible by selecting the “Online Help” tab that appears at the upper part of each page in the PERM online system.

***Practice Pointer: The “Online Help” tab is one of the few functioning links on the PERM website. Be prepared to be re-directed to a new website or to search for the appropriate page.<sup>152</sup>***

***Practice Pointer: Similarly, when the “Contact” tab that appears on each PERM page is selected, it provides the following instruction:***

Please send technical-related questions to [PLC.Help@dol.gov](mailto:PLC.Help@dol.gov) and Policy/Case Status Assistance to [Perm.DFLC@dol.gov](mailto:Perm.DFLC@dol.gov).

***Do not send questions or requests for assistance to [Perm.DFLC@dol.gov](mailto:Perm.DFLC@dol.gov). This email address has not been in use since 2005<sup>153</sup> and is not monitored.***

In order to register, the employer will be asked to provide information for the following three areas:

### **1. User Profile:**

The User Profile must list the contact information for a person with actual hiring and firing authority for the company<sup>154</sup>. This individual will be sent the initial registration confirmation, including a Department of Labor-provided password that must be used when logging in the first time. This individual has ultimate control and responsibility over the PERM account.

### **2. Employer Business Information**

The Employer Business information section requires entry of the company’s full legal name. Avoid using only “dba” or other versions of the name other than the full legal name, as failure to provide the full legal name may result in additional verification

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<sup>152</sup> A list of valid links follows this article.

<sup>153</sup> U.S. Department of Labor Office of Foreign Labor Certification, *OFLC Frequently Asked Questions, Filing* <<http://www.foreignlaborcert.doleta.gov/faqsanswers.cfm#filing11>> (accessed April 1, 2008).

<sup>154</sup> U.S. Department of Labor Office of Foreign Labor Certification, *OFLC Frequently Asked Questions, Registration* <<http://www.foreignlaborcert.doleta.gov/faqsanswers.cfm#refile-reg1>> (accessed April 1, 2008).

procedures. Anecdotal evidence suggests that listing the full legal name *and* the “dba” name does not lead to difficulties in verifying the employer’s existence.

### **3. Employer Contact Information**

The Employer Contact may be any individual selected by the employer, and may be different than the User. Typically, the person chosen to be the Employer Contact is the main immigration contact with the company. This person will be the primary person contacted by the Department of Labor regarding submission of the labor certification application.

***Practice Pointer: The attorney/agent will not be able to change any employer information through their subaccount, and the employer will also be unable to edit the business name or FEIN. Hence, it is important to make sure that this information is current and correct to avoid the need to re-register with the correct information.***

After submission of the required information, the employer will see a Registration Confirmation page. At this point, the employer verification process begins, through which the Department of Labor utilizes various resources to verify an employer’s existence. Should additional proof of existence be required, the DOL will send the employer a request for additional evidence of existence such as articles of incorporation, business license, state registration, proof of physical location such as utility bills, tax records, or leases and additional requests such as proof of FEIN in the form of a Form SS-4 or payroll tax returns.<sup>155</sup> The employer is typically given 30 days to respond to this request.

***Practice Pointer: Because employer verification can take a month or more, employers should register for the PERM online system as soon as is possible to avoid a situation in which existence verification is pending while advertising goes stale.***

Assuming the business information is verified, the DOL will send the employer contact listed in the User Profile two emails. The first email confirms registration, confirms the employer’s chosen username, and assigns a temporary password for the PERM online system. A second email provides the unique 4-digit PIN required to withdraw or submit applications. The employer should then log into the PERM system, change the password, and add the attorney/agent as a User with a sub-account. Note that passwords must be 8-15 characters long and must contain at least one special character and one numeral.

Note: The attorney/agent will receive a similar set of emails from the DOL following addition as a User. The PIN provided to the attorney/agent is the same as that given to the employer.

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<sup>155</sup> Permanent Online System User Guide, <<http://www.plc.doleta.gov/onlinehelp.pdf>> (accessed April 1, 2008).

