



Permanent (PERM) Labor Certification Program

PERM Appeals Submission and Practice Tips

June 13, 2018

**Office of Foreign Labor Certification (OFLC)
Atlanta National Processing Center (ANPC)**

Disclaimer



This presentation is intended for training purposes only and does not carry the force of legal opinion.

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Department of Labor: PERM Program





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Department of Labor: Overview



- I. The PERM Appeal Process - Introduction and Overview
- II. Common Issues
- III. Post Board of Alien Labor Certification Appeals (BALCA) Actions
- IV. Filing Tips
- V. Methods of Submission
- VI. Uploading Appeal Requests Through the Permanent Online System
- VII. Resources for PERM Labor Certification Applications



Section I

The PERM Appeal Process - Introduction and Overview



What is the PERM Appeal Process?

- ***Per 20 CFR 656.24(g)***, it is an opportunity for an employer to **request a Certifying Officer (CO) reconsider** denial of an PERM labor certification application (ETA Form 9089)
- ***Per 20 CFR 656.26***, it is an opportunity for an employer to directly **request BALCA review** a CO's decision to deny an ETA Form 9089



Request for Reconsideration (Reconsideration) VS. Request for Review (Review)

Reconsideration	Review
<ul style="list-style-type: none">▪ 20 CFR 656.24(g)(1)	<ul style="list-style-type: none">▪ 20 CFR 656.26
<ul style="list-style-type: none">▪ May not be used to “appeal” revocation of certifications	<ul style="list-style-type: none">▪ May be used to “appeal” revocation of certifications
<ul style="list-style-type: none">▪ The CO will not consider evidence the employer did not previously submit	<ul style="list-style-type: none">▪ May only include evidence the CO considered to deny the application
<ul style="list-style-type: none">▪ The CO (OFLC) makes the final decision	<ul style="list-style-type: none">▪ BALCA makes the final decision



PERM Appeal Process Overview

- The ANPC receives PERM appeals (Request for Reconsideration or Request for Review)
 - All appeal requests **must** be filed with ANPC
 - The ANPC **reviews and analyzes** all Requests for Reconsideration to make a decision
 - The ANPC **only** prepares and submits a case file to BALCA for Requests for Review. No ANPC review involved.



Appeal Process Overview (continued)

- Requests for Reconsideration
 - The CO will either **overturn** or **uphold** the initial denial reason(s)

- The CO may request additional information through a Request for Information (RFI) letter prior to making a final decision
 - The employer must respond to the RFI within the allotted time-period (usually fifteen (15) days)
 - If the employer fails to timely respond, the ANPC will adjudicate the Request for Reconsideration based on the information provided in the initial request
 - If the employer timely responds, the CO will consider the information the employer provided (in addition to the initial arguments the employer made) to adjudicate the Request for Reconsideration



Appeal Process Overview (continued)

- An **overturn** occurs when the CO makes a favorable decision to re-evaluate the denial reason(s) and either:
 - Certifies the application; or
 - Resets the application for additional processing.

- An **uphold** occurs when the CO agrees with the denial reason(s)



Appeal Process Overview (continued)

- If upheld, the CO will document the reason(s) why he or she did not accept the employer's arguments in a Notice of Decision (NOD) letter
 - The employer has **30 days to respond to a NOD**
 - If the employer does not timely respond, OFLC will **administratively withdraw** the Request for Reconsideration from processing. OFLC will **not** forward it to BALCA for Review.
 - If the employer timely responds and seeks to continue, OFLC will forward the Request for Review to BALCA

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Section II

Common Issues



- **There are two options for filing an appeal:**
 - Request for Reconsideration (Reconsideration)
 - Request for Review (Review)

- **How does an employer submit a request for reconsideration or review to the ANPC?**
 - The employer must clearly identify in its cover letter that it is making a Request for Review
 - If the employer does not specify the type of request, the ANPC will process the case as a Reconsideration
 - If the employer requests both Reconsideration and Review, the ANPC will process the case as a Reconsideration



Can an employer modify the information it submitted on the ETA Form 9089?

