

Labor Certification Process for Permanent
Employment (PERM) supporting EB-2 and
EB-3 University-sponsored petitions for
Lawful Permanent Residency



University of Pittsburgh
Office of International Services



Greetings!

The Office of International Services (OIS) at the University of Pittsburgh (Pitt) has prepared this packet of information to assist foreign nationals and their hiring departments at Pitt with the process of requesting permanent labor certification, which is the prelude to submitting second- and third-preference University-sponsored petitions (EB-2 and EB-3, respectively) for U.S. Lawful Permanent Resident (LPR) status to the U.S. Citizenship and Immigration Services (USCIS) for adjudication.

The labor certification process is lengthy and complex, involving the U.S. Department of Labor, instead of the US Citizenship and Immigration Services (USCIS), and linking both immigration and labor law. Consequently, requests for permanent labor certification (PERM) are normally referred to outside immigration attorneys for processing. The one exception to this is for new faculty hires, which is handled by the Director, OIS. In order to ensure that everything goes smoothly, it is extremely important that you read the materials in this packet very carefully and that you follow the instructions. This will avoid delays in the processing of your case.

Please be advised, however, that any estimated processing times referenced in this packet are subject to change without notice due to changes in the regulations/laws and/or due to backlogs within a particular government agency. OIS cannot control delays of this nature.

Commonly Used Acronyms or Abbreviations

DOL	U.S. Department of Labor
INA	Immigration and Nationality Act
LPR	Lawful Permanent Residence
PERM	Request for permanent labor certification
Pitt	University of Pittsburgh
OIS	Office of International Services
RFE	Request for Evidence
USCIS	U.S. Citizenship & Immigration Services

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Introduction

A permanent foreign labor certification (PERM) from the U.S. Department of Labor (DOL) allows U.S. employers to hire and sponsor foreign workers to work permanently in the U.S. Foreign Labor Certification certifies that the employment of the foreign national will not displace nor adversely affect the wages and working conditions of U.S. workers who are similarly employed. To obtain a Labor Certification the employer must file an application with the DOL establishing that both of these criteria have been met.

Foreign Labor Certification is the usual first step in applying for a green card for a University of Pittsburgh employee and requires the employing unit to prove there are no minimally able, willing, qualified, available and interested U.S. workers to do the job. Labor Certification is used to sponsor internationals in positions including, but not limited to, teaching and research-only faculty, research associates, research specialists/technicians, computer systems programmers/analysts, or other staff employees for second and third preference, employment-based permanent residency.

The positions at the University of Pittsburgh that would support requests for permanent labor certification fall under the general category of “professional occupations,” and within this general category, there is a separate provision for university teachers within 18 months of their initial selection for hire (“special recruitment”). For professional occupations other than those for newly-hired university teachers, the employing unit must document that it has adequately tested the labor market in the preceding six months without finding any “able, willing, qualified, available and interested” U.S. workers (i.e., U.S. citizens and U.S. permanent residents). The University’s standard procedure is to use an outside immigration attorney in these cases, and it has prepared a short-list of OGC-approved attorneys to select from. For newly-hired university teachers, on the other hand, the University may document the national search process as meeting the market test requirement. In these cases, the University’s standard procedure is to utilize internal expertise in OIS, specifically, the Director. To qualify as a “teaching position”, the position must include classroom teaching.

Basic Requirements

To be eligible to obtain the Foreign Labor Certification, the employer must satisfy the following requirements:

- a. The job opportunity is for full-time, permanent employment for an employer other than the foreign worker, is clearly open to any U.S. worker, and does not involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap, or citizenship;
- b. Job requirements must adhere to what is customarily required for the occupation in the U.S. and may not be tailored to the worker’s qualifications. In addition, the employer shall document that the job opportunity has been and is being described without unduly restrictive job requirements, unless adequately documented as arising from business necessity.
- c. The employer must pay at least the prevailing wage for the occupation in the area of intended employment and must certify that it has enough funds available to pay the wage or salary offered to the foreign worker.
- d. Any U.S. worker who applied for the job opportunity was rejected for lawful job-related reasons.

Which Foreign Employees Qualify for University Sponsorship?

- The individual must hold at least an academic or professional degree or foreign equivalent equal to or above the U.S. baccalaureate.
- The individual’s employment at the University of Pittsburgh must meet university policy for sponsorship of a Lawful Permanent Residence petition. See <http://www.ois.pitt.edu/wp-content/uploads/LPRPolicy.pdf> for more information.