***Practice Pointer:*** *Where there are multiple attorneys in the firm, each attorney may be registered as an agent or, in the alternative, you may simply request that the employer add only one attorney as an agent on behalf of the entire firm. You may then manually enter each non-registered attorney's information in the 9089 application. Only the information related to the attorney registered as an agent will be automatically populated.*

***Practice Pointer:*** *It is important to make sure that the emails from the DOL are not stopped by spam filters or directed into junk email folders. Because of this, it is advisable for the User contact, Employer Contact, and any attorney/agent, or employer representative to add the relevant DOL email addresses to the "safe" list. The email addresses are as follows:*

[PLC.HELP@dol.gov](mailto:PLC.HELP@dol.gov)  
[PLC.HelpInt@dol.gov](mailto:PLC.HelpInt@dol.gov)

***Practice Pointer:*** *The PERM online system allows only 3 login attempts. After the third unsuccessful attempt, the account is disabled. It can be reactivated by emailing [PLC.Help@dol.gov](mailto:PLC.Help@dol.gov), but re-activation time may vary.*

## **I. The Electronic Filing Process**

After ETA Form 9089 has been drafted (preferably by the attorney/agent), it should be reviewed by the employer and employee. The easiest way to do this is by saving a draft of the PERM-generated 9089 pdf and sending it to the employer and employee for review. The employer and foreign national beneficiary may also log into the PERM system to view the draft, but if this is done it is not recommended that the foreign national beneficiary be given login information, and it must be stressed that *nothing* should be changed on the application without discussion with the attorney/agent. In order to view and print the ETA Form 9089, Adobe Acrobat Reader 4.0 or higher is required.

***Practice Pointer:*** *Attorneys/agents may only view cases they created after accessing the PERM system using their username and password. They cannot view cases created by the employer or other employer representatives. The employer may view any case created by any sub-account holders.*

The employer or attorney/agent must use the PIN supplied by the Department of Labor to submit an application. The PIN is also required to withdraw an online application.

Upon submission of the 9089, both the employer contact and any attorney/agent will receive an email from the Department of Labor stating that the case has been received and submitted for processing. It is important to make sure that these emails are not caught in junk mail or spam filter systems. The email will note the employer name, address, beneficiary name, occupation title of the position, and ETA Case Number. The

submission date of the ETA Form 9089 marks the foreign national beneficiary's priority date.

Shortly thereafter, the employer should receive a Sponsorship Verification email from the same email address. This email must be completed within 7 calendar days of receipt.

At around the same time, the attorney/agent should receive a courtesy email notification that the Sponsorship Verification email was sent to the employer. Attorney/agents should ensure that this email address is added to their safe list prior to the submission of any applications. This email will again note the employer name, beneficiary name, and the occupation title of the position but does not include the employer address. Note that receipt of the courtesy email notification by the attorney/agent does not necessarily mean that the employer actually received the Sponsorship Verification email.

***Practice Pointer: It is important to check with the employer to make sure they received the Sponsorship email. If not, they should be contacted by a DOL representative via phone within 5 to 15 business days following the initial 7 calendar day period.***

Assuming the email is received and responded to within 7 calendar days, the employer and attorney/agent will receive a third email from the DOL indicating that they have received the response to the sponsorship questionnaire and that the case will continue processing. The email will note the employer name, address, beneficiary name, occupation of the position, and ETA case number.

## **II. The Paper Filing Process**

The Employment and Training Administration (ETA) Form 9089 may be downloaded, manually completed, and mailed to the Department of Labor Application Processing Center with jurisdiction over the job location. Currently, the Atlanta National Processing Center has jurisdiction over job locations in Atlanta, Connecticut, Delaware, Florida, Georgia, Kentucky, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Vermont, Virgin Islands, Virginia, Washington D.C., and West Virginia. The Chicago National Processing Center has jurisdiction over job locations in Alaska, Arizona, Arkansas, California, Colorado, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, and Wyoming.

***Practice Pointer: As of June 1, 2008, employers electing to use the paper process must file applications with the Atlanta Processing Center.***<sup>156</sup>

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<sup>156</sup> 73 FR 11954 (March 5, 2008).

As mentioned above, viewing and printing the ETA Form 9089 requires Adobe Acrobat Reader 4.0 or higher. The 9089 is located at:

<http://www.foreignlaborcert.doleta.gov/pdf/9089form.pdf> and the instructions are found at <http://www.foreignlaborcert.doleta.gov/pdf/9089inst.pdf>.

