

IMMIGRATION UPDATE

PERM: what it can and cannot do for you



ATTY. EUGENE PALACIOS

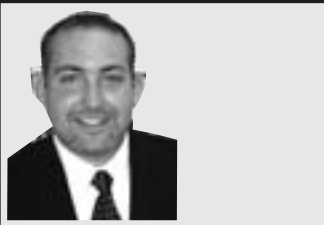
THERE are many misconceptions about PERM (Program Electronic Review Management process). Some people think that PERM is a special law that gives amnesty to undocumented individuals while some think that it is an application that would enable them to obtain a green-card right away or work or stay legally in the US beyond the period stated in their I-94 cards. PERM is simply the program that the Department of Labor (DOL) uses after March 28, 2005 to process labor certification applications. PERM is NOT a special law that gives amnesty to undocumented individuals. It does not legalize anyone's status in the US. If you are already out-of-status at the time you file your application, you will remain out-of-status even if your application

gets approved later on. PERM does NOT give authorization for a foreign national to remain in the US. If you are about to become out-of-status at the time you file your application, you will still become out-of-status even if your application gets approved later on. PERM does NOT grant permission to work. If you do not have a work permit or authorization at the time you file your application, you will not get one simply because your application gets approved later on. PERM does NOT guarantee permanent residence. Labor certification application is only the first step in obtaining lawful permanent residence status through employment in the US (unless you are exempt from said step, i.e. registered nurses, physical therapists, multinational executives/managers, religious workers, etc.). An approved labor certification application proves that there are no qualified US workers able, willing, qualified and available to accept the job at the prevailing wage for

that occupation in the area of intended employment and that employment of the alien will not adversely affect the wages and working conditions of similarly employed US workers. If you are out-of-status, you are no longer allowed to adjust to lawful permanent resident (LPR) status in the US through employment unless you are covered by special law that grants LPR status to undocumented individuals (i.e., Section 245(i), Section 245(k), etc.). Unless you are exempt from the labor certification process, filing a labor certification application under PERM as soon as possible is very important for people who seek to adjust to LPR status through employment in the US. First of all, filing the labor certification application will give you your priority date. Priority date is the date when your labor certification application was filed. The earlier you file your case, the earlier your priority date will be. It is important to

Continued on PAGE C7

INSIDE IMMIGRATION



ATTY. DARREN SILVER

FOR many aspiring immigrants, the negative effects of the world wide economic meltdown towards their ability to be able to work and or immigrate to greener pastures abroad has been devastating. For example, in the United States, there are scores of temporary H-1B workers that are in danger of running afoul of their status as more and more employers are facing a cash crunch and are forced to let them go. For these displaced workers the only options are either to quickly find another employer or go back home. However, there is a 3rd relatively unknown option for these and other aspiring skilled workers to be able to realize their dream of a better life. That option is Canada. Canada has been ranked as one of the best places to live by the United Nations

How about Canada, eh?

numerous times within the past 10 years. Other than its historically lower rates of gun crime and other violence compared to the United States, Canada mirrors its neighbor to the south in almost every other aspect. In fact upon visiting Canada, one will note that it looks like just like any other part of the United States with wide open highways, shopping malls, movie theaters, restaurants, etc. The only real palpable differences is that they use kilometers as opposed to miles, their currency is multi colored, they have a parliamentary system as opposed to our federal system of government and their head of state is the Queen of England as opposed to our President. Geographically Canada is truly a breath taking wonder of nature. Second only to Russia, Canada is the largest country in the world with mountains in the western region to low lying plains in the eastern part of the country with fresh water lakes [Canada has the largest supply of fresh water in the world] and some of the most spectacular forested regions one has

ever seen in between the two coasts. A majority of the estimated 33,000,000 people of Canada live within 150 miles of the border Canada shares with the United States with a majority of them living in the corridor between Windsor, Ontario [bordering Detroit, Michigan] and Montreal, Canada, i.e. the "401 corridor." Economically, Canada is one of the trillion dollar class economies. Historically in order to fill the labor shortages that a country of its size encounters, the Canadian government has had to rely on a large influx of new immigrants each year. In 2007, Canada admitted approximately 250,000 new immigrants with similar figures for 2008 and expected for 2009. The majority of those new immigrants arrived in Canada in one of the following categories; family, refugee and asylum, investment and skilled workers. The latter is the focus of the remainder of this article. In 2008, the Minister of Citizenship and Immigration issued ministerial instructions to completely revamp how Canada

