

# THE FILIPINO **EXPRESS**

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## **Immigrant Visa for Domestic**

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Because of the Immigration Act of 1990, domestic workers now have to wait longer to obtain permanent resident status. The lower tier of the employment-based 3rd preference category to which they are categorized as non-skilled workers, is presently backlogged to November 8, 1987.

There are two steps in applying for the classification under this category. The first step is the application for alien labor certification with the Department of Labor. When approved, an immigrant visa petition may then be filed with the Immigration Service. The filing date of the labor certification establishes the "priority date". A priority date is nothing more than the time order in which an alien is placed in the waiting list.

Approval of both a labor certification and the immigrant visa petition does not entitle the alien to an immigrant visa right away because of the visa backlog. In the event that the alien quits his job, the question of what happens to his priority date arises. The priority date may still be retained provided that a new employer applies and obtains an approved labor certification and an approved petition.

Certain deadlines are imposed on the filing of a visa petition supported by a labor certification. Professional advice must be sought in order to preserve a priority date.

The labor certification is issued only when an employer proves that there are no able, willing and qualified US workers available for the job even as the prevailing wage is offered. This is usually accomplished through advertisement in a newspaper of general circulation.

The prevailing wage of a general household domestic worker is \$8.06 per hour while that of a live-in domestic is \$6.92 per hour. A live-in worker must be provided with a private room and board. In addition, an employer has to justify in its labor certification application his need for a live-in domestic, as a "business necessity". Also, the alien must show one year full time paid experience in the job.

The issuance of a labor certification or the approval of an immigrant visa petition does not confer authorization to work. So that, as is usually the case, the household worker, while waiting for an immigrant visa, overstays and continues to work in violation of the immigration law. This exposes the employer to stiff fines and the alien to deportation. Employer sanctions and alien deportation with regard to household workers have, however, rarely been enforced especially in the New York area.

Overstaying and unauthorized employment are not grounds for a denial of an immigrant visa. They are grounds for denial only for the adjustment of status, a variant alternative in the application for permanent resident status.

If an alien has been found to have worked immediately after arrival in the US under a tourist visa, he may be denied resident status later for having obtained the tourist visa by fraud. The fact that he has worked immediately upon arrival manifests an intent to come here to work, and not solely to visit.

Other kinds of misrepresentation such as submission of false documents and lying on a material point at an immigration interview are grounds for denial.

The alien must be made aware that while his immigrant visa petition is pending, he is grounded in the US. To leave and re-enter as a tourist is to commit a misrepresentation which could be a ground for denial of his immigrant visa.