Applications submitted by mail must have the original signatures of the employer, employee (beneficiary), and any attorney/agent or other preparer. The applications are date stamped upon receipt by the Department of Labor to mark the priority date. Once received, the data in the Form 9089 is manually entered into the PERM electronic system by the DOL, and clear DOL errors in data entry leading to denial are fairly common. Despite the fact that these denials are the result of clear DOL error, the DOL generally will not correct its data entry errors unless the denial is successfully appealed.

Unfortunately, although the data is entered into the PERM electronic system by the DOL, it is not accessible to the employer or attorney/agent through that system. Likewise, the National Processing Centers will not issue confirmations of receipt for mail-in applications, nor will it provide the employer with an ETA Case Number.<sup>157</sup>

The ETA Form 9089 is also used for Schedule A occupations and for shepherders. Such applications are not submitted to the Department of Labor, but are instead submitted by mail to the Department of Homeland Security, U.S. Citizenship and Immigration Services.<sup>158</sup>

### **III. Tracking Cases**

#### ***Tracking Cases Submitted Electronically***

The Department of Labor emails the employer when the case is submitted, when sponsorship is verified, and when the case is certified.<sup>159</sup> The online system also provides status indicators that allow for tracking of cases. The official Status Indicators are Incomplete, In process, Withdrawn, Denied, Appeal, Certified, and Certified-Expired.<sup>160</sup> There is no audit status, so employers and attorney/agents must rely on the Department of Labor's ability to notify them of any issues or deficiencies via mail.

**Incomplete:** Incomplete cases are those that have not been electronically filed. These ETA Case Numbers are preceded by a "T". Upon submission to a National Processing Center, the "T" will change to either an "A" for Atlanta or "C" for Chicago.

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<sup>157</sup> U.S. Department of Labor Office of Foreign Labor Certification, *OFLC Frequently Asked Questions, Filing* <<http://www.foreignlaborcert.doleta.gov/faqsanswers.cfm#filing9>> (accessed April 1, 2008)

<sup>158</sup> 8 CFR 656.15; 8 CFR 656.16

<sup>159</sup> Email notification of certification of electronically-submitted cases began functioning in April 2008.

<sup>160</sup> U.S. Department of Labor Office of Foreign Labor Certification, *OFLC Frequently Asked Questions, Filing* <<http://www.foreignlaborcert.doleta.gov/faqsanswers.cfm#filing14>> (accessed April 1, 2008). Note that anecdotal evidence suggests that the old "Submitted" status may still be seen if case is pulled up immediately after submission.

Note: as of June 1, 2008, the National Processing Centers will be specialized and all permanent labor certification applications will be processed through the Atlanta Processing Center.

**In process:** In process cases are those that have been electronically filed and are in the review queue. This status replaces the old sponsorship verification status, as it encompasses all stages of the review process except those noted below.

**Withdrawn:** A withdrawn case is one which the employer has withdrawn either electronically or manually through contacting the Department of Labor.

**Denied:** A denied status indicates that the application has been denied. The employer or attorney/agent will receive a hard copy of the Final Determination by mail that includes the reason for the denial.

**Appeal:** Appeal status indicates that the application is under consideration and/or review. An application at this stage is considered submitted and in process. As such, no new applications for the same foreign national, by the same employer, and for the same job opportunity may be filed while an application is in this status.

**Certified:** A certified status means that the case has been certified by the Department of Labor and a hard copy of the Final Determination form and certified form 9089 will be sent to the employer or attorney/agent. Once the hard copy is received, the employer or attorney/agent may proceed to filing the appropriate forms with the Department of Homeland Security US Citizenship and Immigration Services.

**Certified—Expired:** A certified—expired status indicates that the case was certified by the Department of Labor but that more than 180 days have passed since the certification. Per Department of Labor regulations, a certified labor certification expires after 180 days. Note that a certified labor certification that has expired remains valid so long as an immigrant petition was filed within the 180 day window.

In order to track a case, the employer or attorney/agent must first login to the PERM online system using the employer-specific login information. That is, an attorney/agent cannot track all of his/her cases through one login where there are different employers.

There are several means of accessing cases prepared in the PERM system. When cases are accessed, the ETA Case Number, date prepared, and status for each case are visible.

