

## Immigrant Visa: Obtaining a Labor Certification for an Employment-based Immigrant Visa

**Effective Date:** January 1, 2011  
**Function:** Human Resources  
**Contact:** Vice President of Human Resources

### Basis for Procedure

One way for a noncitizen to be sponsored for an immigrant visa is for an employer to submit a petition on behalf of the noncitizen to the United States Citizenship and Immigration Services (USCIS) for an employment-based immigrant visa.

The employment-based immigrant visa is designed to help achieve an objective of the Immigration Act of 1990: the attraction to the United States of persons whose occupational skills are in short supply.

To be eligible for such a visa, the noncitizen must belong to one of the USCIS' "preference classifications" of workers. For some preference classifications, the employer must obtain a labor certification.

This document describes the process by which an employer obtains a labor certification, if one is required, as part of a petition for an employment-based immigrant visa on behalf of a noncitizen. For more information, see the following documents:

- [Immigrant Visa \(Permanent Residency\)](#)
- [Immigrant Visa: Petitioning for an Employment-Based Immigrant Visa](#)
- [Immigrant Visa: Preference Classifications for Employment-Based Immigrant Visas](#)

### Legal Counsel

The Research Foundation (RF) has retained services of Harris Beach PLLC, Attorneys at Law firm to assist with all immigration issues. To learn more about the firm you may visit their website at <https://www.harrisbeach.com/>.

The RF strongly recommends that noncitizens use Harris Beach PLLC to work in cooperation with the operating location in this complicated process. You can contact Leonard J. D'Arrigo, Partner directly at 518-701-2770 ([ldarrigo@harrisbeach.com](mailto:ldarrigo@harrisbeach.com)).

### Labor Certification

Preference Classification	Labor Certification Required?	
	Yes	No

Priority workers, including: <ul style="list-style-type: none"> <li>• noncitizens of extraordinary ability</li> <li>• outstanding professors and researchers</li> <li>• managers and executives subject to transfer to the US</li> </ul>		X
<ul style="list-style-type: none"> <li>• noncitizens of exceptional ability</li> <li>• advanced degree professionals.</li> </ul>	X	
<ul style="list-style-type: none"> <li>• professionals with bachelor's degrees not qualifying in the second preference</li> <li>• skilled workers</li> <li>• unskilled workers.</li> </ul>	X	

A labor certification is a document issued by , at the U.S. Department of Labor (DOL) declaring that the employer has established that there are no qualified US workers willing and available to take the job the appropriate wages and working conditions, for which the noncitizen is needed.

### Obtaining a Labor Certification

Working with the state and federal labor departments, the employer must test the labor market by advertising the positions.

The recruitment campaign cannot be tailored exclusively so that only the noncitizen the employer wishes to hire will qualify. US workers who respond to the recruitment process can only be rejected for legitimate, business-related reasons.

**Note:** The operating location's regular procedures for recruitment, affirmative action, and hiring must be followed.

The labor certification application is [Form ETA 9089](#), the "Application for Permanent Employment Certification." Labor certification applications are now processed through the PERM (Program Electronic Review Management) system.

Under PERM the employer files the labor certification application with the DOL, but does not include supporting documentation at the time of filing. The ETA 9089 is initially reviewed by the computer and either approved or selected for an audit.

Before filing ETA 9089 employers must:

- Obtain a prevailing wage determination from the SWA
- Conduct recruitment and post notice of the filing
- Develop and retain documentation of compliance in case of an audit.

**Note:** If a required labor certification is in process, the affected noncitizen has no right to work, unless the noncitizen has work authorization through another status.

### Submitting Form ETA 9089

[Form ETA 9089](#) can be filed electronically or by mail. Only employers and employer's attorneys or agents can prepare applications using the online system. The employer must register to use the PERM Online system and then sub-accounts can be created for attorneys or agents.

Details on PERM and registering can be found at: [www.plc.doleta.gov](http://www.plc.doleta.gov) ( A warning window will pop up when you access this Web site. You are authorized to use the site and may hit OK).

**Note:** Campus representative should contact RF Central Office for help in determining who is eligible for a sub-account.

[Form ETA 9089](#) can be found on the [Department of Labor Web site](#).

To maintain uniformity throughout the Research Foundation campuses should use RF Central Office information when completing Part C, and campus information for Part D on the ETA 9089.

## Fees

The operating location is required to pay all costs related to the preparation of the labor certification application. This includes all attorney fees and advertising costs. The operating location is not required to assume all other costs of the permanent residence process.

It is generally allowable to charge this fee to the award/grant; however, a campus representative should work with the sponsored program administrator to verify that this is an allowable charge on the award.

## Definitions

None

## Related Information

None

## Forms

None

## Change History

Date	Summary of Change
December 9, 2022	Updated to reflect the recommended immigration attorney, Harris Beach PLLC's contact information; and updated with the new template format.
July 1, 2015	Updated Fragomen & WHO contact information
December 1, 2009	Updated Fragomen contact information
October 11, 2007	Updated to reflect change to form ETA 9089, Information on PERM and fees
July 24, 2006	Updated Immigration and Naturalization Service (INS) to United States Citizenship and Immigration Series (USCIS)
July 5, 2005	Updated the recommended Legal Counsel to use for Employment-Based Immigration Visas