PERM Labor Certification & I-140 Immigrant Petition for Alien Worker



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Buy American, Hire American

- Executive Order 13788 directs Federal Departments to craft policies that will encourage purchase of American-made products and hiring of U.S. workers.
  - Increased scrutiny regarding wages
  - Increased detail and greater scrutiny in audit
  - FY2018 statistics do not reflect a significant increase in denials from previous years

Session Highlights



- Basic Information: General Requirements
- Position Requirements, Qualifications and Prevailing Wage
- Recruitment and Scrutiny of Advertisements
- Evaluating Applicants: Review of Resumes and Interviews
- Documentary Evidence and Audits
- I-140, Immigrant Petition for Alien Workers

PERM Labor Certification
20 CFR 656.17

- Department of Labor oversees PERM program
- Designed to protect U.S. workers
- Requires advertising and other forms of recruitment by employers to test the U.S. labor market
- Employer must demonstrate that the Foreign National's employment will not adversely affect the wages and working conditions of U.S. workers



PERM Labor Certification
General Requirements

- "Permanent" Job Offer
- Employer must pay all costs and fees related to the PERM process
- DOL prevailing wage determination (3-4 months to receive)
- Test local job market (recruitment – 60-180 days)
- Application filed electronically with DOL if *no* U.S. workers are willing, able, available and qualified for the position (adjudication – 6-7 months)
  - U.S. worker: U.S. citizen, lawful permanent resident, asylee or refugee
- Employer must pay prevailing wage determined by DOL when PR granted

Position Requirements
Minimum and Special Job Requirements

- Minimum and Special requirements consistent with H-1B record
- Minimum requirements consistent with O*NET database
  - O*Net contains information on hundreds of standardized and occupation-specific descriptors
  - Each occupation is classified with an specific job zone – total of 5 job zones
  - Each occupations lists Specific Vocational Preparation (SVP)
- Requirements, Job Zones and SVP are important for:
  - Prevailing Wage Determination
  - Determination whether job requirements are normal
  - Determination whether job requirements are tailored to the employee's credentials
  - Business necessity

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Hot Topics in Employment Based Immigration: PERM, I-140, Change of Status/NIVs, ICE Audits, and USCIS/FDNS Investigations

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