Prerecruitment Stage: Determining Job Description

Before PERM recruitment may begin, you must provide information about the foreign worker’s offered position, specifically the job title, minimum job requirements (education, experience and/or skills), and duties to be performed.

The Department of Labor (DOL) has put into place a fraud unit with the intention of rooting out inconsistencies in job requirements for the same position. The DOL is expected to audit employers who do not consistently recruit with the same requirements for the same job position. For example, the DOL will look into why an employer has filed two PERM applications for the same software engineer position, but one position requires a master’s degree while the other only requires a bachelor’s degree.

**TIP:** Use the same job descriptions for all your PERM cases. Do not change your company’s job description to cater to individual foreign workers. If you have any questions about how to draft a job description, please visit DOL’s O*Net website at http://online.onetcenter.org/.

**TIP:** Make sure that your foreign worker can actually produce documentation and evidence to show that he or she meets the job requirements. Some employees have trouble getting their diplomas and/or experience letters to validate their qualifications.

**WARNING:**

**Supervised recruitment:** If the DOL suspects that recruitment was not done in good faith after reviewing an audit, the DOL may tag the employer for supervised recruitment to re-test the labor market. Supervised recruitment is a very burdensome and arduous process that makes obtaining lawful permanent residence status for your foreign national very difficult.

PERM cases will be tagged for supervised recruitment if there have been known layoffs, or employers have failed to respond to the DOL’s audits in the past.

Currently, data mining shows that some employers are routinely not responding to audits. Such employers will be required to file under supervised recruitment in the future.

**Recruitment Stage 1: Prevailing Wage**

A prevailing wage determination must be requested from the DOL. The employer will be required to pay 100 percent of the prevailing wage by the time the employee attains permanent residency.

**TIP:** Generally, the DOL’s prevailing wage determination will be issued within six to eight weeks of submission.

**TIP:** The employer may submit a third-party wage survey to the DOL either as part of its request for a prevailing wage determination or in response to an agency’s determination. Any survey that is proposed to be used for this purpose must be reviewed by the attorneys prior to submission, as it must meet strict criteria.
TIP: Prevailing wage determinations are subject to expiration dates (the DOL may give an expiration anywhere from 90 days to one year from the date of issuance). For a determination to be used in support of a PERM application, either: 1) recruitment must commence before the determination’s expiration, or 2) the PERM application must be filed before the determination’s expiration.

Section A: Create DOL PERM Account

All PERM labor certification applications are filed online with the DOL. In order for the attorneys to be able to file your case, a sub-account must be created by the employer for VISANOW on the DOL’s PERM website.

1. To create your initial employer DOL PERM account, please register at: www.plc.doleta.gov/eta_start.cfm
2. Once you have received your temporary login, you will need to log in to the DOL PERM site to create a permanent password.
3. After creating your permanent password, you will have to log in a second time to create a sub-account within your DOL PERM account for the attorneys of VISANOW.

To create a sub-account, log in, select the “User Accounts” tab, then click the “Add New User” button.

Please enter one of our attorneys’ names in the name section on the “Add New User” page of the PERM website. The additional information below will be required to create the VISANOW sub-account:

Address:
Ryan Bay
Global Immigration Associates
350 N. Lasalle St. Suite 1400
Chicago, IL 60657

Phone: 312-722-6300
Fax: 312-527-1214
Email: gov@giafirm.com

For Sub-account User Type, please select “Lawyer.”

You can create the username for the VISANOW sub-account. This login information will be sent to us in an email along with a temporary password.

For Security Access, make sure the following are checked/selected:

- Edit Applications
- Add/Reuse Applications
- Withdraw Applications
- We will not need access to your User Accounts or your Employer Data.

TIP: More than one sub-account should be opened if the employer anticipates filing a large number of applications simultaneously.

TIP: Start this process early. It can take up to three weeks to get a username/password signed by the DOL.
Section B: Create Job Order Account

In anticipation of recruitment, the employer should create a Job Order Account for the purpose of completing the Mandatory Job Order posting. This is a registered employer account created with the website or job bank designated by the State Workforce Agency with jurisdiction over the worksite.