First, select My Applications. A search box will appear with “No record(s) found” listed in the results box. This is normal and does not mean that you do not have cases in the system. You may access cases through this first search window by entering the temporary case number, the case number received in the submission email from the Department of Labor, or by selecting a particular case status. If this case number is not

readily available or you are unsure of the case status, you may select Advanced Search and search by date or status. Date Prepared refers to the last date on which the case was modified. Through this search function, cases may be accessed along with their status indicators.

Another option for searching cases is to select Withdraw Cases. This will bring up a list of all Incomplete and In process cases that includes the ETA Case Number, date prepared, and status for each of these types case. This method provides a short-cut to searching un-submitted or pending cases (the most accessed case types), but unfortunately will not include Certified, Denied, Appealed, Withdrawn, or Certified-Expired cases.

A final option, Search Incomplete Cases, will pull up only un-submitted cases, or those with a "T" prefix in the ETA Case Number.

### ***Tracking Cases Submitted by Mail***

As discussed above, there are currently no means of tracking cases submitted through the paper process. The cases are manually entered into the PERM system, but the Department of Labor typically does not provide an ETA Case Number or other means of tracking the case through the online system. Instead, employers typically must wait for an Audit Notification or Final Determination letter to learn of case status.

## **IV. Withdrawal**

Because the Department of Labor will not allow corrections of a submitted Form ETA 9089, withdrawal and re-submission of a submitted application (whether pending, approved, or denied) is generally the easiest means of correcting data entry or other employer errors, particularly if the error is caught early and/or the priority date is not an issue.<sup>161</sup> In addition, because the only means of correcting a certified application with incorrect information due to DOL data entry error is through the often lengthy Request for Reconsideration process, withdrawal may be the best option where priority date retention is not an issue.<sup>162</sup> Finally, because of the prohibition on the filing of multiple labor certifications for the same opportunity (same employer, same foreign national beneficiary, and same job opportunity), withdrawal of a pending, approved, or denied application may be necessary where a change in circumstances requires the employer to file a new labor certification for the same foreign national and the job opportunity remains the same.<sup>163</sup>

After June 1, 2008, all requests for withdrawal, whether written or made via email, will be directed to the Atlanta Processing Center.

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<sup>161</sup> 20 CFR 656.11(b)

<sup>162</sup> Office of Foreign Labor Certification, Fraud FAQs Round2, 1 (March 31, 2008).

<sup>163</sup> <sup>163</sup> U.S. Department of Labor Office of Foreign Labor Certification, *OFLC Frequently Asked Questions, Filing* <<http://www.foreignlaborcert.doleta.gov/faqsanswers.cfm#filing12>> (referencing 20 CFR 656.10(c)) (accessed April 1, 2008).

***Practice Pointer:*** Because of the prohibition on the filing of multiple labor certifications under the PERM regulations, a case must be withdrawn before a new case for the same beneficiary, same job, and same location may be submitted unless the employer is attempting to refile a pending Form ETA 750 and retain the priority date (see below) or the case has been denied. The employer may submit a new case for the same foreign national and same job opportunity as soon as the withdrawal confirmation email or paper notice is received or the status of the original case changes to “Withdrawn”.<sup>164</sup> This is extremely helpful in instances where an error is detected after submission.

### **Withdrawal of Electronically Submitted Cases**

Online withdrawal of an application created through the PERM system is possible only for cases with an Incomplete, Submitted, or Sponsorship status. Of these three types, the Department of Labor at this time formally utilizes only the Incomplete status. Because of this, only those cases with a “T” prefix, or un-submitted cases, may be withdrawn online. Cases withdrawn online will receive an automated response email confirming the withdrawal.

***Practice Pointer:*** Anecdotal evidence suggests that the DOL will not withdraw a case that has been submitted but sponsorship verification has not been received, whether because the employer has not received the required sponsorship verification email or follow up telephone call, or because the employer failed to respond to these sponsorship verifications. In this situation, withdrawal cannot occur until the case is formally denied due to lack of sponsorship verification.

