

## Employment-Based Immigration: Third Preference EB-3, Skilled Workers, Professionals Holding Bachelor's degree and Unskilled Workers

### **Employment-Based Immigration: Third Preference EB-3**

You may be eligible for this immigrant visa preference category if you are a skilled worker, professional, or other worker.

- **“Professionals”** are persons whose job requires at least a U.S. baccalaureate degree or a foreign equivalent and are a member of the professions. You must be able to demonstrate that you possess a U.S. baccalaureate degree or foreign degree equivalent, and that a baccalaureate degree is the normal requirement for entry into the occupation. You must be performing work for which qualified workers are not available in the United States. A Permanent Employment Certification (PERM) and a permanent, full-time job offer are required.
- **“Skilled workers”** are persons whose job requires a minimum of 2 years training or work experience, not of a temporary or seasonal nature. A Permanent Employment Certification (PERM) and a permanent, full-time job offer are required.
- The **“other workers”** subcategory is for persons performing unskilled labor requiring less than 2 years training or experience, not of a temporary or seasonal nature. You must be capable, at the time the petition is filed on your behalf, of performing unskilled labor (requiring less than 2 years training or experience), that is not of a temporary or seasonal nature, for which qualified workers are not available in the United States. A Permanent Employment Certification (PERM) and a permanent, full-time job offer are required.

### **Requirement of Individual PERM (Permanent Labor Certification) approved**

A PERM (Permanent Employment Certification) is required to be approved by the US Department of Labor prior to the filing of the EB-3 Petition before USCIS.

### **Ability to Pay**

Any petition filed by or for an employment-based immigration which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established (date PERM is filed) and continuing until the beneficiary obtains lawful permanent residence.

Acceptable ability to pay documentations may include the following:

**(1) Net income\*\***

The initial evidence reflects that the petitioner's net income is equal to or greater than the proffered wage.

**(2) Net current assets\*\***

The initial evidence reflects that the petitioner's net current assets are equal to or greater than the proffered wage. Only the petitioner's current assets, defined as those expected to be converted into cash within a year, may be considered. Further, the petitioner's current assets cannot be viewed as available to pay wages unless reduced by the petitioner's current liabilities, defined as those liabilities to be paid within a year. USCIS will consider such net current assets, i.e., its current assets minus its current liabilities, in determining ability to pay.

**(3) Employment of the beneficiary**

The record contains credible verifiable evidence that the petitioner not only is employing the beneficiary but also has paid or currently is paying the proffered wage.

\*\*Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay.

Note: USCIS has also considered that the overall magnitude of the entity's business activities should be considered when the entity's ability to pay is marginal or borderline, including years in business, reputation within the field, number of employs, whether the petition is filed to replace a person already holding the same position or to create a new position within the company, financial stability of the company, etc.

**Portability Provision**

The beneficiary of a pending or approved I-140 which was concurrently filed with I-485 Applications to adjust status can port or change employers if the I-485 has been pending for 180 days or more. The new employer shall provide USCIS with a letter determining that there is an offer of permanent full-time employment for the beneficiary and that the new position is the same or similar occupational classification for the initial I-140 petition filed by first employer.

When making a determination if the new employment is the **"same or similar"** occupational classification in comparison to the employment in the initial I-140, adjudicators normally consider the following factors:

A. Description of the job duties contained in the Permanent Employment Certification or the initial I-140 and the job duties of the new employment to determine if they are the “same or similar” occupational classification.

B. The DOT code and/or SOC code assigned to the initial I-140 employment for petitions that have a certified Permanent Employment Certification or consider what DOT and/or SOC code is appropriate for the position for an initial I-140 that did not require a certified Permanent Employment Certification. Then consider the DOT code and/or SOC code, whichever is appropriate for the new position to make a determination of “same or similar” occupational classification.

C. A substantial discrepancy between the previous and the new wage.

The relevant inquiry is if the new position is the same or similar occupational classification to the alien’s I-140 employment when considering the beneficiary’s new position and job duties and not the geographic location of the new employment. A difference in the wage offered on the approved labor certification, initial I-140 and the new employment should not be used as a basis of a denial. However, a substantial discrepancy between the previous and the new wage may be taken into consideration as a factor in determining if the new employment is “same or similar.”

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