



MEMORANDUM

TO: Employees Seeking PERM-based Permanent Residency
FROM: Seyfarth Shaw Business Immigration Group
RE: Requirements for PERM Employment Verification Letters

PURPOSE

This memorandum provides information about how to document that you satisfied all of the minimum green card job requirements before you joined your green card sponsoring employer. This documentation is required by United States Citizenship and Immigration Services (USCIS) at stage two of the green card process (the I-140 Preference Petition), but many employers require the documents in-hand before undertaking the expensive recruitment actions required at the PERM stage of the green card process. Following the below guidelines will ensure the best possible outcome on your green card case.

PRIOR EXPERIENCE REQUIREMENT

All employees being sponsored for a PERM Labor Certification application must demonstrate that they have met the minimum requirements as set forth in the sponsoring employer's PERM application.

Generally, you must have gained the minimum employment experience requirement prior to joining the employer sponsoring the PERM application.

- You must meet minimum requirements before the PERM application is filed with the Department of Labor.
- We are required to submit letters from prior employers as evidence of this prior experience and skills, with few exceptions.

DOCUMENTING YOUR PRIOR EXPERIENCE - FREQUENTLY ASKED QUESTIONS

- **How important is it that I obtain employment verification letters for my green card application?**

Extremely important. Simply put, if you cannot demonstrate how you meet the minimum experience requirement as stated in the PERM application, we cannot file your PERM application. In many cases, your sponsoring employer will not move forward with your PERM application without these letters.

Your employment verification letters should encompass ALL of the minimum experience requirements outlined in the PERM application. If you are just one day short of the employment requirement, or if you are lacking one of the skills, we will not be able to file the PERM application.

➤ **What should these employment verification letters say? How should they be formatted?**

Seyfarth will provide you with employment verification letter templates that contain the required language for each letter. At a minimum, the letters should contain the following:

- Prior employer's letterhead
- Your exact dates of employment (MM/DD/YYYY to MM/DD/YYYY)
- Your former job title
- The green card job skills you gained during your prior employment
- Signatory's name, title, relation to you, and contact information

Your prior employer may have strict requirements for the format of their employment verification letters. As long as you or they do not alter the description of your prior experience and skills, feel free to change the format of Seyfarth's template to suit their requirements.

➤ **Who should sign the employment verification letter?**

A former manager or supervisor, an executive, or a human resources representative should sign the letter. Generally, letters signed by colleagues, coworkers or peers are not accepted.

➤ **My former employer will not sign an employment verification letter with information about my job duties. What do I do?**

The best kind of evidence is direct confirmation, on letterhead, from your prior employer of your dates of employment, job title, and the green card job skills you gained during your employment with them. We cannot guarantee that USCIS will accept any evidence other than an employment verification letter from your prior employer on letter head as described above. Submitting any other type of evidence may trigger a request for additional evidence (RFE) from USCIS asking for further proof of your prior employment.

However, many employers have a policy that they will only verify dates of employment on letterhead and will not include detailed job descriptions in those letters. In that case, we will have to submit secondary or alternative evidence to demonstrate your prior experience, and we must prove that the primary or main evidence is not available. We thus recommend obtaining all of the following:

- A simple employment verification letter from the prior employer, printed on letterhead, that confirms basic information such as your dates of employment (in MM/DD/YYYY format) and your job title.
- Evidence that your prior employer is unwilling or unable to provide details about your prior job. This evidence could be set out in the simple letter described above or the evidence could consist of your email correspondence reflecting the prior employer's refusal to provide job details.

- Two separate sets of letters/affidavits from former managers or supervisors for each prior employer, as follows:
 - A letter/affidavit signed by a former manager or supervisor that verifies your detailed job duties, including the green card job skills you gained during your employment. This letter will likely be on blank letterhead if your former manager no longer works for your prior employer. If he or she does still work for your prior employer and the letter is therefore on company letterhead, then this letter and the HR letter are all you need.
 - We recommend that you ask your former managers/supervisors to sign this as an affidavit, as USCIS may ask for this letter to be in affidavit format.
 - An employment verification letter from your prior employer, printed on letterhead, that confirms your manager's dates of employment (in MM/DD/YYYY format) and job title with your prior employer or, in the alternative, evidence that your former manager worked at your prior employer during the period set out in the manager's letter (such as W-2 statements or payroll records).
- **What if the manager/supervisor who has agreed to verify my former job duties, in lieu of my prior employer, no longer works for the company?**

See the last bullet point above. The manager or supervisor does not need to still be employed by the company where you both worked. If the manager or supervisor is no longer employed by that company, he or she should include the dates of their employment (in MM/DD/YYYY format) and their job title(s) in the letter. He or she should also include current contact information in the letter and should include proof that he/she worked at the company (either in the form of a letter from the company or in the form of W-2s, other tax records, or payroll records)

➤ **My former employer merged with another company. What do I do?**

If your prior employer has been acquired by another company, then in most cases HR records will have been transferred to the acquiring company, and so the acquiring company could issue the detailed letter on letterhead under its current name; in that case, you should request that they list the name of the company that you worked for in the employment verification letter that they provide. The same guidelines regarding primary vs. secondary evidence of your prior experience apply, as outlined above.

➤ **My former employer no longer exists. What do I do?**

If your former employer is no longer in existence, then we will have to submit alternative evidence to verify your employment. We recommend you obtain the following:

- An employment verification letter signed by a former manager or supervisor that includes your exact dates of employment, job title, and detailed job duties, including the PERM skills you gained. The former manager should include the dates of their employment (in MM/DD/YYYY format), job title, and current contact information in the letter. The letter should explain that your prior employer is no longer in existence;

- Evidence that your employer no longer exists. This could include articles or government notices that confirm the company no longer exists.
- Alternative documentation of prior employment, for both you and your manager. Examples of documentation include:
 - Copies of the offer letter showing a start date of employment, and a “leaving letter” showing last date of employment and job title;
 - Copies of W-2 forms and/or pay statements, evidencing duration of employment with that employer.

The above documentation may include sensitive or personal information, such as salary or your Social Security Number. Both you and your manager should feel free to redact any of this information prior to providing these documents to us.

➤ **I was previously self-employed and I want to use this experience to meet the minimum requirements. Can I?**

It can be a challenge to prove the nature and duration of your self-employment. If you need to rely on self-employment to meet the qualifications for your PERM Labor Certification, we recommend you obtain all of the following:

- **Documentation of your self-employment.** This can include business formation documents if you created your own company while self-employed.
- **Documentation of the duration of your employment.** This can include invoices for services which detail the duration of projects and the hours that you worked on these projects.
- **Documentation of income.** This can include invoices and bank records evidencing payment by clients.
- **Documentation of the type of work that you performed.** You must obtain letters from former clients that include the exact dates that you performed services, the total number of hours that you performed services, and detailed duties, including the PERM skills you gained. The letter from the former client should include information about the person signing the letter for the client, including the dates of their employment with the client (in MM/DD/YYYY format), job title, and current contact information.

Despite all of this evidence, USCIS may still challenge the duration and hours of your self-employment, so we recommend reaching out to your immigration contact at Seyfarth Shaw to discuss the reliance on self-employment as part of the qualifications for your PERM application.

If you should have any questions, please reach out to your immigration contact person at Seyfarth Shaw LLP. We will be happy to address your questions.