

**IMMIGRATION EDGE**



**ATTY. DANIEL HANLON**

# How to effectively avoid or respond to a PERM audit

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 application. 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.

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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 manageable 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 "shortcuts" 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

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**PAGE B2** ◀  
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 None of the information herein is intended to give legal advice for any specific situation. Atty. Ray Bulaon has successfully helped more than 4,000 clients in finding solutions to their debt problems. To schedule a free attorney consultation, please call Ray Bulaon Law Offices at TOLL FREE 1-866-477-7772. (Advertising Supplement)

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