- **No.** An employer **cannot** make modifications to the ETA Form 9089 after it has been filed. 20 CFR § 656.11(b).

- If the ANPC denies the application, the employer may request Reconsideration within 30 **calendar** days from the date of the denial letter. If the CO:
 - **Accepts the employer's request**, the CO will make the change(s) to the ETA Form 9089 and certify the application or reset it for additional processing; or,
 - **Does not accept the employer's request**, the CO will issue a NOD informing the employer that it may make a **Request for Review with BALCA**, affirmatively in writing, no later than thirty (30) calendar days from the date on the NOD.



- **What happens after the CO makes a decision to uphold a Request for Reconsideration?**
 - If, after considering the Request for Reconsideration, the CO makes a decision to uphold the reason(s) for denial, the employer will receive a NOD letter
 - The NOD letter will outline the reason(s) for upholding the denial
 - The employer has 30 days to respond to the NOD letter



- **What happens after the CO makes a decision to uphold a Request for Reconsideration? (continued)**
 - If the employer does not respond to the NOD letter within 30 days, OFLC will administratively withdraw the request
 - If the employer responds to the NOD letter within 30 days with a Request for Review, OFLC will forward the request to BALCA. The employer will receive e-mail notification confirming OFLC sent the case file to BALCA.



- **If the employer filed a Request for Reconsideration, can the employer later change it to a Request for Review?**
 - If less than 30 days have passed from the date of Final Determination, the employer may change its Request for Reconsideration to a Request for Review

- **How can an employer check the status of a Request for Reconsideration?**
 - E-mail the ANPC help desk at plc.atlanta@dol.gov; or
 - Go to icert.doleta.gov and check the “Reconsideration Requests to the CO” processing times for general information.

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Section III

Post-BALCA Actions



What happens after BALCA makes a decision on a Request for Review?

- BALCA will notify, **in writing** (U.S. mail), both the CO and the employer when it has made a decision
- BALCA can either **uphold** or **overturn** the CO's decision
 - The ANPC will enter the decision to uphold or overturn a denial into the Permanent Online System. The case status in iCERT will either:
 - **For upholds** → revert to **“Denied;”** or
 - **For overturns** → show either **“In Process”** (if the case is reset for additional processing) or **“Certified”**

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- **What if the ANPC does not enter the BALCA decision into the Permanent Online System?**
 - You may:
 - Upload a copy of the BALCA decision to the Permanent Online System; or
 - E-mail a copy of the BALCA decision to the ANPC help desk at plc.atlanta@dol.gov.
 - Upon receipt, the CO will review the BALCA decision and enter the appropriate action into the Permanent Online System



- **What if the BALCA decision is not entered in the Permanent Online System? (continued)**
 - The employer also can check the Office of Administrative Law Judges (OALJ) website at www.oalj.dol.gov
 - Use the search functionality to determine whether BALCA has made a decision
 - A .PDF document will be available for download if a decision has been made

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Office of Administrative Law Judges March 22, 2018

Featured Postings

Enhanced Access to ALJ Orders

Since the fall of 2000, OALJ has published all final ALJ decisions and selected orders on the public website at www.oalj.dol.gov. Effective Tuesday, October 31, 2017, OALJ expanded its website publication to include all ALJ final decisions, interim decisions, orders, and notices made in the adjudication of cases, with limited exceptions for documents that are FOIA exempt. This change was prospective only. Users can access these documents through both the [Case Status Lookup](#) and the [DMS Search](#) Option 2.

Case Status Lookup

The status of cases pending before OALJ and BALCA can be checked by using the [Case Status Lookup](#).

Status of Washington DC OALJ Office

The OALJ National Office location at 800 K St NW in Washington DC reopened on Monday, March 5, 2018.

Visitors must call ahead to arrange an escort. (202) 693-7300.

