

Figure 21

Basic permanent labor certification and employment-based green card process

DEPARTMENT OF LABOR NATIONAL PREVAILING WAGE CENTER (NPWC)

Recommended about 180 days before job order and recruitment

1. PREVAILING WAGE DETERMINATION (PWD)

• May be filed during or after job order/recruitment. Submit ETA Form 9141 to NPWC electronically through the FLAG system.

• Identify all job duties and sites. • Attach a private survey if not suing the OES.

138,316 PWD requests

NPWC reviews ETA Form 9141. Employer may withdraw the request before determination.

NPWC specialist decides the job code and issues PWD in ~143 days for OES survey or 126 days for other surveys.

24% of non-OES sources rejected

Employer accepts PWD? Y

NPWC specialist redetermines PWD in 30-60 days.

0.6% of all requests

Modify PWD. Affirm PWD.

0.3% of all requests

Employer may request review of a PWD by NPWC director within 30 days.

0.04% of all requests

NPWC director reviews PWD.

NPWC director issues final determination letter.

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DEPARTMENT OF LABOR (DOL) OFFICE OF FOREIGN LABOR CERTIFICATION ATLANTA NATIONAL PROCESSING CENTER (ATLANTA NPC)

0-180 days before filing labor certification application

During prevailing wage determination (PWD) validity (90-365 days after PWD)

STATE WORKFORCE AGENCY (SWA)

30-180 days before filing labor certification application

2. JOB ORDER

• May be before PWD Submit a Job Order Request Form to an SWA covering the job for at least 30 days during the period from 30 to 180 days before the labor certification application and during the validity period of the PWD (less than 365 days after receiving a PWD).

• Wage must exceed PWD.

SWA posts job order if it meets SWA requirements.

3A. MANDATORY RECRUITMENT

• May occur before job order.

• Offer job to former employees laid off in the 6 months before filing the labor certification if in the same area and similar occupation.

• Advertise on 2 Sundays in print newspapers.

• Place notice of filing at workplace for 10 business days.

Bachelors required for job? Y

4. RECRUITMENT REPORT

Prepare recruitment report that:

• documents recruitment steps and job order;

• provides lawful job-related reasons for every U.S. worker refused;

• proves contact with recent layoffs;

• keeps resumes of applicants.

5. ALIEN WORK HISTORY

May be filed out earlier. Alien worker must verify and sign sections J and K of ETA Form 9089 relating to work history and skills, obtain reference letters from past employers verifying skills and experience meeting the job requirements, and provide start and end dates, job titles, and relevant experience or skills obtained for past 3 years of job history.

6. AUDIT FILE

Create a file that includes the PWD, recruitment report, alien work history, ability to pay, and business necessity for higher-than-standard job requirements.

3B. ADDITIONAL RECRUITMENT

• Conduct three more recruitment actions through job fairs, employer website, campus recruiting trade organizations, private job firms, employee referrals, campus placement, local papers, or radio/TV.

Not later than 180 days after starting recruitment

Not before 30 days after completing mandatory recruitment

7. LABOR CERTIFICATION

Submit to the Atlanta NPC ETA Form 9089 through the FLAG system before 180 days after recruitment, not before 30 days after completing mandatory recruitment (must include valid PWD).

102,655 applications.

Atlanta NPC sends email to verify the employer's existence.

Employer has 30 days to verify.

Atlanta NPC reviews Form 9089 in 6-7 months.

Deficiencies found? Y

Certify

Employer may withdraw at any time but must continue with any audit.

Audit applications

17% of applications

Employer has 30 days to provide audit file or information.

Deficiencies resolved? Y

3% withdrawn

Request for information

Supervised recruitment

Employer may request NPC to reconsider the denial within 30 days.

Atlanta NPC reconsiders Form 9089, about 2-3 months.

Deficiencies resolved? Y

3% of all reconsidered

Employer may appeal denial to BALCA within 30 days.

