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IT'S THE LAW

IMMIGRATION LAW IN THE HOSPITALITY INDUSTRY

Understanding Labor Certification Processing Times

For hospitality workers, the most common route to legal permanent resident ("LPR") status (a "green card") is through labor certification, the process by which a U.S. employer sponsors a foreign national for LPR status by showing that there are no U.S. workers "able, willing, qualified, or available" to fill the offered job, and that hiring a foreign worker will not adversely affect the wages of U.S. workers.

It is important for U.S. employers sponsoring foreign workers for LPR status through labor certification to be aware of current labor certification processing times so that business decisions relating to the foreign national's immigration status can be planned accordingly. It is also critical for employers contemplating filing a labor certification application on behalf of a foreign national worker to understand how long it can take for a labor certification to be approved, especially if the employer has locations in more than one

state and may have the option to sponsor a particular worker in a more efficient jurisdiction.

Applying for LPR status through labor certification involves three steps: (1) an Application for Alien Employment Certification ("labor certification") filed with the Department of Labor ("DOL"), (2) an Immigrant Visa Petition filed with the Immigration Service, and (3) a personal application for LPR status filed either with the Immigration Service (called "adjustment of status") or with an overseas consular post (called "consular processing").

Although each of the three steps in the permanent residence process is time consuming, the longest and most tedious step by far is the first one, labor certification. Because the labor certification application must be processed first by the State DOL (known as the "State Workforce Agency" or "SWA") and then by a Regional Office of the U.S. DOL, processing times vary by state. While in a handful of cases, a labor certifica-

tion can be processed in under a year (my firm recently had a labor certification for a Hotel Manager approved in seven months), in most cases processing takes many years.

The U.S. DOL publishes current labor certification processing times at <http://workforcsecurity.doleta.gov/foreign/times.asp>. In order to use this website you must know (1) whether your case is at the SWA or has been forwarded to the Regional DOL, and (2) whether your case was filed as a "regular permanent" case (in which the employer submits an application to the SWA, which issues specific instructions to the employer about where and when it must advertise the position) or as a "reduction in recruitment" or "RIR" case (in which the employer conducts its own recruitment for the position and submits the results to the SWA).

For example, if your case is at the SWA in DC, Maryland, or Virginia, you would look under "State Processing Times" on the DOL's website. DC, Maryland, and Virginia are all under the jurisdiction of the Philadelphia Regional DOL, so you will find them grouped together under the heading "Philadelphia." (See at right.)

The dates listed reflect the receipt dates of cases that each office is currently processing. As you can see, the District of Columbia is still working on cases (both regular permanent and RIR) received in April 2001, more than 2-1/2 years ago. Maryland is also backlogged more than 2-1/2 years for regular permanent cases, but is processing RIR cases filed about 2 years ago, in November 2001. Virginia is by far the most efficient of these three locations, with a backlog of a little more than 2 years for regular permanent cases, and only about 1-1/2 years for RIR cases.

Remember that these are only the processing times for the SWA (the state level). Once the SWA has processed your case they will forward it to the Regional DOL, and you can expect to wait anywhere from 1 month to more than three years for a decision on your



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labor certification application.

For example, as you can see from the chart at right, the Philadelphia Regional DOL has a backlog of about 7 months for regular permanent cases, and about 10 months for RIR cases.

Of course, labor certification is only the first step to becoming a permanent resident; after the labor certification is approved you must still go through steps two (the Immigrant Visa Petition) and three (the personal application for LPR status) of the permanent residence process.

Becoming a permanent resident, like most major life decisions, requires careful planning and thought. Alternatives to the cumbersome and time-consuming labor certification process exist. If labor certification is the most appropriate option for you, the headaches and frustrations of the process can be minimized with sound legal advice and careful strategic planning. Therefore, if you are considering applying for LPR status you should consult a qualified immigration attorney to discuss the feasibility and timing of the various options available.

Becki L. Young has been working in the field of immigration law since February 1995. Ms. Young's practice focuses on employment-based immigration law. She has represented employers in a variety of industries, providing advice on work permits and related immigration issues. Contact her to learn more or to schedule a personal consultation by calling (202) 232-0983 or e-mailing to youngb@blylaw.com. To receive her bi-monthly electronic newsletter "Recent Developments in Immigration Law" send an email with "subscribe" in the subject line to newsletter@blylaw.com.

STATE PROCESSING TIMES

(from <http://workforcsecurity.doleta.gov/foreign/times.asp>)

PHILADELPHIA

Program Title: District Of Columbia

Regular Permanent: April 2001

RIR: April 2001

Date Updated: December 2003

Program Title: Maryland

Regular Permanent: April 2001

RIR: November 2001

Date Updated: December 2003

Program Title: Virginia

Regular Permanent: August 2001

RIR: April 2002

Date Updated: December 2003

REGIONAL PROCESSING TIMES

(also from <http://workforcsecurity.doleta.gov/foreign/times.asp>)

Program Title: Philadelphia

Regular Permanent: May 2003

Reduction in Recruitment: February 2003

Updated: December 2003