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PERM Delays At The Department Of Labor

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PERM, the first step in most permanent residency applications, has always been a slow and technical process. Unfortunately, the long wait continues according to the Department of Labor's (DOL) recently updated processing times for requests for prevailing wage determination (PWD) and the actual PERM applications.

Requests for PWD

As of March 31, 2023, the National Prevailing Wage Center (NPWC) is processing PWDs requested in January 2022. Additionally, the DOL is processing redeterminations for PWD requests submitted in June 2022. The OFLC is randomly completing applications outside of the typical processing table.

Forms ETA 9089, PERM Applications

As of March 31, 2023, the DOL is processing PERM applications filed in July 2022. On average it takes DOL 271 days (approximately 8 1/2 months) for case adjudication. Audit review remains at 363 days from the filing date.

Increased Wave of Audit Requests and Denials

Based on various sources of data, the DOL's rate of "random" audit requests appears to have increased. In prior years, audit rates were below 5 percent. Recently, these requests have become more common, with processing times of three to four months. Additionally, inconsistent adjudication of PERM applications has garnered national attention and has resulted in a surprising wave of denials without audit requests. In response to advocacy by the American Immigration Lawyers Association and other sources, the DOL appears to have backtracked on these denials.

Updated processing times details can be found here: <https://flag.dol.gov/processingtimes>.

Strategies

As the increased processing times for both prevailing wage determinations and PERM applications create significant challenges for sponsoring employers and foreign nations, there are new strategies to avoid interruptions in work authorization. First, sponsoring employers should consider initiating PERM processes as far in advance of H-1B or L-1 max-out dates as possible to avoid potential gap in work authorization and ensure employees' ability to remain in the U.S. Historically, two years before the maximum period of stay where applicable for H-1B and L visa holders was sufficient. Currently, three years before their maximum stay often seems more reasonable.

Second, there are often opportunities to batch cases, which can eliminate the lengthy wait times associated with, for example, prevailing wage processing. Third, to be successful in this climate, PERM processes must be combined with strategic consideration of the foreign national's entire immigration life cycle. For example, with lengthy backlogs for many Indian and Chinese nationals, starting the PERM process early is only one part of the puzzle – if the individual is on an L visa, switching them to an H-1B is often necessary and should be started at the outset to take advantage of the ability to extend H-1Bs beyond six years.