

LEGAL RIGHTS

Visa for the nanny



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worker. Is the *yaya* going to live in a house or an apartment? How many rooms are in the house? How many people are residing in the house and their ages? The *yaya* must have a private room at no cost to her. There must be an employment contract detailing the wages to be paid, the working hours and reasonable and fair working conditions.

How long before the *yaya* gets here? This is the million dollar question. *Yayas* will be applying for visas in the employment-based third preference category. The US only allocates 10,000 visas for the "unskilled labor" category. Since labor certification has become somewhat easier for *yayas*, the waiting time to get a visa may take longer. In fact, persons from China, India, and the Philippines have recently experienced retrogression in the EB-3 category. As of April 2005, this classification has retrogressed to July 1, 2001, for all countries. What does this all mean? *Yayas* or nannies from the Philippines may take as long as six to eight years before they are given a visa. As the demand increase and more people apply under PERM, the wait gets longer.

There may be a bit of relief for people who already filed a labor certification prior to the cutoff date of April 30, 2001. A refiled PERM application could preserve the priority date and enable the worker to file for adjustment of status. Approval of a new PERM application, if successful, is likely to be faster than the old labor certification. Refiling under PERM to make it faster is another complicated issue. Don't refile under PERM unless you understand all of the possible consequences. Seek legal advice.

Bringing your *yaya* may now be easier because of the new PERM rules. However the catch is you must be willing to wait and wait and wait some more. As you wait your child gets older. And then you ask, do we still need a *yaya*?

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THE Bureau of Labor Statistics reported that the employment growth rate in the country has been trending down while the unemployment rate has risen to 8.1 percent in February 2009. Construction and manufacturing reflected a slight decline while job growth in major industries in both the goods-producing and service-providing sectors continued to decline significantly. However, despite this reported weakening labor market condition, stories of labor shortages in various industries abound. Among the industries reportedly expanding are education and health services while leisure and hospitality remains substantially unchanged.

One solution seen to address the labor shortages is the hiring of foreign workers. Many employers in the industries experiencing labor shortages require temporary or seasonal workers owing to the nature of their business. Seasonal employers have the most challenging time in attracting local workers to take

H-2B visa for seasonal employees

temporary employment without the benefits customarily given to regular employees. On the other hand, maintaining regular workers for seasonal services could be detrimental to the business' profitability. Employers faced with this dilemma may hire foreign workers to fill temporary positions under the H-2B program.

To qualify under the H-2B program, the US employer must be able to show that its need is temporary as justified by one-time occurrence, intermittent, seasonal, or peak load nature. It must also show that there are no US workers available, willing or qualified in the area of the proposed employment. Further, the employment need must be full-time and generally not longer than 10 months for recurring employment need.

Occupations common in H-2B petitions include hotel and restaurant workers, resort and spa workers, construction workers, entertainers, and child care and home support workers. H-2B may also be appropriate for programmers for a temporary assignment of installing a new computer program, professionals to work on a contract needing expertise not normally needed by the employer, or for relieving a regular employee during a leave

of absence. Like H-1B and other nonimmigrant worker petitions, H-2B petition is filed with the US Citizenship and Immigration Services (USCIS). Prior to filing a petition with the USCIS, the employer must first obtain a temporary labor certification determination from Department of Labor (DOL). The application for temporary labor certification must be filed at least 60 days but not more than 180 days prior to the designated date of need for employment. An application can cover more than one worker, provided it is for the same occupation, area of intended employment, and period of need.

After certification, an H-2B visa petition is filed at the USCIS designated office along with the approved Labor Certification from the DOL. The H-2B visa petition must include copies of evidence that each foreign worker named in the petition meets the minimum job requirements stated in the certification. Currently, it takes about 60 days for the USCIS to process H-2B petitions.

Obtaining labor certification and H-2B visa for a foreign worker may entail a lengthy and complicated process. However, a competent and experienced lawyer should be able to guide

and assist the US employer in completing the process.