Because many states require that only the employer create job order accounts, VISANOW cannot create these accounts with the State Workforce Agencies. You will find the links to Job Order websites for each state here: www.visanow.com/help/jobordersites.htm

**TIP:** The steps for creating a Job Order Account vary widely by state. Some states require contact by e-mail, fax or telephone in lieu of creating the account online. Some states do not require the creation of a Job Order Account in order to post a job opening. If you have any questions regarding this item, please do not hesitate to ask the attorneys for assistance.

After the Job Order Account has been created, both the login information and password should be sent to VISANOW.

Section C: Provide Business Necessity Documentation

In certain cases, the attorneys may request Business Necessity Documentation for a case. These are cases in which the attorneys have determined that the minimum educational and/or experience requirements for the position being certified exceed what the U.S. Department of Labor believes to be the “industry average” requirements for a position. The employer must be able to justify that the minimum requirements for the offered position exceed the industry average for some reason pertaining to the employee’s reasonable performance of the job duties and the context of the employer’s business.

Documents that generally support a Business Necessity argument include, but are not limited to:

- The employer’s official job description for the position (to confirm the requirements are indeed the employer’s actual, minimum requirements for the position)
- Copies of “normal,” non-PERM recruitment for the position
- The resumes of other employees in the same position (to confirm that all other employees have met these requirements)
- Printouts of job postings from job search websites, such as CareerBuilder.com, for similar positions with other companies
- An expert opinion letter confirming that the requirements are normal

Recruitment Stage 2: Job Order

Once the attorneys have verified that the salary to be offered by the employer meets the requirements of the prevailing wage regulations, recruitment is commenced with the preparation of the Job Order form. The Job Order is a mandatory recruitment activity and must run for at least 30 days on a website or job bank designated by the State Workforce Agency with jurisdiction over the work site.

If the Job Order form and application evaluation prepared by the attorneys meets with the employer’s approval, VISANOW will post an order at the designated website. VISANOW will use the Job Order Account created in Stage 1 for this purpose. After the Job Order has been completed, the case will move into Stage 3.
**Recruitment Stage 3: Activities**

Upon receiving confirmation that the employer has posted the Job Order, the attorneys will prepare draft recruitment materials for review: “Advertisement” and “Internal Posting.” The instructions for these items are included with each draft.

**TIP:** If edits or changes are made to these drafts, they should be reviewed by the attorneys before the employer begins recruitment. We must ensure that the materials still meet DOL regulations regarding the content of these advertisements.

**TIP:** It is possible to use recruitment materials that have been recently used to recruit for the same position being offered in the labor certification, so long as the recruitment is not over 180 days old. These should be reviewed by the attorneys to ensure they meet DOL regulations before they can be submitted in support of a PERM labor certification application.

**TIP:** There are separate regulations concerning recruitment for non-professional occupations and for college and university teachers who were hired in the past 12 months. These situations should be brought to the attention of the attorneys in order to evaluate if such regulations may apply.

Using these draft materials, the employer must conduct pre-filing recruitment for the offered position, consisting of the following mandatory activities (in addition to the Job Order posted in Stage 2 of the PERM Process):

<table>
<thead>
<tr>
<th>Recruitment Activity</th>
<th>Duration/Frequency</th>
<th>Documentation to Submit</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 newspaper advertisements (or 1 newspaper ad and 1 trade/professional journal ad)</td>
<td>Newspaper ads must be posted on two Sundays (may be two consecutive Sundays)</td>
<td>Original tear sheets are preferred; copies of invoices, affidavits, receipts or other confirmation that the ads were posted (preferably indicating the date of posting) are acceptable</td>
</tr>
<tr>
<td>Internal posting</td>
<td>10 consecutive business days (not calendar days)</td>
<td>Original is preferred; a scanned or faxed copy is acceptable</td>
</tr>
</tbody>
</table>

**TIP:** Please note that the mandatory recruitment materials may not be more than 180 days old at the time of filing the PERM application. In addition, they may not have occurred within the 30 days preceding the filing of the PERM application.