Secretary of Labor Ratifies Appointment of Administrative Law Judges

On Nov. 29, 2017, the Solicitor General submitted a brief in the United States Supreme Court in *Raymond J. Lucia and Raymond J. Lucia Companies Inc. v. Securities and Exchange Commission*, No. 17-130 (U.S.), asking the Court to decide whether the Commission's administrative law judges (ALJs) are inferior officers who must be appointed consistent with the Appointments Clause of the Constitution. The Solicitor General's brief takes the position that the Commission's ALJs are inferior officers.

Search Options

Option 1: Full Text by Topic

Search: ALL OALJ for:

[OALJ Advanced Search Page](#)

[Search all DOL](#)

Option 2: ALJ Decisions by Case Number, Name or Date

OALJ Case Number (yyyy/aaa/nnnnn): ACA

Claimant/Complainant:

Employer/Respondent:

Decision Date (mm/dd/yyyy):

[About DMS Search](#)


Enter foreign worker's name (claimant)

and/or

Enter Employer's Name

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Search Results

16549 Records matched your criteria. Please Click on Case Number to see the details of the case. Please Click on the Column Title to sort the results by that column.

Records 1 to 50

		Search Again		See next 50 Records	
Case Number	Decision Date	Claimant	Employer	DMS File	
1					
2					
3					
4					
5					
6					
7					View Document(s)
8					

Select "View Documents"



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Section IV

Filing Tips



Filing Tips and Information

- Make sure scanned documents are **clear and legible**
- Use the **upload function** in the Permanent Online System
- There is no longer a separate queue for **Government Error**
- Clearly indicate whether the employer is making a Request for Reconsideration (656.24(g)) or Review (656.26)
 - **Unspecified or both = Request for Reconsideration**



Filing Tips and Information (continued)

- If responding to a “**non-response**” denial, include the “**missing**” documentation and proof it was timely filed with the Request for Reconsideration
 - For example, if denied for “non-response to audit,” provide the audit documentation (with proof of submission)
- **Respond to the NOD letter.** If the employer does not respond timely, the ANPC will administratively withdraw the appeal request and conclude processing.
- Do **NOT** include information that was not part of the file at the time the employer submitted it (e.g. referral letters requested or received after the employer filed the application)



Filing Tips and Information (continued)

- Subscribe to the OFLC website (www.foreignlaborcert.doleta.gov) by entering your e-mail address to receive content updates, including FAQs
- Review www.oalj.dol.gov for BALCA-related information and decisions



Section V

Methods of Submission



Submission Instructions

1. Preferred Method: Upload documents to the Permanent Online System

- Provides a faster application processing time
- Reduces employer costs (e.g. no mailing cost)
- Can be done in four easy steps



Employer Benefits Related to Uploading

The employer receives many benefits, which include:

- **Immediate confirmation** of successful upload;
- **The ability to upload** each section under the respective drop-down;
- **Reduction in costs and burdens** from not having to submit documentation via mail, e-mail, or facsimile;
- **Streamlined process** for submitting responsive documents;
- **Expedited review** of PERM labor certification applications by connecting the responsive documents directly to the application; and
- **Integrity and receipt** of information submitted.

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Reminders

- The **maximum size** limit for saving a single uploaded document is **30MB**
- Recommend separating document(s) that exceed (or seem to exceed, if the exact size is not known) the 30MB limit into two or more documents
- For example:
 - Case A-12345-XXXXX Reconsideration – Part I
 - Case A-12345-XXXXX Reconsideration – Part II



2. Send Documents to ANPC via E-mail

Employer receives fewer benefits compared to uploading, including:

- **No costs** associated with e-mailing documentation;
- **Immediate acknowledgement** that the ANPC received the documentation; and
- **No delay** for ANPC to receive and process documentation.



3. Send Documents to ANPC via Mail Service

Although permissible, this method has many drawbacks to employer, which include having:

- Costs associated with sending documents to the ANPC via regular postal mail, certified mail, FedEx, UPS, etc.;
- Delay in the receipt and processing of documentation; and
- No confirmation of receipt.