For the vast majority of cases, manual withdrawal by the PERM processing center is necessary. The employer must submit a withdrawal request that is clearly marked as such and that includes the ETA Case Number, employer name, employer EIN, foreign national beneficiary name, and name and title of the individual requesting withdrawal.<sup>165</sup> In order to withdraw an electronically submitted case, an employer or agent must contact the relevant processing center. The email addresses are:

Chicago Processing Center:  
PLC.Chicago@dol.gov  
Atlanta Processing Center:  
PLC.Atlanta@dol.gov

After an email request for withdrawal of an electronically-submitted application is made, the requesting party will receive a manual email response from the Processing Center confirming that the case has been withdrawn.

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<sup>164</sup> Id. at <<http://www.foreignlaborcert.doleta.gov/faqsanswers.cfm#withdrawal5>> (accessed April 1, 2008).

<sup>165</sup> U.S. Department of Labor Office of Foreign Labor Certification, *OFLC Frequently Asked Questions, Withdrawal* <<http://www.foreignlaborcert.doleta.gov/faqsanswers.cfm#withdrawal3>> (accessed April 1, 2008).

### **Withdrawal of Cases Submitted by Mail**

To withdraw an application that was filed by mail, a written withdrawal request must be made to the National Processing Center to which the application was submitted. The Processing Center will then provide written confirmation of withdrawal. The addresses are as follows:

Chicago National Processing Center  
ATTN: Certification Withdrawal  
844 N. Rush Street  
12th Floor  
Chicago, Illinois 60611

Atlanta National Processing Center  
ATTN: Certification Withdrawal  
Harris Tower  
233 Peachtree Street, Suite 410  
Atlanta, Georgia 30303

Withdrawn paper applications will receive confirmation of withdrawal via mail, and employers are advised to wait until receipt of written confirmation that the case has been withdrawn before filing a new case for the same foreign national and same job opportunity.

Note: A new labor certification for the same foreign national and same job opportunity also may not be filed if a request for review is pending with the Board of Alien Labor Certification Appeals.<sup>166</sup>

### **Withdrawal of Certified or Denied Cases**

To withdraw a certified case, the employer must send a withdrawal request via mail using the paper withdrawal instructions listed above. The Attention Line should be changed to “Withdrawal Request-Certified PERM Application”. The withdrawal request must include all pages of the original certified ETA Form 9089.<sup>167</sup> A new application may be submitted as soon as confirmation of the withdrawal request is received.

***Practice Pointer: Employers must submit documentation requested in an audit letter even if the employer wishes to withdraw the application. However, the employer may respond to the audit letter while at the same time requesting withdrawal. If the employer can provide proof that a withdrawal request was sent before the audit letter was received, the DOL will allow withdrawal without requiring a response to the audit.***

Withdrawal of a denied case is unnecessary. Instead, the employer may submit a new PERM application for the same beneficiary and job opportunity as soon as the denial notice is received.

## **V. Refiling Cases**

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<sup>166</sup> 20 CFR 656.24(e)(6)

<sup>167</sup> U.S. Department of Labor Office of Foreign Labor Certification, *OFLC Frequently Asked Questions, Withdrawal* <<http://www.foreignlaborcert.doleta.gov/faqsanswers.cfm#withdrawal4>> (accessed April 1, 2008).

The current ETA Form 9089 provides an option for refiling a pending ETA Form 750 (a pre-PERM labor certification filed under the regulations in effect prior to March 28, 2005) and retention of the priority date of the original application. Applications filed under the traditional recruitment process, those filed under the reduction-in-recruitment (RIR) process, and those filed under the reduction-in-recruitment conversion process are eligible for refiling.

In order to refile a case, an employer must withdraw the original application and submit an application for an identical job opportunity through the PERM system within 210 days of withdrawal. This is done through marking “yes” to question A-1 on the ETA Form 9089 and noting the pertinent information about the withdrawn case. “Identical job opportunity” means that the employer (including FEIN and address), beneficiary, job title, job location, job requirements, and job description are identical.<sup>168</sup> A new prevailing wage must be requested and all filing and recruitment requirements of the PERM system must be complied with in order to refile the case.

