
NAFSA

Association of
International Educators

The NAFSA Adviser's Manual

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4. What constitutes adequate recruitment for the job in question
5. The standards for rejecting a U.S. worker during recruitment and how to document a recruitment effort
6. The importance of filing deadlines and timely action

The burden of proof for obtaining labor certification is on the employer who seeks an alien's entry for permanent employment.

† See S. Rep. No. 748, 89th Cong., 1st Sess., reprinted in 1965 U.S. Code Cong. & Ad. News 3333-3334.

11.3.3.1 Uniqueness of the labor certification recruitment requirements

The labor certification process implements a statutory mandate to protect U.S. workers; it was not developed to assist an employer in filling a position with a particular candidate. As such, the labor certification process departs in important ways from how the real business world actually works, most notably:

- In the real world, an employer will consider the candidate who is *best* qualified for the job. In the labor certification world, employers can reject a U.S. applicant only on the basis that he or she did not possess one of the required *minimum* qualifications for the job. It does not matter whether the alien worker is better qualified, unless the alien worker will be employed as a college teacher or is of exceptional ability in the sciences or arts (the only exception to this rule is for college and university teaching positions);
- In the real world, the salary offered is set by the market, the type of employer, and negotiation; in the labor certification world, the salary offered has to meet a statistically determined *prevailing wage*.
- The labor certification process requires the U.S. employer to take steps to recruit U.S. workers that may not be ordinarily done outside of the labor certification process.
- A DOL certifying officer (CO) makes the final decision to grant or deny the labor certification based on the information included in the employer's labor certification application. If audited before the CO certifies the application, the employer must respond to the CO's audit inquiries, and may have to document recruitment efforts and compliance with DOL regulations.

11.3.4 TIMELINES AND TIME PERIODS

† Source, and for more details about time calculations: [PERM FAQs: Set 9](#).

Two "types" of time calculations are used by PERM: *timeline* calculations and *time period* calculations.

1. *Timelines* are the number of days prior to or after a required event. For example, verifying that advertisements did not run less than 30 days but no more than 180 days from the date of filing is a *timeline* calculation.
 - When calculating timelines, the day the event occurred is not counted. The next day is counted as day one and the last day of the event is included in the count.