**TIP:** For newspaper advertisements, the employer must select a newspaper of general circulation in the area of intended employment. The employer generally should be familiar with which publications it has used in the past to successfully recruit candidates.

**TIP:** Some newspapers offer a service where the Sunday advertisements will also be posted to a job search website (either the newspaper’s own website or a website such as CareerBuilder.com). This service is usually free, but some newspapers may charge a fee. This posting can be used as proof of advertising on a job search website.

**TIP:** You may use abbreviations or shorten the text of the draft advertisement the attorneys prepared. If you make edits or changes to these drafts, they should be reviewed by the attorneys before posting the newspaper advertisements to ensure that the content still meets DOL regulations.
For professional-level positions (i.e. positions that require a bachelor’s degree or higher), the employer must also perform at least three of what VISANOW terms the “discretionary” recruitment activities:

<table>
<thead>
<tr>
<th>Recruitment Activity</th>
<th>Duration/Frequency</th>
<th>Documentation to Submit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employer’s website</td>
<td>10 consecutive business days (not calendar days), maximum 30 days</td>
<td>Printout of the actual posting(s) on the company’s website, one on the first day of posting and one on the last day of posting, is preferred. Copies of requisitions or other confirmations that the advertisements were posted (preferably indicating the start and end dates of the posting) are acceptable. Provide a record of all hits to the page during the recruitment period if available.</td>
</tr>
<tr>
<td>Job search website</td>
<td>10 consecutive business days (not calendar days), maximum 30 days</td>
<td>Printout of the actual posting(s) on the job search website, one on the first day of posting and one on the last day of posting, is preferred. Copies of requisitions or other confirmations that the advertisements were posted (preferably indicating the start and end dates of the posting) are acceptable. Provide a record of all hits to the page during the recruitment period if available.</td>
</tr>
<tr>
<td>Employee referral program</td>
<td>If already in place, continuous throughout recruitment period; if created for a specific position, at least 30 days</td>
<td>Copy of pertinent portions and other memoranda describing the program and specifying the incentives offered (e.g. bonus or other type of payment). It must point to the specific position at issue.</td>
</tr>
<tr>
<td>Contracts with private employment firms</td>
<td>If already in place, continuous throughout recruitment period; if created for a specific position, at least 30 days</td>
<td>If already in place, copy of contract. If created for specific position, copy of communications between employer and private employment firm regarding the position and results of candidate match. The contract must point to the specific position at issue.</td>
</tr>
<tr>
<td>Participation in job fairs</td>
<td>Varies by event, usually one to three days</td>
<td>Copies of pamphlets, brochures, invoices, confirmations, and other materials evidencing employer’s participation are preferred. Employer-prepared materials showing what job fair events were attended are acceptable. There must be evidence that the job fair advertised the specific position at issue.</td>
</tr>
<tr>
<td>Participation in on-campus recruitment</td>
<td>Varies by event, usually one to three days</td>
<td>Copies of pamphlets, brochures, invoices, confirmations, and other materials evidencing employer’s participation are preferred. Employer-prepared materials showing what on-campus recruitment events were attended are acceptable.</td>
</tr>
<tr>
<td>Campus placement office advertisement</td>
<td>10 consecutive business days (not calendar days), maximum 30 days</td>
<td>Copy of employer’s notice of the job opportunity provided to the campus recruitment office.</td>
</tr>
<tr>
<td>Advertisement in local or ethnic newspaper</td>
<td>Varies by frequency of publication, usually one to three days</td>
<td>Original tear sheets are preferred; copies of invoices, affidavits, receipts or other confirmation that the ads were posted (preferably indicating the date of posting) are acceptable.</td>
</tr>
<tr>
<td>Advertisement with trade/professional associations</td>
<td>Varies by frequency of publication, usually one to three days</td>
<td>Original tear sheets are preferred; copies of invoices, affidavits, receipts or other confirmation that the ads were posted (preferably indicating the date of posting) are acceptable.</td>
</tr>
<tr>
<td>Radio and television advertisements</td>
<td>Varies frequency of publication, usually one to three days</td>
<td>Original tear sheets are preferred; copies of invoices, affidavits, receipts or other confirmation that the ads were aired (preferably indicating the date of posting) are preferred. Transcripts of the advertisements are acceptable.</td>
</tr>
</tbody>
</table>
**TIP:** On-campus recruitment or campus placement advertisements may not be an appropriate form of recruitment for high-level positions or positions requiring many years of experience.