Section VI

Uploading Appeal Requests Through Permanent Online System

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- The employer must log into the Permanent Online System and select the 'MY APPLICATIONS' tab, and then click on the "UPLOAD DOCUMENTS" sub-tab



Enter or check the case number (if displayed) that you wish to upload documents. NOTE: Documents can be uploaded up to 30 days past final decision d

Upload Documents

ETA Case Number:

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- The employer must enter the case number for the application in the “ETA Case Number” field and click on “Search”

Enter or check the case number (if displayed) that you wish to upload documents. NOTE: Documents can be uploaded up to 30 days past final decision date.

A close-up screenshot of a web form titled 'Upload Documents' in a blue header. Below the header, the text 'ETA Case Number:' is followed by a white text input field. To the right of the input field is a grey button with the text 'Search'. A red arrow points from the top-left towards the input field.A full screenshot of the 'Upload Documents' page. At the top, there is a navigation bar with tabs: 'HOME', 'MY APPLICATIONS', 'MY PROFILE', 'EMPLOYER DATA', and 'USER ACCOUNTS'. Below the tabs is a secondary navigation bar with links: 'CREATE CASE', 'SEARCH CASES', 'WITHDRAW CASES', 'SEARCH INCOMPLETE CASES', and 'UPLOAD DOCUMENTS'. The main content area contains the text: 'Enter or check the case number (if displayed) that you wish to upload documents. NOTE: Documents can be uploaded up to 30 days past final decision date'. Below this text is a form titled 'Upload Documents' with the label 'ETA Case Number:' and a text input field. The input field is highlighted with a dashed blue border. To the right of the input field is a 'Search' button.



Uploading Steps

The screenshot shows a web form titled "Upload Documents" with a blue header. It contains three required fields: "* Select File:" with a text input and a "Browse..." button; "* Category:" with a dropdown menu showing "Choose a category"; and "* Document Type:" with a dropdown menu. An "Upload" button is located at the bottom right. A red dashed box highlights the "Browse..." button.

After selecting "Upload Correspondence," it will need to click on the "Browse" button and locate the audit document that needs to be uploaded.

Below is a list of documents that are uploaded by an analyst or an external user. External user uploads are marked with a "(E)". Please click on the File Name link to open the document.

Documents For Case Number: [REDACTED]	Case Status: Appeal
---------------------------------------	---------------------



Uploading Steps (continued)

The maximum size limit for saving any one uploaded document(s) is 30MB. Please consider separating document(s) that exceed (or seem to exceed if the exact size is not known) the 30MB limit into two or more document upload and save events to avoid lost information. Selectable document sequence options, i.e., xyz 1, xyz 2, etc., and the Note's free-text data field are provided to assist stakeholders with document upload clarity.

The Note data field provides stakeholders with a maximum of 250 characters to provide additional document upload and save clarity. When appropriate, stakeholders may provide additional information pertaining to the uploaded document to be saved, e.g., document separation sequencing, uploading notations, clarifying previous document upload and save errors involving selection of the incorrect document type, etc.

Uploaded and saved documents must pertain only to the selected case. Do not combine documents for multiple cases. If combined documents are submitted, the case reviews may be delayed and/or denied for failure to follow instructions. The Note data field may not be used to explain any application issues or document content.

The screenshot shows a web form titled "Upload Documents" with a blue header bar. The form contains several fields: a "Select File:" field with a "Browse..." button; a "Category:" dropdown menu currently set to "Appeal"; a "Document Type:" dropdown menu with a list of options: "Appeal Miscellaneous", "Appeal RFI Response", "Appeal Withdrawal Request", "NOD Response", "Request for Reconsideration", and "Request for Review". The "Document Type:" dropdown is currently open, and the first option is highlighted. Below the "Document Type:" field is a "File Name:" field. To the right of the "File Name:" field is a character count "250 characters remaining" and a text area with up and down arrow icons. At the bottom right of the form is an "Upload" button.

