

EB-3: The Race to the Bottom

Federal Agency Oversight: [DOS](#), [DHS](#), [DOL](#)

The Basics:

- EB-3 is the third preference category for [employment-based immigration](#). The category is for “skilled workers, professionals, or other workers.” These aliens are granted an immigrant visa (a green card) and put on a direct path to U.S. citizenship.
 - Skilled workers are defined as aliens who are capable of performing skilled labor and whose job requires at least two years of training or experience and is not of a temporary or seasonal nature. Skilled workers must also meet any educational, training, or experience requirements of the job opportunity. Relevant post-secondary education may be considered as training.
 - Professionals are defined as aliens who hold at least a U.S. bachelor’s or foreign equivalent degree and are “members of the professions.” Their jobs require a minimum of a bachelor’s degree. Professionals must also meet any educational, training, or experience requirements of the job opportunity.
 - Other workers (also called unskilled workers) are defined as aliens capable of performing unskilled labor whose job requires less than two years of training or experience and is not of a temporary or seasonal nature. Other workers must also meet any educational, training, or experience requirements of the job opportunity.
- In order to apply for an EB-3 immigrant visa, these workers must have a job offer from a U.S. employer that has filed a petition to sponsor them.
- By [law](#), the number of EB-3 visas is set at an annual level of “28.6% of the worldwide level, plus any numbers not required by first and second employer preferences.” The worldwide level of employment-based visas is 140,000, so just over 40,000 immigrant visas are set aside for the EB-3 category each year, of which not more than 10,000 may be given to “other workers.”
- In order to sponsor an EB-3 immigrant, the employer must undergo a labor certification process through the Department of Labor (DOL) to ensure no Americans are willing and able to do the job being offered to the foreign worker. This process is called the “Program Electronic Review Management,” or PERM.
 - For certain occupations, referred to as Schedule A occupations, DOL has predetermined that there are not sufficient U.S. workers who are able, willing, qualified, and available. For these occupations, employers submit the labor certification directly to USCIS, bypassing DOL review.
 - [Schedule A](#) occupations are physical therapists and nurses.
 - [Sheepherders](#) are also eligible to bypass DOL.

The Problem:

- The category overall requires minimal qualifications and experience for eligibility, thus creating unnecessary entry-level competition for Americans trying to enter the workforce.
- The combination of high demand and the “trickle down” of unused EB-1 and EB-2 visas to the EB-3 category means that more of these relatively low-skilled EB-3 visas are distributed each year than the higher-skilled EB-1 and EB-2 visas, even though all three categories are awarded the same share (28.6%) of overall employment-based visas.
- The “other workers” are an especially egregious reserved permanent pipeline of unskilled cheap labor. There is no unskilled labor shortage in the United States, yet they are certified by DOL. Not surprisingly, demand for these unskilled EB-3 visas is well above the annual limit of 10,000, so this subcategory is oversubscribed and backlogged.
- The PERM process is broken and fails to serve the interests of American workers.
 - A 2020 DOL Office of Inspector General Report [found](#):
 - “The PERM program relentlessly has employers not complying with the qualifying criteria. Therefore, the PERM and H-1B programs remain highly susceptible to fraud.”
 - “In 2005, the PERM program was changed to an attestation program where employers are not required to submit any documentation with their application. An application does not provide [DOL] enough information to make an informed decision on whether there were no able, available, qualified, and willing U.S. workers for the job opportunity and the job opportunity would not adversely affect the wages and working conditions of U.S. workers similarly employed.”
- American workers are not being protected from permanent labor competition from relatively inexperienced and unskilled foreign labor.

LEGISLATIVE RECOMMENDATION: Congress should eliminate the EB-3 program, especially the 10,000 slots for unskilled workers.

ADMINISTRATIVE RECOMMENDATION: Revamp the labor certification attestation process to require documentation from employers for the job listing, wages, and proof of effective advertisements for the occupation seeking American workers. Remove all occupations from the Schedule A list. Dedicate significant resources to audit approved labor certifications post-adjudication in at least 30-35% percent of annual cases and debar all employers found to have violated the process.