**TIP:** Please note that the discretionary recruitment materials may not be more than 180 days old at the time of filing the PERM application. In addition, they must not have occurred within the 30 days preceding the filing of the PERM application. The only exception to this strict timeline is that only one of the three forms of discretionary recruitment may occur within the 30 days preceding the filing of the PERM application.

The employer is required to gather and review any resumes received in response to any of the above recruitment activities and provide a lawful job-related reason why the applicant is not qualified for the position. This means that each resume must be reviewed and, in some cases, candidates must be interviewed. The employer must prepare a detailed application evaluation form identifying who applied and listing the reason why each candidate was not qualified for the position.

**TIP: Resume screening**

- If you have an HR department that handles initial resume screening, forward VISANOW’s Applicant Evaluation, which is a list of screening questions. This will ensure that your company interviews all minimally qualified U.S. applicants. VISANOW can also help organize the screening process through its Job Posting Today service.

- The employer may have agents or attorneys represent them throughout the labor certification process. The employer, and not the attorney or agent, must be the first to review an application for employment, and must determine whether a U.S. applicant’s qualifications meet a minimum requirement for the position. Attorneys may provide advice throughout the consideration process on any and all legal questions concerning compliance with governing statues, regulations and policies.

- Through the audit process, the DOL may review evidence regarding how the employer received resumes. If any of the recruitment materials direct applicants to send their resumes to any location other than directly to the employer, the employer could face an audit asking for an explanation of how the resumes got to the employer.

If applications are received, then the employer must provide the attorneys with the following statistics before the PERM application is filed:

- The number of open related positions there were at the outset of the recruitment period
- The number of resumes received in response to the recruitment efforts
- The number of individuals rejected for lawful, job-related reasons
- The number of individuals who were interviewed
- The number of job offers that were extended
- The number of offers that were accepted
- The number of openings that remain at the close of the recruitment period

**TIP:** The employer must retain recruitment materials and results for at least five years.
The following are considered “lawful, job-related reasons” an applicant responding to PERM recruitment may be rejected:

1. Failure to meet the stated minimum requirements for the position
2. Inability to perform the core job duties of the position
3. Failure to attend a scheduled interview or to respond to a request to schedule an interview
4. Disinterest in the job (i.e., the applicant declines the offer of employment)
5. Unwillingness to accept the offered wage
6. Bad work references or references that cannot be checked
7. Applicant’s lack of proficiency in English language, if it would affect job performance or reliability (e.g., a receptionist or telephone operator)
8. Applicant does not have permanent employment authorization (i.e., is not a U.S. citizen or a lawful permanent resident)

TIP: After the ads have been posted for the required time period, there is a mandatory 30-day cooling off period before the ETA-9089 (PERM) application may be submitted to the DOL.

**Filing Stages 4-6 (ETA-9089, I-140, I-485)**

When all of the recruitment documentation has been received by the attorneys, Form ETA-9089 (and, if applicable, ETA-9089 Additional Jobs) will be prepared for the employer and employee’s review. The attorneys will not be filing this form with the government; it merely reflects the online PERM questionnaire.

The PERM application is filed online and could be adjudicated in as little as six months unless audited by the DOL. In case of an audit, the employer will have 30 days to submit their recruitment documentation to the DOL.