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- The system will prompt the following appeal “Document Type” options:

* Category:

* Document Type:

Select a Document Type to upload

Appeal Miscellaneous

Appeal RFI Response

Appeal Withdrawal Request

NOD Response

Request for Reconsideration

Request for Review

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- **The employer can:**
- Upload and save several documents for the same case
- Select the “File”, “Category” and “Document Type.”
(Optional: “*File Name*” and “*Note*” for each document to be uploaded.)

<input type="checkbox"/>	Name	File Type
<input type="checkbox"/>	New G-28 for Case A-1 [redacted] docx	G-28 Documentation
<input type="checkbox"/>	Audit Response for Case A [redacted] docx	Audit Miscellaneous Documentation
<input type="checkbox"/>	Substitute for New Attorney for Case [redacted] docx	Substitute Attorney/Agent Documentation

Buttons below the table: Delete Selected Attachments, Save, Cancel

- Left click on “Save” and then “OK” to complete the last steps in uploading the documents in CMS

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- A view of the list of the documents uploaded, by document type, date uploaded, and any uploaded notes will be available, in addition to the name of the user that uploaded each document

File Name	Document Type	Date	Upload Note	User
[REDACTED] 2 for Employer and FW.docx	Audit Miscellaneous Documentation	04/26/2017	Attached is the employer's audit response for case [REDACTED] for ABC Employer and Foreign Worker Name.	uat1tester
Case [REDACTED]	SR RFI Response	04/26/2017	SR Response Case [REDACTED] to DOL's SR letter dated 4/23/2017.	uat1tester
Audit Response for Case [REDACTED] 4 for ABC Employer and First and Last Name of Foreign Worker.docx	Audit AAIR Documentation	04/26/2017		uat1tester
HD Inquiry Case [REDACTED] 4 for Employer and FW.docx	Help Desk Inquiry	04/26/2017	What is the status of my case?	uat1tester
HD Inquiry Case [REDACTED] 4 for Employer and FW.docx	Change of Address Request	04/26/2017	Please see my change of address.	uat1tester
New G-28 for Case [REDACTED] 4.docx	G-28 Documentation	04/26/2017	See my updated G-28.	uat1tester
Audit Response for Case [REDACTED] 4.docx	Audit Miscellaneous Documentation	04/26/2017		uat1tester
Substitute for New Attorney for Case [REDACTED] [REDACTED].docx	Substitute Attorney/Agent Documentation	04/26/2017	See attachment.	uat1tester

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- The external user will receive an automatically generated e-mail from “U.S. Dept. of Labor Employment & Training Administration plc.help@dol.gov” after uploading documents in CMS (*a copy of the e-mail will be simultaneously sent to the ANPC help desk*) acknowledging that documentation was uploaded

- Example:

“This internal e-mail is to notify you that correspondence has been added to A-12345-XXXXX. Correspondence Type uploaded:

- | | |
|--------------------------------------|----------------------------|
| <i>- Request for Reconsideration</i> | <i>User Name (UserID)</i> |
| <i>- G-28 Documentation</i> | <i>User Name (UserID)”</i> |



Section VII

Resources for PERM Labor Certification Applications

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How to Contact ANPC for Assistance



- PERM General Program and Processing Questions
 - Help Desk: PLC.Atlanta@dol.gov
 - Telephone: (404) 893-0101
 - Mail: U.S. Department of Labor
Office of Foreign Labor Certification
Atlanta National Processing Center
Harris Tower
233 Peachtree Street N.E., Suite 410
Atlanta, GA 30303

- Check the OFLC website on regular basis for PERM updates, FAQs, webinar announcements, and updated forms at www.foreignlaborcert.doleta.gov

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Processing Times for PERM Labor Certification Applications



- Go to icert.doleta.gov click on “Processing Times”