Deficiencies resolved? Y

5% of applications

No refiling while appeal is pending

0.3% of all appealed

Employer has 30 days to submit an advertisement to NPC for approval.

NPC tells employer when to run ad.

Employer must run ad for 3 days, including a Sunday in a newspaper.

Atlanta NPC certifies Form 9089 and sends employer a Final Determination Form.

Certification valid for 180 days.

93,865 jobs certified

U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS) NEBRASKA OR TEXAS SERVICE CENTERS

Not later than 180 days after approval of the labor certification

8. PETITION FOR IMMIGRANT WORKER

Submit paper Form I-140 petition with the original certified ETA Form 9089 and supporting documentation to USCIS within 180 days of labor certification approval. Documents must include:

• proof of ability to pay;

• evidence of alien's degrees or qualifications for immigrant visa category; and

• I-94 number if relevant;

• payment for \$700 filing fee or submission of Form I-907 and \$2,500 for premium processing.

142,451 petitions

USCIS mails Form I-797C receipt with case ID number in about 2 weeks.

Employer may withdraw at any time.

USCIS reviews within about 5-16 months or 15 business days for premium processing.

Deficiencies found? Y

USCIS may remand to DOL.

Atlanta NPC reviews.

Atlanta NPC may revoke certification for any reason that would have caused a denial.

Deficiencies resolved? Y

USCIS may issue a Notice of Intent to Deny.

Employer provides additional evidence within the specified period (not more than 12 weeks).

Deficiencies resolved? Y

USCIS may issue a Notice of Intent to Deny.

Employer provides additional evidence within the specified period (not more than 30 days).

Deficiencies resolved? Y

8% of adjudicated petitions

Denial

Employer may appeal to the Administrative Appeals Office within 30 days on Form I-290B.

USCIS sends I-797B Approval Notice to employer (and consulate if requested).

92% of adjudicated petitions

U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS) FIELD OFFICES AND SERVICE CENTERS

After I-140 approval or after I-140 receipt if priority date current at I-140 filing

9-AOS. BONA FIDE JOB OFFER CONFIRMATION

Employer fills out Parts 5-8 of Supplement J of the I-485 Adjustment of Status (AOS) if I-485 can't be concurrently filed with I-140.

10-AOS. MEDICAL EXAMINATION

Receive vaccinations and a medical exam by a civil surgeon who must fill out Form I-693.

• Valid for 2 years.

• If interview is waived, submitted in response to request for evidence.

11-AOS. APPLICATION FOR ADJUSTMENT OF STATUS (AOS)

Submit paper Form I-485 with Supplement J, confirmation of bona fide job offer, and any waivers of inadmissibility. The following must also be included:

• payment for \$1,140 filing fee and \$85 biometric fee;

• two identical applicant photos;

• copies of photo ID, birth and marriage certificates, certified police and court records, status and admission history;

• Form I-797 approval notice (or receipt notice if filing concurrently for those with current date for filing at time of filing I-140).

• Optional items include Form I-693 medical exam, Form I-765 work permit, and Form I-131 advanced parole.

USCIS mails Form I-797C with time and place for biometrics appointment 2-5 weeks after receipt.

Rejection notice? Y

USCIS mails Form I-797C receipt with case ID number in about 2-6 weeks.

Refile proper I-485.

12-AOS. BIOMETRICS APPOINTMENT

Attend USCIS field office indicated in appointment notice letter to submit fingerprints and/or photo.

Bring acceptable photo ID.

USCIS sends employment authorization document and travel document (6-12 months)

USCIS reviews I-485 in about 12 months.

Deficiencies found? Y

Request for evidence or notice of intent to deny of Labor?

Remand to Department of Labor reviews.

Deficiencies resolved? Y

USCIS waives interview?

Worker provides evidence within specified period.

Deficiencies resolved? Y

USCIS issues decision (sometimes at interview, sometimes within a few weeks).

Form I-797C notice of interview.