**TIP:** The employer must also show that they have the financial ability to pay the proffered wage as indicated on ETA-9089. U.S. Citizenship and Immigration Services (USCIS) will accept the following:

- Annual report (net income must exceed proffered wage)
- Tax returns (net income must exceed proffered wage)
- Audited financial statement (net income must exceed proffered wage)
- W-2 and pay statements (actual wage must exceed the proffered wage) or, if employer employs more than 100 employees, a letter from a financial officer regarding company’s ability to pay
Instructions on Reviewing Forms

Clicking on any of the hyperlinked forms will open them up for your review and editing. Please note that if the hyperlinks are grayed out, the forms are being reviewed by the attorneys.

You have three options for your review and approval of your forms:

1. Review each form, approve them without any additional changes by clicking on the “Approved” checkbox, and click the “Submit to Attorney” button.

2. Review each form, make any necessary changes by clicking the “Update” button, and submit them back to the attorneys for review. After looking over the forms for accuracy, we will send them back to you again for your review. You may review and update the forms as often as you like until they are correct.

3. Review each form, make any necessary changes by clicking the “Update” button and “Approved” checkbox, and submit them to the attorneys by clicking the “Submit to Attorney” button.

Instructions on Reviewing Letters

To review or edit the letters, follow these steps:

1. Click on the letter hyperlink in the “Letters Needed” section.

2. A pop-up window opens. Click on the “Download Letter” button.

3. Choose “Save,” then save the file to your computer (for example, on your computer’s desktop or your C drive).

4. Go to the area on your computer where you saved the file, and open it.

5. You can review and edit it as necessary. If you make edits to the letter, be sure to save your changes, and be sure the document is in Rich Text Format (with a “.rtf” file extension).

6. Once you have completed your reviews or edits, you will need to upload the file to our system.

7. Click on the document hyperlink in the “Letters Needed” section.

8. A pop-up window opens. Click on the “Browse...” button.

9. Locate the file on your computer, select it, and click “Open.”

10. Click “Upload Letter” to complete this process.

11. You have three options for the review and approval of your letters:

   12. Review each letter, approve them without any additional changes and submit them back to the attorneys. Then, click the “Submit to Attorney” button to send them to the attorneys.

   13. Review each letter, make any necessary changes in the document, save and upload, and submit back to the attorneys for review. After looking over the letters for accuracy, the attorneys will send them back to you for your review. You may review and update the letters as many times as you like until they are correct.

Review each letter, make any necessary changes in the document, save and upload it, then click the “Submit to Attorney” button.
## Recruitment Stages

1. **Prevailing Wage**  
   - Time frame varies  
   - Include pre-recruitment activities

2. **Job Order**  
   - Must run for 30 days  
   - Can run concurrently with Stage 3

3. **Recruitment Activities**  
   - Time frame varies (max 150 days)  
   - Can run concurrently with Stage 2

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### Cooling-Off Period: 30 Days

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## Filing Stages

1. **Documents for case submitted to VISANOW**

   - Post Recruitment  
   - VISANOW will file ETA-9089 within 180 days of the first date of recruitment
## STAGE 1 PREVAILING WAGE

<table>
<thead>
<tr>
<th>Step</th>
<th>Activity Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Complete questionnaire</td>
</tr>
<tr>
<td>2</td>
<td>Uploads supporting documentation to VISANOW platform</td>
</tr>
<tr>
<td>3</td>
<td>Attorneys prepare Prevailing Wage request</td>
</tr>
<tr>
<td>4</td>
<td>Employee receives employment verification letters</td>
</tr>
<tr>
<td>5</td>
<td>HR approves Prevailing Wage</td>
</tr>
<tr>
<td>6</td>
<td>Attorneys submit &amp; obtain Prevailing Wage Determination from Department of Labor</td>
</tr>
</tbody>
</table>

## STAGE 2 JOB ORDER

<table>
<thead>
<tr>
<th>Step</th>
<th>Activity Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Attorneys prepare job order</td>
</tr>
<tr>
<td>7</td>
<td>HR reviews and approves job order</td>
</tr>
<tr>
<td>8</td>
<td>Attorneys post job order (must run for at least 30 days)</td>
</tr>
</tbody>
</table>