[ETA Home](#) > [iCER Portal](#)

Welcome to the iCERT Visa Portal System

Username:

Password:

[New to the iCERT System?](#)
[Create Your Portal Account Today](#)

[Forgot your username or password?](#)
[Click Here](#)



ICERT CASE STATUS CHECK

Enter up to 30 case numbers, one per line
(e.g., G-100-12345-123456)
[Case Numbers](#)

FIND CURRENT FAQs

To find the latest Frequently Asked

[Alerts](#) [Processing Times](#) [Forms](#) [User Guides](#) [Legacy Accounts](#)

NPWC Processing Times (as of 3/31/2017)

Processing Queue	Request Date
H-1B	January 2017
H-2B	March 2017
PERM	January 2017
	Submission Date
Redeterminations	H-1B - January 2017 PERM - January 2017
Center Director Reviews	PERM / H-1B- February 2017 H-2B - March 2017

PERM Processing Times (as of 3/31/2017)

Processing Queue	Priority Dates	
	Month	Year
Analyst Review	January	2017
Audit Review	August	2016
Reconsideration Requests to the CO	February	2017

The Analyst Review and Audit dates posted on iCERT above reflect the month and year in which cases were filed that are now being adjudicated at the Atlanta National Processing Center. *The Reconsideration Request to the CO dates posted on iCERT above reflect the month and year in which cases that are now being reviewed at the Atlanta National Processing Center were appealed. For various reasons, we may be completing the processing of applications filed prior to the month posted on iCERT. If your application was filed more than 3 months prior to the month posted, you may contact our Helpdesk for a status on the application at plc.atlanta@dol.gov.

Determinations	Average Number of Days to Process PERM Applications	
	Month	Calendar Days
Analyst Review	March 2017	78
Audit Review	March 2017	234

The Analyst Review and Audit Review determination processing times on iCERT above reflect the amount of time to process applications for the month. The actual processing time for each employer PERM application may vary from the average depending on the material facts and circumstances. OFLC is only reporting the average processing time for all PERM applications for the most recent month.

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Helpful Resources



- Visit the OFLC website and “Subscribe” for e-mail updates at www.foreignlaborcert.doleta.gov

UNITED STATES DEPARTMENT OF LABOR
Employment & Training Administration

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Enter Search Term Search

ETA Home Find Job & Career Info Business & Industry Workforce Professionals Grants & Contracts TAA Program Foreign Labor Certification Performance & Results Regions & States

Office of Foreign Labor Certification

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- Policies & Regulations
- Program Debarments
- Foreign Labor Recruiter List 
- OFLC Performance Data
- Contact Information
- OFLC Help Desks

Ombudsman Programs

- H-2A
- H-2B

Office of Foreign Labor Certification

Helping U.S. employers fill jobs while protecting U.S. and foreign workers

H-2A

H-2B

H-1B

PERM

Prevailing Wage Determinations

I Want To...

- Find the latest PERM processing times

GO



Performance Data

Click Here

E-Mail Updates

Type your e-mail address into the box then click on "Subscribe" to receive OFLC updates.

Enter E-mail Address

Subscribe

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Helpful Resources



- View PERM FAQs, forms, regulations, etc., at www.foreignlaborcert.doleta.gov/perm.cfm



The screenshot shows the homepage for the Foreign Labor Certification program. At the top, the title "Foreign Labor Certification" is displayed in blue, with the tagline "Helping U.S. employers fill jobs while protecting U.S. and foreign workers" below it. A navigation bar features "Permanent Labor Certification" in red text and a home icon. A "Helpful Links" section contains two columns of buttons: "Frequently Asked Questions", "Forms & Case Management System", "Regulations", "Wage and Survey Information", "Disclosure Data", "Appendix A Professional Occupations", "Schedule A Occupations", "Program Debarments", "Contact Us", "Additional Resources", and "PERM Webinars". To the right, two red buttons labeled "On This Page" and "Quick Links" are visible.