13-AOS. ADJUSTMENT OF STATUS INTERVIEW (MAY BE WAIVED)

Interview at USCIS field office. Bring copy of Form I-485, originals of documents submitted with Form I-485, sealed Form I-693, and passport.

• May be waived by USCIS.

Deficiencies found? Y

USCIS issues decision (sometimes at interview, sometimes within a few weeks).

Denial

5% of EB I-485s.

Worker may appeal to Administrative Appeals Office within 30 days, Form I-290B.

Approval

104,849 EB approved I-485

STATE DEPARTMENT BUREAU OF CONSULAR AFFAIRS NATIONAL VISA CENTER (NVC) AND U.S. CONSULATES OR EMBASSIES

After approved I-140 immigrant petition, not later than 1 year from NVC notification

9A-IV. IMMIGRANT VISA (IV) APPLICATION FEE

Create Consular Electronic Application Center (CEAC) account online.

• Pay \$325/visa fee for worker and dependents.

NVC processes fee payment within 1 week.

9B-IV. IMMIGRANT VISA APPLICATION

File DS-260 and submit copies of passport, police, birth and marriage certificates, court, and military records with certified English translations online via the CEAC.

• Must be submitted within 1 year of NVC letter.

Email for applicant to submit corrections.

Deficiencies found in documents? Y

NVC reviews documents in about 1-6 months.

Worker submits corrected documents.

NVC email stating DS-260 is documentarily complete.

If final action date is current (maybe years), consulate will email visa interview time within about 2-24 months.

10-IV. MEDICAL EXAMINATION

Receive vaccinations and a medical exam by a panel physician in the processing country.

11-IV. IMMIGRANT VISA INTERVIEW

Interview at the processing consulate. Bring originals of DS-260 documents submitted, DS-260 confirmation page, visa appointment letter, 2 identical applicant photos, and sealed exam results (if not sent by physician directly).

• Sign statement of intent to work for petitioning employer.

Consular officer issues decision (interview's end).

Deficiencies found? Y

Remand to USCIS? Y

Administrative processing or initial refusal.

Submit evidence, refile with waiver of inadmissibility, or wait.

Consular officer issues visa to worker, which is valid for up to 6 months.

USCIS reviews.

Deficiencies resolved? Y

Final refusal, no appeal

14,842 visas issued

12-IV. USCIS GREEN CARD FEE

Pay \$220 fee for permanent resident card online.

• May be paid after entry.

CUSTOMS AND BORDER PROTECTION

Within 6 months of receiving visa

13-IV. ADMISSION

Come to U.S. port of entry with immigrant visa and immigrant visa packet.

CBP conducts checks, reviews documents, and retakes fingerprints.

Secondary inspection.

Deficiencies found? Y

Deficiencies resolved? Y

Denial with no appeal.

Admission granted as lawful permanent resident.

U.S. CITIZENSHIP AND IMMIGRATION SERVICES

After I-485 approval or entry

USCIS mails permanent resident card in about 2-3 weeks for AOS or 90 days after entry for immigrant visa.

14. WORK FOR PETITIONING EMPLOYER

Worker must start job for the I-140 petitioning employer, absent extenuating circumstances.

• Obtain Social Security card if required.

15. EMPLOY IMMIGRANT PETITION BENEFICIARY

Employer must employ I-140 petition beneficiary, absent extenuating circumstances.

• Pay a wage equal to or above PWD from NPWC.

16. RECORD RETENTION

Employer must retain audit file, labor certification, supporting documents, and job records for 5 years.

Sources: 20 C.F.R. § 656 (2022); 8 C.F.R. § 204.5 (2022); I-485, Application to Register Permanent Residence or Adjust Status; U.S. Citizenship and Immigration Services, May 26, 2023; "Employment-Based IV Classifications," Foreign Affairs Manual, U.S. Department of State, 9 FAM 502A, April 13, 2023.

LEGEND

Employer actions

Worker actions

Government actions: NPWC, SWA, OFLC/Chicago NPC, USCIS, consular or CBP