

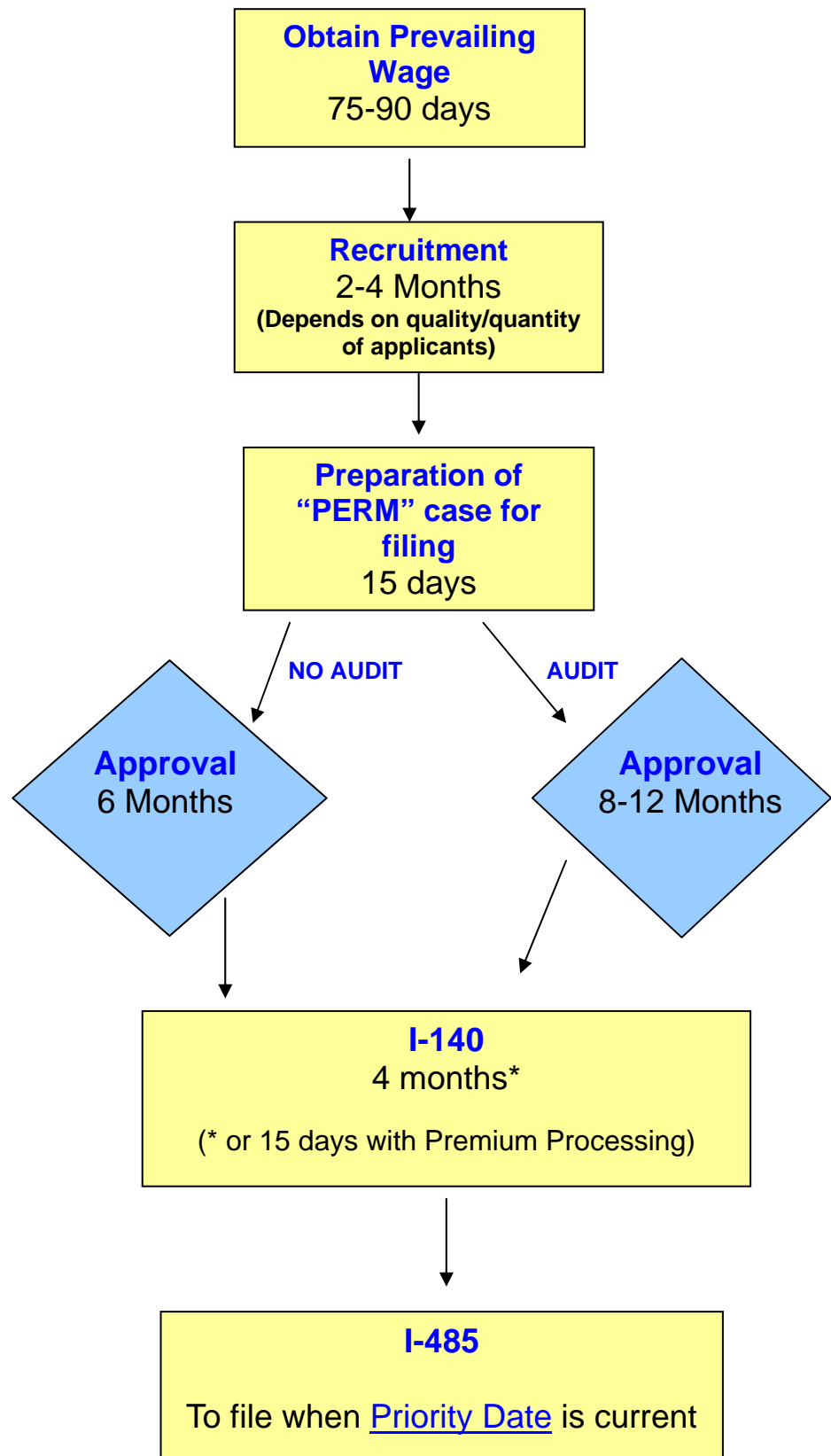


Shah & Kishore
AN IMMIGRATION LAW FIRM



employment based permanent resident guide

TIME LINE FOR EMPLOYMENT BASED PERMANENT RESIDENT PROCESS



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PHASE 1: LABOR CERTIFICATION PROCESS “PERM”

As you may be aware, the Labor Certification process is the first phase of your obtaining permanent resident status. In the Labor Certification process, the sponsoring employer must test the labor market to ascertain whether any qualified U.S. worker is ready, willing and able to take the position for which there is an opening.

Pre-Recruitment Preparation:

- A. Employee completes questionnaire submitted by Law Firm.
- B. Employee provides all documents requested by Law Firm.
- C. The position description listing all qualifications for the position including but not limited to experience and education is drafted by the employer.

Step 1: Obtain Prevailing Wage Determination (PWD) from the Department of Labor

Shah and Kishore will submit on behalf of the employer a request to obtain the prevailing wage for the position offered from the Department of Labor. The timeline for the PWD is **75-90 days**. If PWD determination is acceptable proceed to Step 2.

(STEPS 2-4 SHALL BE DONE CONCURRENTLY)

Step 2: Posting Notice

The employer must post notice of the job opportunity for at least **10 consecutive business days** at the office premises. Shah and Kishore will send the employer the document to post.

Step 3: Place Job Order with SWA

The employer must place a job order with the State Workforce Agency (“SWA”) for a period of **30 days**. The employer must wait **30 days** from the last day of the posting of the Job Order with the SWA to accept resumes from applicants. Therefore the total wait time since the day of filing a job order is **60 days**. Shah and Kishore will assist the employer to place the job order.