Continued on PAGE C7

IMMIGRATION EDGE



ATTY. DANIEL HANLON

How to effectively avoid or respond to a PERM audit

SINCE March 2005, the US Department of Labor (DOL) has been processing Permanent Labor Certification applications under the Program Electronic Review Management system, or PERM. PERM was designed to allow employers to continue to sponsor foreign workers to fill open positions in a streamlined manner, while still requiring employers to show that they could not find available "qualified, willing and able" US workers before filing an Immigrant Petition with the USCIS. While PERM has proved to be a much speedier and more man-

ageable process, Employers must adhere to the strict rules and conduct recruitment of potential applicants in a fair and unbiased manner, without an immigration attorney's undue influence or trying to take any "short-cuts" in the process. Most jobs for which a US employer wishes to hire a foreign national, through which the worker will seek permanent resident status in the United States, require that the employer first obtain a "labor certification" from the DOL. The labor certification process is designed to establish that there are no "qualified, willing and able" US workers available in the area of intended employment, which protects wages and working conditions in the United States. Under PERM, the employer is required to undertake recruitment efforts during the sixth month period preceding

the filing of the LC. In recruiting, the employer must place at least two Sunday print ads in a newspaper of general circulation at least 30 days, but not more than 180, prior to filing, and use any "in-house" media the employer utilizes in accordance with normal recruitment procedures in the organization. The employer must also place a "job order" with the State unemployment agency for 30 days and post printed notice at the job location for a period of ten days. Professional jobs and jobs requiring advanced degrees require at least three additional types of recruitment efforts. Employers must timely interview any potentially qualified applicants and accurately memorialize all recruitment efforts and outcomes of interviews. The employer does not identify the individual rejected workers in filing the initial ap-

plication. Since the PERM system relies on attestations and audits for accuracy and truthfulness in the LC process, however, employers must maintain records of the recruitment and detailed reasons for rejecting US workers. The DOL could audit the records, request additional information, or call for supervised recruitment after filing. Despite the relative straightforwardness of the PERM process, some Attorneys leave their clients in the dark as to what efforts they are undertaking and what course will be taken to complete a successful PERM application. In order to accurately advertise the position, the Attorney has to communicate with the employer to fully understand the job duties and what qualifications the employer would expect of a successful applicant. If the employer has engaged in recruitment before

deciding to petition the alien through PERM, the Attorney must review the recruitment efforts and results and be able to advise the employer as to whether further recruitment is necessary. The Attorney should advise the employer if certain requirements will be deemed restrictive and thus hurt the chances of success, while encouraging the employer to include requirements that are necessary to the job and will enhance the chances for success. The Attorney, however, should not and cannot, however, intermeddle with the recruitment process or attempt to steer the employer toward taking any "shortcuts" which would taint the entire recruitment effort. In such a case, receipt of an audit will likely be fatal to the application. A properly advised employer should not fret upon receipt of an audit,

as audits are issued regularly and perhaps randomly in many cases, in order to preserve the accuracy and effectiveness of the whole system. In all, the employer should understand exactly why things are being done and not settle for vague explanations. The outcome of the case should not be left to the Attorney's "paralegal" or some recent law school graduate. Far too much is at stake for the employer, the alien worker and his family to rely on less than bona fide professional assistance. *** Daniel P. Hanlon is a California State Bar Certified Specialist in Immigration and Nationality Law and a principal of Hanlon Law Group, PC, located at 225 S. Lake Ave., 11th Floor in Pasadena, California; tel. No. (626) 585-8005. Hanlon Law Group, PC is a "full-service Immigration Law firm." E-mail: visas@hanlon-greene.com and www.hanlon-greene.com

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