

Foreign Labor Certification Overview

The U. S. Department of Labor issues labor certifications for permanent and temporary employment under the following programs:

- [Permanent Labor Certification](#)
- [H-1C Nurses in Disadvantaged Areas](#)
- [H-1B Specialty \(Professional\) Workers](#)
- [H-2A Temporary Labor Certification \(Seasonal Agricultural\)](#)
- [H-2B Temporary Labor Certification \(Non-agricultural\)](#)
- [D-1 Crewmembers Certification](#)

A brief description is provided for those labor certifications that are applicable to residents of the U. S. Virgin Islands.

Permanent Labor Certification

A permanent labor certification issued by the U. S. Department of Labor (USDOL) allows an employer to hire a foreign worker to work permanently in the United States/Virgin Islands. In most instances, before the employer can submit an immigration petition to the Department of Homeland Security's [U.S. Citizenship and Immigration Services \(USCIS\)](#), the employer must obtain an approved labor certification request from the USDOL's Employment and Training Administration (ETA). The USDOL must certify to the USCIS that there are no qualified U.S. workers able, willing, qualified and available to accept the job at the prevailing wage for that occupation in the area of intended employment and that employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers.

To improve the operations of the permanent labor certification program, ETA published a final regulation on December 27, 2004, which required the implementation of a new re-engineered permanent labor certification program by March 28, 2005.

Applications filed under the regulation in effect prior to March 28, 2005, will continue to be processed at the appropriate Backlog Elimination Center under the rule in effect at the time of filing. As of March 28, 2005, applications (Form 750) will no longer be accepted under the regulation in effect prior to March 28, 2005, and instead new applications ([ETA Form 9089](#)) will need to be filed under PERM at the appropriate National Processing Center. Only if an employer chooses to withdraw an earlier application and refile the application for the identical job opportunity under the refile provisions of PERM will a previously filed application be processed under the PERM regulation.

The USDOL processes applications for Alien Employment Certification (ETA Form 9089). The date the labor certification application is filed is known as the filing date and is used by USCIS and the Department of State as the priority date. After the labor certification application is approved by the USDOL, it should be submitted to the USCIS service center with an I-140, Immigrant Petition for Alien Worker.

Prevailing Wage Determination. Prior to filing [ETA Form 9089](#), the employer must request a prevailing wage determination ([Prevailing Wage Determination Form](#)) from the State Workforce Agency (SWA)/Virgin Islands Department of Labor–Job Service Division (VIDOL-JSD). The prevailing wage is defined as the average wage paid to similarly employed workers in the requested occupation in the area of intended employment.

Pre-Filing Recruitment Steps. In addition, all employers (except for those applications involving college or university teachers selected pursuant to a competitive recruitment and selection process, Schedule A occupations) **must** attest, in addition to a number of other conditions of employment, to having conducted recruitment prior to filing the application.

Mandatory recruitment must be conducted at least 30 days, but not more than 180 days from filing the application. Placement of a job order with the SWA/VIDOL–JSD for a period of 30 days, as well as, an advertisement on two separate Sundays in a newspaper of general circulation.

A [Fast Fax Job Order Form](#) is provided to satisfy the SWA requirement.

Filing. The USDOL recommends that employers file their application electronically. Not only is electronic filing faster, but it will also ensure that the employer has provided all required information, as an electronic application cannot be submitted if the required fields are not completed.

Employers, however, have the option of filing their application by mail as follows:

Atlanta National Processing Center
Department of Labor
Employment and Training Administration
Harris Tower
233 Peachtree Street, Suite 410
Atlanta, Georgia 30303
Phone: (404) 893-0101
Fax: (404) 893-4642

Forms & Instructions

[ETA Form 9089](#)

[Instructions for ETA Form 9089](#)

[Permanent Online System](#)

For more information regarding Permanent Labor Certification filing, please visit the U. S. Department of Labor-Foreign Labor Certification website at:
<http://www.foreignlaborcert.doleta.gov/hiring.cfm>

H-1B Specialty (Professional) Workers

The H-1B program allows an employer to temporarily employ a foreign worker in the U.S./V. I. on a nonimmigrant basis in a specialty occupation or as a fashion model of distinguished merit and ability. A specialty occupation requires the theoretical and practical application of a body of specialized knowledge and a bachelor's degree or the equivalent in the specific specialty (e.g., sciences, medicine and health care, education, biotechnology, and business specialties, etc.).