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Step 4: Place Advertisements

The employer must place two advertisements on two different Sundays in the newspaper of general circulation in the area of intended employment. Shah and Kishore will place the advertisement for the employer if requested.



THREE ADDITIONAL RECRUITMENT STEPS FOR

PERM requires that applications for professional jobs must have additional recruitment. The employer must conduct **3** of the following **10** (none can be repeated):

1. Job fairs
2. Employer's web site
3. Job search web site other than employer's (note that web page generated in conjunction with a print ad now counts as a website other than the employer's)
4. On-campus recruiting
5. Trade or professional organizations
6. Private employment firms
7. An employee referral program, if it includes identifiable incentives
8. A notice of the job opening at a campus placement office, if the job requires a degree but no experience
9. Local and ethnic newspapers, to the extent they are appropriate for the job opportunity
10. Radio and television advertisements.



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Step 5: Interview Candidates and Prepare Recruitment Report

The employer must contact and interview qualified candidates for the position within **14 days of receipt** of a resume. The employer must prepare a recruitment report that describes the recruitment steps taken and the results. Shah and Kishore will provide interview guidelines and a sample recruitment report to complete.

Step 6: Filing of the Labor Certification

On behalf of the employer and yourself we will electronically file ETA form 9089 with the Department of Labor. Please note that the PERM case can only be filed if after recruitment, no qualified U.S. worker is ready, willing, and able to take the position.

Step 7: Adjudication

The decision to **grant** or **deny** a labor certification is based on a decision of whether or not the employer has met the requirement that there are no U.S. workers who are able, willing, qualified and available for and at the place of the job opportunity.

The Department of Labor may also **audit** the case either on a random basis or based on an issue spotted on review of the case. In such case, we will submit all documentation regarding the recruitment conducted for the case and any other information that is requested.



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PHASE 2:

PETITION FOR ALIEN EMPLOYEE “I-140”

Upon approval of the PERM application, the second stage in obtaining an employment based permanent resident status is filing of an Immigrant visa petition (I-140) with the USCIS. The I-140 petition is filed by the employer on behalf of the alien beneficiary.

The adjudication time is generally **4 months (this may vary)**.

At this stage the USCIS allows filing of the I-140 petition in *premium processing* for an additional **\$1225.00 government filing fee**. Filing a case in premium processing ensures an adjudication from the USCIS within **15 days**.

At the I-140 stage, the USCIS will determine the following:

1. The employment classification of the position (EB-2 or EB-3).
2. Whether the company has the ability to pay the proffered salary.
3. Whether the employee meets the requirements for the position in the underlying approved PERM application. We will submit experience letter and educational documents.

What is an EB-2 case?

The case will be an EB-2 case if the requirements for the position require 1) a Master's Degree or 2) a Bachelor's Degree and five years of experience. Furthermore you must qualify by having the Master's Degree or U.S. Bachelor's degree equivalent.



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PETITION FOR ALIEN EMPLOYEE “I-140”

The USCIS has provided the following guidance as to whether your education and/or experience qualify you for the EB-2 category. If you have **one** of the following, you will qualify:

- **U.S. Master's degree** - as long as it is in the field required no additional documents would be required;
- **4 year Bachelor's degree + 2 year Master's degree** - with degrees in the same or related fields this will generally be considered the equivalent to a U.S. Master's degree with no additional documents required;
- **3 year Bachelor's degree + 3 year Master's degree** - with degrees in the same or related fields, this will generally be equivalent to a U.S. Master's degree with no additional documents required;
- **3 year Bachelor's degree + 1 year postgraduate diploma + 2 year Master's degree** - with degrees in the same or similar field this would generally be considered the equivalent of a U.S. Bachelor's degree plus one additional year of education so the beneficiary would also need to have 5 years progressive experience.

Note: If the postgraduate diploma is determined to be progressive postgraduate education that is a continuation of the 3 year bachelor's degree, it is possible that this would be considered the equivalent to a U.S. Master's degree and there would be no need to establish 5 years progressive experience;

- **3 year Bachelor's degree + 2 year Master's degree** - Generally this would be the equivalent of a U.S. Bachelor's degree + 1 year and would require 5 years progressive experience to qualify under the 2nd preference category;
- **3 year Bachelor's degree + 2 year Master's degree + 5 years progressive, post-Master's degree experience** - Generally the educational degrees would be determined to be the equivalent of a U.S. Bachelor's degree + 1 year and the beneficiary would meet the statutory requirement;
- **3 year Bachelor's degree + 2 year Master's degree + 1 year Postgraduate Diploma** - Generally this would be the equivalent of a U.S. Bachelor's degree + 1 year and would require 5 years progressive experience to qualify under the 211a preference category.

Note: If the postgraduate diploma is determined to be progressive postgraduate education that is a continuation of the 3 year Bachelor's degree or the 2 year Master's degree it is possible that this would be considered the equivalent to a U.S. Master's degree and there would be no need to establish 5 yrs progressive experience.



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PHASE 3:

**ADJUSTMENT OF STATUS
“I-485”**

The final phase in obtaining a U.S. “green card” in the application for permanent residence is the adjustment of status for foreign nationals in the United States. It is at this stage where the employee (and family members) obtains their permanent resident status.

An employee can only file the I-1485 petition if their [priority date](#) is current.

The [priority date](#) is essentially a quota that limits the number of employment based approvals. **The time frame for filing the adjustment of status application depends upon the priority date.**



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