## STAGE 3 RECRUITMENT ACTIVITIES

<table>
<thead>
<tr>
<th>Step</th>
<th>Activity Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Attorneys prepare recruitment materials</td>
</tr>
<tr>
<td>10</td>
<td>HR reviews and approves recruitment materials</td>
</tr>
<tr>
<td>11</td>
<td>HR conducts recruitment (posts advertisements, reviews resumes, interviews job candidates)</td>
</tr>
</tbody>
</table>

### KEY

- HR
- Employee
- VISANOW
- Government

Please note that this is a general timeline. The actual time required to complete a case may vary. For more specific timelines, please post to your VISANOW Communication Center. USCIS reserves the right to adjudicate cases. Scanned copies of the required documents are generally sufficient. Appointment times have not been included in this timeline.
<table>
<thead>
<tr>
<th>Stage 1 ETA-9089</th>
<th>Stage 3 I-485</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong></td>
<td><strong>13</strong></td>
</tr>
<tr>
<td>Mandatory 30-day cooling-off period following recruitment activities</td>
<td>Upload supporting documents</td>
</tr>
<tr>
<td><strong>2</strong></td>
<td><strong>14</strong></td>
</tr>
<tr>
<td>HR submits final recruitment report to VISANOW</td>
<td>Attorneys review documents and prepare forms</td>
</tr>
<tr>
<td><strong>3</strong></td>
<td><strong>15</strong></td>
</tr>
<tr>
<td>Attorneys prepare ETA 9089 form</td>
<td>Review and approve prepared forms</td>
</tr>
<tr>
<td><strong>4</strong></td>
<td><strong>16</strong></td>
</tr>
<tr>
<td>HR and employee review and approve ETA 9089 form</td>
<td>Attorneys finalize petition and send to government</td>
</tr>
<tr>
<td><strong>5</strong></td>
<td><strong>17</strong></td>
</tr>
<tr>
<td>Attorneys review and finalize forms; submit to Department of Labor</td>
<td>Receives petition and issues receipt notice</td>
</tr>
<tr>
<td><strong>Stage 2 I-140</strong></td>
<td><strong>Stage 3 I-485</strong></td>
</tr>
<tr>
<td><strong>5</strong></td>
<td><strong>18</strong></td>
</tr>
<tr>
<td>Upload supporting documents</td>
<td>Receives receipt notice and posts information to account</td>
</tr>
<tr>
<td><strong>6</strong></td>
<td><strong>19</strong></td>
</tr>
<tr>
<td>Attorneys review documents and prepare forms</td>
<td>Attend scheduled appointment at local USCIS Application Support Center (ASC)</td>
</tr>
<tr>
<td><strong>7</strong></td>
<td><strong>20</strong></td>
</tr>
<tr>
<td>Review and approve prepared forms</td>
<td>Adjudicates and sends approval notice</td>
</tr>
<tr>
<td><strong>8</strong></td>
<td><strong>21</strong></td>
</tr>
<tr>
<td>Attorneys finalize petition and send to government</td>
<td>Receives approval notice and posts information to account</td>
</tr>
<tr>
<td><strong>9</strong></td>
<td></td>
</tr>
<tr>
<td><strong>10</strong></td>
<td></td>
</tr>
<tr>
<td>Receives petition and issues receipt notice</td>
<td></td>
</tr>
<tr>
<td><strong>11</strong></td>
<td></td>
</tr>
<tr>
<td>Receives receipt notice and posts information to account</td>
<td></td>
</tr>
<tr>
<td><strong>12</strong></td>
<td></td>
</tr>
<tr>
<td>Adjudicates and sends approval notice</td>
<td></td>
</tr>
<tr>
<td><strong>12</strong></td>
<td></td>
</tr>
<tr>
<td>Receives approval notice and posts information to account</td>
<td></td>
</tr>
</tbody>
</table>

**Key**

- HR
- Employee
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Please note that this is a general timeline. The actual time required to complete a case may vary. For more specific timelines, please post to your VISANOW Communication Center. USCIS reserves the right to adjudicate cases. Scanned copies of the required documents are generally sufficient. Appointment times have not been included in this timeline.