Which Positions Qualify as “Permanent” Positions

The position must be full-time and “permanent,” defined by applicable regulations, which means either tenured, tenure-stream, or “for a term of indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination” [8 CFR 204.5(i)(2)]. Employees holding the title of Postdoctoral Scholar or Postdoctoral Associate do not qualify for this category, since those are training roles and considered temporary positions at Pitt. Note that the Department of Labor defines “full-time” as requiring at least 36 hours or more per 40-hour work week.

General Administrative Information

Process Stages and Planning Times

The PERM request will go through four stages:

- Initial meetings.
 - Foreign worker and supervisor schedule a meeting with the immigration specialist assigned to the sponsoring department. If there is agreement to continue, the immigration specialist will recommend proceeding either under basic labor certification procedures for professional occupations or under optional special recruitment procedures for newly hired university teachers.
 - **In the case of professional occupations**, the department chair will need to complete and submit the Outside Immigration Attorney Request Form (<http://www.ois.pitt.edu/PDF/OutsideImmigrationAttorneyRequestForm.pdf>), along with a copy of the foreign employee's current c.v. or resume, job description, and brief explanatory statement to the Director, OIS, for approval. The requested attorney must be on the University's pre-approved list (<http://www.ois.pitt.edu/wp-content/uploads/OutsideImmigrationCounselGuidelines.pdf>). Once approved, a follow-on meeting is scheduled with the attorney, the department chair, PI, and/or representative, the supporting HR representative, the Associate Director, OIS, and the foreign employee. Details of the process, estimated costs, timelines, responsibilities, and cautions will be presented for agreement.
 - **In the case of newly-hired university teachers**, the immigration specialist handling the initial H-1B application will forward the file to the Director, OIS, to concurrently initiate the PERM. Otherwise, the immigration specialist will recommend scheduling a follow-on meeting with the Director, OIS, the department chair/administrator, and the foreign faculty member. Details of the process, estimated costs, timelines, responsibilities, and cautions will be presented for agreement.
- Securing the prevailing wage determination. The prevailing wage is the median wage paid to workers in a specified locality. The salary offered must meet or exceed the prevailing wage determination; if it does not, either the salary must be adjusted or the labor certification process must be halted. This is now taking DOL 3-4 months to process these requests.
- Documenting the recruitment and selection and completing the Competitive Recruitment Report and the Audit File. Normally, this takes approximately 12 weeks to accomplish—longer if there are difficulties. In some cases, this step is accomplished while waiting for the prevailing wage determination; in others, this step follows and takes up to 12 weeks more. When assembled, the University (OIS) is required to maintain the Audit File for five years, to be retained as an official record and used when responding to an audit during certification.
- Submission and Certification of the form ETA-9089, Application for Permanent Employment Certification. When received from the Department of Labor, the permanent labor certification is used to support second- and third-preference employment-based (University-sponsored) petitions for lawful permanent residency. Processing times vary with DOL, currently averaging 4 months.

Fees

In general, all costs associated with the PERM are borne by the hiring department/unit and the law specifically prohibits the passing on of any of these costs to the foreign employee.

- There are no filing fees for the ETA-9089.
- **In the case of professional occupations**, all fees associated with the services of the outside immigration attorney, advertisements, interviews, and other related costs are to be borne by the hiring department. At the initial meeting with the immigration attorney, fees will be discussed and formally agreed upon before work proceeds.
- **In the case of newly-hired university teachers**, the hiring department/unit will pay OIS the associated cost recovery fee for a PERM case.

Process Overview and Responsibilities: Professional Occupations

1. **Foreign worker and supervisor schedule a meeting with the immigration specialist** assigned to the sponsoring department. If there is agreement to continue, department chair will complete and submit the [Outside Immigration Attorney Request Form](#), along with a copy of the foreign employee's current c.v. or resume, job description or position advertisement to the Director, OIS, for approval. The requested attorney must be on the University's pre-approved list.

The **foreign employee** will be asked to provide copies of his/her diploma(s), and certificates/licenses, and US immigration history (summarized in a table, if appropriate) to help the attorney more fully understand the case and any time constraints that might be present and impact the submission.

2. When the use of an outside immigration attorney has been approved by the Director, OIS, the **Department administrator schedules a meeting** with the attorney, department chair/PI or representative, HR representative, designated OIS representative, and the foreign employee. The primary purposes for this meeting are to assemble the team and confirm contact information, clearly communicate the process and its desired timetable, clarify responsibilities, and set deadlines for the initial critical steps.