Refiling is only available for those cases in which a job order has not yet been placed by the State Workforce Agency (SWA).<sup>169</sup> Where the employer placed a job order as part of a reduction-in-recruitment application, the application may still be withdrawn and refiled because this is not considered a job order placed by the SWA<sup>170</sup>. According to the most recent Department of Labor Stakeholder minutes, all cases previously pending with the Backlog Elimination Centers, which had jurisdiction over all pending ETA Form 750s, have now entered advertising. Hence, theoretically there should be no more cases eligible for re-filing. In reality, there may be some cases still eligible, particularly those that are winding their way through the appeals process or were closed in error but may be re-opened in the future.

### **Website Addresses and Contact Information:**

Department of Labor Frequently Asked Questions:  
<http://www.foreignlaborcert.doleta.gov/faqs.cfm>

ETA FORM 9089 (The PERM Application):  
<http://www.foreignlaborcert.doleta.gov/pdf/9089form.pdf>

ETA FORM 9089 Instructions:  
<http://www.foreignlaborcert.doleta.gov/pdf/9089inst.pdf> also at:

[http://www.plc.doleta.gov/plc\\_cp.pdf](http://www.plc.doleta.gov/plc_cp.pdf)

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<sup>168</sup> 20 CFR 656.17(d).

<sup>169</sup> *Id.*

<sup>170</sup> U.S. Department of Labor Office of Foreign Labor Certification, *OFLC Frequently Asked Questions, Refiling* < <http://www.foreignlaborcert.doleta.gov/faqsanswers.cfm#refile1> > (accessed April 1, 2008).

PERM Online System: <http://www.plc.doleta.gov>

PERM Online System Userguide: <http://www.plc.doleta.gov/onlinehelp.pdf>

Office of Foreign Labor Certification (OFLC): <http://www.foreignlaborcert.doleta.gov/>

OFLCS's Permanent Labor Certification page:  
<http://www.foreignlaborcert.doleta.gov/perm.cfm>

PERM Regulations:  
[http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=0aef71c9d1521d8a6459cbf9f647b113&tpl=/ecfrbrowse/Title20/20cfr656\\_main\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=0aef71c9d1521d8a6459cbf9f647b113&tpl=/ecfrbrowse/Title20/20cfr656_main_02.tpl)

*See also* [http://www.foreignlaborcert.doleta.gov/pdf/PERM\\_Final\\_Rule\\_12-27-04\\_FR.pdf](http://www.foreignlaborcert.doleta.gov/pdf/PERM_Final_Rule_12-27-04_FR.pdf) and <http://www.foreignlaborcert.doleta.gov/pdf/fraudRule.pdf>

Atlanta National Processing Center:

Email: [PLC.Atlanta@dol.gov](mailto:PLC.Atlanta@dol.gov)  
Phone: (404) 893-0101  
Fax: (404) 893-464  
Address:  
U.S. Department of Labor  
Employment and Training Administration  
Harris Tower  
233 Peachtree Street, Suite 410  
Atlanta, Georgia 30303

Chicago National Processing Center

Email: [PLC.Chicago@dol.gov](mailto:PLC.Chicago@dol.gov)  
Phone: (312) 886-8000  
Fax: (312) 353-3352  
Address:  
U.S. Department of Labor  
Employment and Training Administration  
844 N. Rush Street 12th Floor  
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## **About the Author**

**Katherine Lopez Ley** heads the Labor Certification Department of The Bae Law Group. Her practice focuses on labor certifications and related immigrant petitions, but encompasses both employment-based and family-based lawful permanent residence (the "green card" process). She also provides representation for a variety of additional matters, including K visas and naturalization applications.

**Davis C. Bae** is the founder and Managing Attorney of The Bae Law Group. Mr. Bae's practice focuses on comprehensive immigration planning for multinational and fast growth corporations. He has established corporate immigration policies, consulted on mergers and acquisitions, and developed recruiting plans for companies throughout the United States. In addition, Mr. Bae actively promotes employer interests through advocacy efforts before the Department of Homeland Security, the Department of Labor, and Congress. Mr. Bae regularly speaks to professional associations and companies on a variety of immigration issues including corporate changes, human resources, legal advocacy, foreign recruitment, and employee retention. He has published numerous articles addressing a variety of business immigration topics. Mr. Bae is also an active member of the American Immigration Lawyers Association. His achievements have been recognized by government agencies, lawyers associations and business organizations. Mr. Bae was born in Busan, South Korea and immigrated to the United States in 1971.