



Insight

Expediting Immigrant Labor Certification: What Are the Options?

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Executive Summary

- Employers are increasingly turning to foreign labor to fill job openings – of which there are almost two for every unemployed American worker – but cannot rely on consistent, efficient access to these workers due to bureaucratic challenges associated with the immigration system.
- To hire foreign workers, employers must first complete a permanent labor certification (PERM) which, due to its current one-year processing time, makes supplementing native-born labor with immigrants an unrealistic solution to the U.S. labor shortage.
- Reforming the PERM process would provide a long-term solution to improve access to high-skilled immigrants but would likely be a lengthy process; in the meantime, updating the Department of Labor's Schedule A, a list of occupations facing native-born worker shortages, to reflect current labor needs would allow many employers to bypass the PERM process and expedite the hiring of foreign workers.

Introduction

As the United States is currently facing a labor shortage in which there are 1.7 job openings for every unemployed American worker, many employers are turning to foreign labor to fill positions. Yet employers cannot rely on consistent, efficient access to high-skilled immigrant labor due to bureaucratic challenges associated with the immigration system.

Before filling an open position with a foreign worker, an employer must prove to the Department of Labor (DOL) that it has attempted to hire a native-born worker but could not due to an insufficient supply. This is done through the permanent labor certification (PERM) process, which currently takes between [eight months to a year](#) to complete, making immigrant labor an unrealistic solution to the U.S. labor shortage.

Reforming the PERM process would provide a long-term solution to more efficient access to permanent employment-based visas, but such a change would likely take significant time. An alternative and shorter-term solution is to update DOL's [Schedule A](#), a list of occupations that the agency has predetermined face an insufficient supply of qualified U.S. workers. Despite significant changes to the U.S. labor market, Schedule A has not been updated in over three decades. Updating the list to reflect current labor needs would allow many employers to bypass the PERM process and expedite the hiring of foreign workers in industries with the greatest labor shortages.

Employers Turn to Foreign Labor

There are currently 1.7 job openings for each unemployed U.S. worker. According to the latest Job Openings and Labor Turnover Survey data, the industries with the most job openings, and therefore most likely to benefit from the introduction of foreign labor, are the “professional and business service” and “education and health

service” industries with [1.8 million](#) and [1.9 million](#) openings, respectively.

Employers are increasingly turning to foreign labor to help fill job openings. According to Envoy’s 2023 Immigration Trends Report, [87 percent](#) of U.S. employers are currently recruiting and hiring foreign national employees. Despite the demand for foreign labor, however, visa caps force domestic employers to compete for the limited number of available visas at a time when demand for foreign employee sponsorship is at an [all-time high](#). Approved petitions face the further challenge of extensive processing times, which remain elevated compared to pre-pandemic conditions.

The PERM Process

Before filling open positions with foreign workers, an employer must prove to DOL that it has attempted to hire domestically but could not due to an insufficient supply of U.S. workers. This is done through the PERM process, which requires employers to submit a significant amount of paperwork to DOL: Employers must define the duties of the position, post multiple hiring notices to attempt to hire U.S. workers first, file forms detailing these efforts, and submit a prevailing wage request, which promises to pay the foreign worker the same wage as an American in the same role.

The average processing time for a PERM certification in 2022 was approximately [eight months to a year](#). Although 2022 saw higher-than-usual processing times, the PERM process remains time-consuming under normal conditions: In 2020 the average processing time was [four to ten months](#). Currently, a PERM certification is required for H-1B, E-B2, and E-B3 work visas. So, any employer hiring for specialty occupations, professions requiring advanced degrees, and skilled workers is looking at a year-long wait for immigrant workers, including those in the “professional and business service” and “education and health service” industries, which are facing the greatest number of job openings. As a result, supplementing native-born labor with foreign workers is an unrealistic solution to the U.S. labor shortage under the current permanent employment-based immigration system.

Possible Reforms

Streamlining the PERM process would shorten processing times, a long-term solution to the challenge that employers face in accessing permanent employment-based visas. This kind of reform has not been introduced since President Obama announced an executive action to modernize the PERM program in 2014. (While the Obama DOL submitted a [draft PERM modernization regulation](#) to the Office of Management and Budget for initial review, the administration never implemented a final regulation.) Reforming the PERM process would likely take significant time and is therefore not a promising solution for improving employers’ near-term access to foreign labor.

A more efficient and short-term solution to accessing foreign labor would be to update DOL's Schedule A. The [Immigration and Nationality Act of 1965](#) established the list and gave DOL's secretary authority to revise it at "any time upon his own initiative or upon a written petition of any person requesting the inclusion or omission of any occupation...." In the late 1960s and early 1970s, the Schedule A requirements were revised to include an annual renewal of Schedule A designation. Approximately a decade later, DOL proposed another change that required employers to conduct a search for native-born workers to fill job openings before turning to foreign labor. Since the creation of Schedule A, the list of occupations has fluctuated according to labor force needs. DOL, however, has not updated Schedule A in over three decades, so today only physical therapists, nurses, and immigrants with exceptional ability in the arts and sciences are listed as in-demand workers, which is an incomplete representation of current labor force needs.

As DOL has predetermined that the occupations covered by Schedule A lack sufficient U.S. workers to fill open positions, employers hiring for listed occupations are able to bypass most of the PERM process and are only required to obtain the prevailing wage determination and submit the appropriate documentation to U.S. Customs and Immigration Services. As a result, employers hiring workers covered by Schedule A benefit from visa processing time that is reduced by approximately [six months](#). If Schedule A were updated to include more occupations within the professional, business, education, and health sectors, employers in industries facing the most job openings would be better able to hire foreign workers, mitigating the labor shortage.

Conclusion

Employers are increasingly turning to immigrant labor to fill job openings but face about a year of bureaucracy in the process. Reforming PERM would shorten processing times for permanent employment-based visas but would likely take significant time and is therefore not a promising solution for improving employers' near-term access to foreign labor. Instead, a more efficient and short-term solution to accessing foreign labor would be to update DOL's Schedule A to reflect current labor needs, allowing employers in industries facing the greatest labor shortages to more easily hire foreign workers.