At the meeting, the **department administrator/HR representative** will confirm minimum requirements (academic, experience, and other special skills, etc.). Ambiguous terms (e.g., "familiarity with", "knowledge of", etc.) must be clarified and quantified while ensuring the description is not "unduly restrictive" (i.e., "tailored" to the incumbent foreign worker). If experience is required, the foreign worker must generally have gained it outside of Pitt and it must be documented by statements from previous supervisors or employers. Experience acquired in the current position cannot be listed—DOL's position is that if the department hired the foreign worker without experience and then provided it, it could also hire a U.S. worker without experience and provide it. These issues are critical to the entire labor certification process.

3. **The attorney submits the request for a Prevailing Wage Determination.** The prevailing wage is the median wage paid to workers in a specified locality. Requests for University of Pittsburgh positions are sent electronically to the Department of Labor's Office of Foreign Labor Certification in Atlanta, GA. It is critical that this request for prevailing wage determination contain an accurate job description, clearly defined minimum requirements, and all location(s) of work.

IMPORTANT: If the salary meets or exceeds the prevailing wage determination, continue; if not, either the salary must be adjusted or the labor certification process halted.

4. **The attorney** guides the development and implementation of the **Recruitment Campaign**. Since most positions will fall within the general category of *professional occupations*, the employer (University of Pittsburgh) must complete the following recruitment campaign **no earlier than 30 and no later than 180 days** before filing the application. Furthermore, the employer must maintain documentation of the recruitment and be prepared to submit it in the event of an audit. Initially, the attorney's office will maintain the original documentation, but once the labor certification has been approved, the originals will be maintained in the Audit Files in OIS for the required 5 years and then destroyed.

- a. **Job Order (Career Links).** **HR representative** will place an advertisement for the position at the local DOL office for 30 days through the Pennsylvania Careers website (<http://www.pacareerlink.state.pa.us>). Salary listed cannot be less than the prevailing wage.

NOTE: These advertisements are often amended by the site staff, so the HR representative must follow-up and ensure that the advertisements are published as requested and the critical elements have not been modified. Copies verifying start and end dates and text of the advertisements must be gathered for the audit file.

- b. **Advertisements in two separate (normally consecutive) Sunday editions of the local newspaper.** **Department administrator** will place the ads drafted by the attorney and will confirm publication by retaining “tear sheets” for each. Salary listed cannot be less than the prevailing wage.

NOTE: If the job requires experience and an advanced degree, and a professional journal would normally be used to advertise the job opportunity, the employer may, in lieu of the Sunday advertisements, place an ad in the professional journal most likely to bring responses from able, willing, qualified, and available U.S. workers. A copy of the page with the advertisement must be retained as documentation.

- c. **Internal posting** at the employer’s office for at least ten (10) consecutive business days (both hard copy and intranet posting). The **department administrator** posts the notices and at the conclusion of the required time, signs a copy verifying start and end dates and locations of postings.
- d. Utilize any and all **in-house media**, whether electronic or printed, typically utilized in the University’s normal recruitment process (e.g., PittSource, employee referral program, etc.). **HR representative** maintains documentation verifying type of media, location(s), text(s) of the advertisement, and inclusive dates.
- e. In addition, as guided by the attorney, the **employer** must select three additional recruitment steps from the alternatives listed below. Salary need not be included in the advertisement.
- Job Fair;
 - Job search website other than the employers (e.g., *Hotjobs.com, Monster.com, etc.*);
 - On-campus recruiting;
 - Trade or professional organizations;
 - Private employment firms;
 - Campus placement office;
 - Local and ethnic newspapers; and
 - Radio and television advertisements.

NOTES:

- *Attorney needs to be informed of any recruitment for this or a similar position conducted by the University (Department) within the past three months.*
- *DOL requires the University to contact any laid-off employees who filled the exact same position in the exact same work location during the six-month period prior to the filing of the application for permanent labor certification. The employer need not re-hire these people, but the labor certification application cannot proceed if any of these former employees are both qualified and interested in the job. Of course, if there were no relevant lay-offs, this requirement does not apply.*

1. **Department Administrator (and Department Chair/PI)** will gather applications and review each, ultimately documenting (in a spreadsheet or matrix with notes as necessary) all candidates who expressed an interest in the position and their credentials in relation to the minimum qualifications, the results of any interviews, and the reason why each of the applicants (whether interviewed or not) was not qualified for the position.

