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2009 Media Fact Sheet on PERM Harm

Unlike the H-1B, certification for a green card allegedly requires "proof" that no qualified Americans are available to fill the position. But employers and immigration attorneys make a mockery of this requirement. Under PERM an employer must only demonstrate an attempt to recruit. This sham entrusts the employer to proxy for the DOL. Employers run sham job ads with no intent to hire any of the American applicants - because the positions are already filled by H-1B workers.

"Our firm is yet to see an RIR (now known as PERM) labor certification which was rejected." - immigration attorney Carl Shusterman

This was illustrated by the law firm **Cohen & Grigsby's May 2007 video "TubeGate"** that instructs employers that "the intent of PERM is to not find any qualified U.S. applicants," and details the tips for how to disqualify even the best Americans.



<http://www.youtube.com/watch?v=TCbFEgFajGU>

PERM FACTS

1. The Department of Labor is charged with assuring that employment-based greencards are only granted in cases where "no qualified American is available" to fill the job. But Congress and Industry have stacked the deck against all American applicants.

2. PERM is flawed because the recruitment of Americans occurs after rather than before the U.S. jobs openings are filled by foreign workers.

PERM REFORMS

1. Reform the PERM prevailing wage definition

Currently PERM prevailing wage contains the same flaw as H-1b: Employers may choose from "four levels" – with level one being the 17th percentile of the average (prevailing) wage. Whereas PERM positions are so specialized that "no U.S. workers are available," these jobs should pay at least the (full prevailing wage).

These low wages are key to disqualifying American applicants: The PERM ad does not disclose salary. American applicants must provide an "expected salary." If the American states "\$50,000" and the "secret PERM salary" is \$48,500 – it is "game over." The employer deems the American "not available" without inquiring whether they would accept \$48,500. Even though the full prevailing wage would have been over \$60,000, the U.S. Congress, DOL, USCSIS, and Federal Courts uphold that the American was "not available."

REF: PERM prevailing wage regulation
www.foreignlaborcert.doleta.gov/wages.cfm#changes

2. Make the PERM recruitment process transparent

Currently Americans have no idea that they are applying for and being unjustly rejected under PERM recruiting. Because the intent of the ads is to "not" find any qualified applicants, the ads should contain a disclaimer "This ad is being run to comply with the DOL PERM recruitment process."

All PERM jobs should be posted on a public DOL website where American applicants could publicly post their applications. If the employer does not hire any of the Americans, they must post a statement explaining why each of the Americans was deemed "not qualified" or "not available."

Prior to PERM many states mailed surveys to applicants informing that they had applied for a position that was intended to be filled by a green-card applicant. Prior to the Internet this was a cumbersome process. But now that this could be managed via automated email notification and a web form, Congress should reinstate this poll.

SEE EXAMPLES IN "REFERENCES" BELOW

3. Give Americans legal standing to challenge PERM approvals

Currently Americans who are disqualified for PERM positions have no recourse. EEOC generally only acts when discrimination occurs against a protected class, and can prove that the basis of the discrimination was membership in that class. In PERM the discrimination occurs because “a foreign worker is already occupying the job, and wants to sponsor that worker for a green card.”

Congress must grant Americans a legal appeal or recourse

4. Require that the employer pay the PERM fees

Proponents of expanding the H-1b and PERM process argue, “Why would employers pay for the legal expenses to hire foreign workers if qualified Americans were available?” But in fact many employers force the foreign worker to pay for these expenses.

REFERENCES

PERM Fake Ads in the Sacramento Bee
www.programmersguild.org/RIR/

Recruitment Survey received by **Rob Sanchez** in 1994:
www.jobdestruction.info/ShameH1B/Library/Archives/AZ/DES.htm

Recruitment Survey received by **Kim Berry** in 1996:
www.programmersguild.org/docs/kimberry_green_card_recruitment_survey.html