If you have any questions, it is best to consult with an attorney. Bander Law Firm has been serving the community of Los Angeles, CA since 1987 and has multilingual staff who can communicate effectively in Tagalog, Spanish, Sinhala, Farsi, Russian, Korean and Mandarin. Please feel free to call Bander Law Firm at 213-873-4333 to schedule your free initial consultation on immigration concerns. Bander Law Firm provides full range of legal services in the fields of Mortgage Litigation, Bankruptcy, Immigration, Personal Injury, Criminal and Removal Defense, Civil and Business Litigation, Wage and Hour Litigation and Class Action lawsuits.

Atty. Joel R. Bander is the partner of Bander Law Firm, LLP. With over 15 years of litigation and immigration experience, Mr. Bander is a leading litigator and accomplished trial strategist. He has successfully handled numerous cases before Federal, State, Civil, and Criminal Judges and has participated in hundreds of arbitrations and trials. Bander Law Firm, LLP Downtown office address: 1055 W. 7th Street, Suite 1950, Los Angeles, CA, 90017. Tel: (213) 873-4333 Fax: (213) 873-4334. San Gabriel Office address: 1045 E. Valley Blvd., #A215, San Gabriel, CA 91776. Email: info@banderlaw.com. (Advertising Supplement)

Before PERM, to obtain a labor certification, you will first need to obtain a waiver. To obtain a waiver, the employer had to document that a job order had been filed with a local job service office and that following posting of the job order for a period of 30 days, no qualified US worker was found.

The good news under PERM is that *yayas*, domestic workers, and caregivers are eligible for labor certification without having to get a waiver. You can file for PERM for your *yaya* just like any other foreign employee. This may make it faster, however, if you need a live-in domestic worker, you still need to prove that the job duties and requirements are reasonable and that there are not cost-effective alternatives to a live-in household requirement.

When hiring a live-in household domestic worker, the employer must be prepared to produce certain additional documents. The employer must be able to describe the living conditions and accommodations of the domestic

Pre-foreclosure...

YOUR loan is an Adjustable rate mortgage (ARM)

Your interest rate is too high.

You are in foreclosure or a Notice of Default has been filed.

You are having hardship in making payments or currently in default.

Note: This is not a legal advice. You may need to discuss your case to an attorney. Our Law Firm handles loan modification cases. We offer free consultation on loan modification cases only.

Immigration tips of the week .We again have successfully obtained a waiver of fraud or misrepresentation in Immigration Court for a green card holder who entered as single but is actually married. Denied adjustment of status

and Naturalization applications are now being sent to the Immigration Court.

Income tax filing is required in the proposed legalization. Individual Tax Identification Number (ITIN) can be used for filing tax returns and is required before bank accounts can be opened. Our office assists clients in obtaining ITIN.

Crispin Caday Lozano is an active member of the State Bar of California and he practice real estate and immigration law. He earned his Juris Doctor at Western State University in Fullerton, California. He is also a CPA and a licensed Real Estate Broker. His offices are located at 17057 Bellflower Blvd. Suite 205, Bellflower, CA 90706 and 1290 B Street, Suite 205, Hayward, California 94541 and at 777 N. First St., Suite 333, San Jose, CA 95112. You can contact him at telephone (562) 461-1355 and (510) 538-7188.

Entry visas that create...

PLANE or bus home. Unfortunately, he will be accompanied by a deportation order. If he returns without permission, he will be subject to a lifetime bar from admission and will be required to wait ten years before being eligible to apply for a waiver.

An EWI alien who has avoided deportation orders and lifetime bars is still not home free. If he becomes eligible to apply for a green card, he will not be able to adjust status unless he is 245(i) grandfathered. If he chooses to consular process, he will need to request a waiver of a 3 or 10 year bar if he has been unlawfully present in the US for 6 months or more.

One should learn the ramifications of a visa before using it to enter the US. One should also know the impact of that visa before filing to change or adjust status. This is clearly a situation where knowledge is power and what you don't know could hurt you.

Atty. Reeves has represented clients in numerous landmark immigration cases that have set new policies regarding INS action and immigrants' rights. His offices are located in Pasadena, San Francisco, Las Vegas and Makati City. Telephone: (800) 795-8009 E-mail: immigration@rreeves.com Website: www.rreeves.com.

The analysis and suggestions offered in this column do not create a lawyer-client relationship and are not a substitute for the personalized representation that is essential to every case. (Advertising Supplement)

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