NOTES:

- *First, it is very important that the review proceed under direct guidance from the attorney; however, the attorney cannot be involved in the interviewing and/or disqualifying of potential applicants.*
- *Second, it is not enough that a candidate be merely “qualified” for the job; the person must also be “interested” in the position as advertised. For example, the person would not be interested if he/she did not want to work in that location, wanted a different salary, etc.*
- *Third, employers must determine whether applicants could acquire the noted skills/requirements during a reasonable period of on-the-job training. If so, they cannot be disqualified.*

IMPORTANT: If there is no U.S. worker “able, willing, qualified, available or interested,” the foreign labor certification process can continue. If, on the other hand, there is a qualified and interested U.S. worker, then the department chair/PI must make the decision to either stop the foreign labor certification process or continue with the hiring of the U.S. worker--this decision must be communicated to the attorney and OIS either by email or letter.

2. After completing the Recruitment Campaign, the **attorney** will draft and the **Department Chair/PI** will verify and sign the **Recruitment Summary**, which documents the actual recruitment steps taken, the number of candidates who expressed an interest in the position, copies of their resumes or c.v., a list of people interviewed for the position, a statement as to why each of the applicants (whether interviewed or not) was not qualified for the position, and any other related documentation. The objective is to clearly show that despite an extensive recruitment campaign, the University was not able to find a U.S. worker (U.S. citizen or U.S. permanent resident) who was “able, willing, qualified, and available” and interested in the job.
3. When complete, the **attorney** will electronically file the actual application (ETA-9089) with the DOL, on behalf of the University. OIS will respond to the initial filing questions, verifying the submission and clearing the way for DOL to proceed with the approval process. It is important to note that neither the attorney nor OIS has any influence on the speed of the review process at DOL.
4. Upon certification, the attorney’s office will sign the certified ETA-9089 and forward it to OIS for signature (OIS representative and foreign worker). The certified ETA-9089 will then form the basis for either the EB-2 or EB-3 petition for permanent residence. The attorney will also forward the original **Recruitment Summary** and supporting documents to OIS for the audit file, to be maintained for 5 years.

Process Overview and Responsibilities: University Teachers* Within Initial 18 months of Selection of Hire

*Positions that formally include regular classroom teaching

1. **When notified of a new faculty hire, the immigration specialist** assigned to the sponsoring department will coordinate the application for initial H-1B status and will notify the Director, OIS, to initiate the PERM. The Director will contact the department administration to discuss the overall process, responsibilities, and timelines and gain concurrence to continue. The immigration specialist assigned to the sponsoring department will retain responsibilities for actions involving visa status; whereas, the Director will retain responsibilities solely for the PERM—both will coordinate the overall case.
5. **The Director submits the request for a Prevailing Wage Determination.** The prevailing wage is the median wage paid to workers in a specified locality. Requests for University of Pittsburgh positions are sent electronically to the Department of Labor's Office of Foreign Labor Certification in Atlanta, GA. It is critical that this request for prevailing wage determination contain an accurate job description, clearly defined minimum requirements, and all location(s) of work, identical to the advertisement used in recruitment.

IMPORTANT: If the salary meets or exceeds the prevailing wage determination, continue; if not, either the salary must be adjusted or the labor certification process halted.

2. The **Director** will prepare the Notice of Filing and will electronically forward it to the **department administrator** for posting. The posting must be in two conspicuous locations normally utilized for job and opportunity announcements and must remain up for at least 10 consecutive business days. When completed and removed, the department administrator will complete the record copy and include it in the Competitive Recruitment Report.
3. **The department administrator** assembles the Competitive Recruitment Report, utilizing the template provided by OIS as a base guide, tailoring as appropriate. When finalized, the **Department Chair** will sign the Report and forward it with all attachments to the Director.
4. The **Director** will review the Competitive Recruitment Report and, if complete, will prepare a draft application (ETA-9089) and forward Sections J and K to the foreign employee to complete and verify. When that is done, the **Director** will electronically file the actual application with the DOL, and after submission will respond to the initial filing questions, verifying the submission and clearing the way for DOL to proceed with the approval process.

NOTE: Neither the OIS nor the University has any influence on the speed of the review process at DOL.

5. The **Director** will assemble the Audit File, which is to be retained in OIS for five years from the date the ETA-9089 was submitted.
6. Upon certification, the **Director** and the **foreign employee** will sign the certified ETA-9089. The certified ETA-9089 will then form the basis for either the EB-2 or EB-3 petition for permanent residence.