The H-1B certification is valid for the period of employment indicated on the Labor Condition Application (LCA) for up to three years however, it can be renewed for a maximum continuous period of six years.

Each employer seeking an H-1B shall submit a completed Labor Condition Application (LCA) on [Form ETA 9035E](#) in the manner prescribed by the regulations. By completing and signing the LCA, the employer agrees to several attestations regarding an employer's responsibilities, including the wages, working conditions, and benefits to be provided to the nonimmigrant.

The employer may then submit a copy of the approved LCA to U.S. Citizenship and Immigration Services ([USCIS](#)) with a completed petition ([USCIS Form I-129](#)) requesting an H-1B classification.

Pre-Filing Steps.

Prevailing wage determination from the SWA/VIDOL- JSD ([Prevailing Wage Determination Form](#)).

Post the job notice for 10 consecutive days in at least two conspicuous locations at the place of employment.

Filing.

LCAs must be submitted electronically via the Department's [LCA Online System](#).

Employers submitting LCAs via the LCA Online System can expect a response in minutes or, in the case of a question regarding the prevailing wage source, within seven working days.

Employers with physical disabilities that prohibit them from filing electronic applications may submit a written request to file their labor condition applications via U.S. mail. Such requests must be made prior to submitting an application and should be addressed to:

Chief, Division of Foreign Labor Certification
Department of Labor
Room C-4312
200 Constitution Avenue, NW
Washington, DC 20210

For further information, contact [LCA Online System](#).

H-2B Certification for Temporary Nonagricultural Work

The H-2B nonimmigrant program permits employers to hire foreign workers to come to the U.S./V. I. and perform temporary nonagricultural work, which may be one-time, seasonal, peak load or intermittent and lasting for no longer than one year. The process for obtaining H-2B certification is similar to, but less extensive and time consuming, than permanent certification.

In the case of the H-2B certification, the USDOL decision is only an advisory to USCIS. The certification request is made by the employer using [Form ETA 750](#), and multiple openings of the same job and rate of pay may be on the same application. The certification is issued to the employer, not the worker, and is not transferable from one employer to another or from one worker to another. To allow time for processing delays and correction of application errors, the employer should file for H-2B at least 60 days, but not more than 120 days before the worker is needed.

Process for Filing

1. The prospective employer files a completed [Form ETA 750](#) in duplicate with the local State Workforce Agency (SWA) – Virgin Islands Department of Labor/Job Service Division (VIDOL-JSD).
2. The SWA/VIDOL-JSD instructs the employer on recruitment requirements, appropriateness of the wages and working conditions offered and refers qualified candidates to the employer for interviews.
3. The employer prepares a recruitment report summarizing the results of the effort. This recruitment report includes names and addresses of applicants and lawful reasons for not hiring the interviewees.
4. When evaluated, applications for certification shall be forwarded by the SWA/VIDOL-JSD to the National Processing Center (NPC) in Atlanta.
5. The USDOL NPC certifying officer will grant certification if he/she finds that qualified persons are not available and that the terms of employment will not adversely affect the wages and working conditions of workers in the U. S./V. I. similarly employed.
6. The certification or notice of denial thereof is to be used by the employer to support its visa petition filed with the district director of the USCIS. To obtain the H-2B work visa, the employer uses the [USCIS Form I-129, Petition for Nonimmigrant Worker](#). The Labor Certification Determination and the Form I-129 are submitted to the [USCIS](#) along with filing fees.
7. Because the USDOL decision is only an advisory to USCIS, there is no appeal process within the USDOL for denial for H-2B applications. Such appeals must be filed with the USCIS.
8. A candidate outside the U.S./V. I. must apply for a visa at the U.S. Consulate and the employer must provide copies of the above forms to the local USCIS service center.

Forms & Instructions

[Form ETA 750](#)

[Instructions for Form ETA 750](#)