

# COMPLETING FORM ETA 9089, APPLICATION FOR PERMANENT EMPLOYMENT CERTIFICATION

by Lorna A. De Bono, Ari J. Sauer, and Barbara L. Bower\*

**NOTE: Always check the website for the most recent version of this form and current filing fees!**

Form ETA 9089, Application for Permanent Employment Certification, is used by the Department of Labor (DOL) to adjudicate Applications for Permanent Employment Certification, as governed by the Immigration and Nationality Act (INA), 8 USC §1182(A)(5)(A), and by DOL regulations at 20 Code of Federal Regulations (CFR) Part 656. The form was established to support the new process for labor certification enacted in 2005 called Program Electronic Review Management (PERM) as enacted by the PERM Final Rule, 69 Fed. Reg. 77326 (Dec. 27, 2004). The labor certification process is now colloquially referred to as a PERM application. Form ETA 9089 is also used by U.S. Citizenship and Immigration Services (USCIS) in connection with Schedule A and Sheepherder immigrant visa petitions, as detailed below.

Before beginning Form ETA 9089, be sure to check the PERM Frequently Asked Questions (FAQ) section of the DOL's website at [www.foreignlaborcert.dolceta.gov/faqsanswers.cfm#Perm\\_Program](http://www.foreignlaborcert.dolceta.gov/faqsanswers.cfm#Perm_Program) for the DOL's most up-to-date guidance on PERM topics.

An employer may apply for labor certification using Form ETA 9089 for any occupation, other than sports, on behalf of a foreign national employee. For all occupations other than Schedule A and Sheepherders, the Form ETA 9089 is filed with the DOL either using their online system or by mail to a designated DOL application processing center. Applications for Sheepherders and Schedule A occupations are filed directly with USCIS.

Regardless of whether the application is filed online or by mail, the Form ETA 9089 and supporting documents must be retained for five years from the date of filing.<sup>1</sup>

## **PERM Pro Tip**

It is strongly recommended to file the PERM application using the DOL's online system. The online system has several built in mechanisms to detect some obvious typographical errors. While the online system will not catch all typos, the form is not able to be amended after filing and even a clear typographical error could spell the downfall of a PERM case, making the risk of a paper filed form much higher. The only cases that should be filed by paper application are for very small companies that are unable to establish an account with DOL's online PERM system.

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*Articles do not necessarily reflect the views of the American Immigration Lawyers Association.*

\* **Lorna A. De Bono** is the senior associate at Haight Law Group, PLC in Los Angeles, where she focuses her practice on business immigration. She is active in AILA on both the local and national levels, and is a past chair of the AILA Southern California Chapter. In addition, she was a member of the 2009 California Chapters Conference Committee, and was part of the planning committee for the inaugural Pro Bono Clinic at the 2011 Annual Conference. She currently serves as a member of the California Service Center Liaison Committee.

**Ari J. Sauer** is the outgoing chair of AILA's New Members Division and the chair of the Midsouth Chapter. He practices with the law offices of Siskind Susser, PC, where his practice is focused on employment- and family-based immigration and nationality law. He frequently lectures on immigration-related topics for AILA and the Federal Bar Association. For a full bio please visit [www.visalaw.com/ari](http://www.visalaw.com/ari).

**Barbara L. Bower** practices immigration law, with an emphasis in business immigration, in Pittsburgh. She has been listed in the *Best Lawyers in America* in immigration law for more than 10 years. Ms. Bower is a past chair of AILA's Pittsburgh Chapter and has served on numerous AILA committees. She is the author of "L-1 Intracompany Transferee Visas," 98-4 *Immigration Briefings* (Apr. 1998) and numerous AILA conference articles.

<sup>1</sup> 20 Code of Federal Regulations (CFR) §656.10(f).

## SECTION A: RE-FILING INSTRUCTIONS

### 1. Are You Seeking to Utilize the Filing Date From a Previously Submitted Application for Alien Employment Certification (ETA 750)?

This section pertains to a transitional benefit available at the beginning of the PERM program in 2005 that would permit employers to transfer a previously filed labor certification filed under the old regulations (on Form ETA 750, Application for Alien Employment Certification) to the PERM process and retain the previously established priority date.<sup>2</sup> As the DOL backlog centers are already closed, it is not likely that any of these cases still exist.

## SECTION B: SCHEDULE A OR SHEEPHERDER INFORMATION

### 1. Is This Application in Support of a Schedule A or Sheepherder Occupation?

The aim of this section is to determine whether or not the application is properly filed with DOL. If the answer to this question is “yes,” then do not file Form ETA 9089 with the DOL (either online or by mail); the form should instead be filed with USCIS in connection with a Form I-140, Immigrant Petition for Alien Worker.<sup>3</sup>

## SECTION C: EMPLOYER INFORMATION (HEADQUARTERS OR MAIN OFFICE)

### 1. Employer's Name

Insert the employer's official, legal name as it appears on its corporate documents. If the petitioner is using another name, include the doing business as (D/B/A) in this section along with the legal name. The DOL conducts a “business existence check” for each entity that establishes an online PERM account against a commercial corporate entity database, so it is essential that the business name exactly matches the corporate foundation documents, particularly the Internal Revenue Service Federal Employer Identification Number (FEIN) assignment letter. If the business does not appear in the database, then DOL will send a business existence verification request and the employer will be required to submit supporting documents that verify the business name, address, and existence. Make sure that the employer's name matches the name used on the ETA 9141, Application for Prevailing Wage Determination.

### 2 – 4. Address and Telephone Number

Enter the street address, city, state, and zip code of the U.S. business, as well as the telephone number in (xxx) xxx-xxxx format.

### 5. Number of Employees

Insert the total number of employees of the entire company, not just the office or location where the beneficiary is employed.

### 6. Year Commenced Business

Insert the year that the employer's business was incorporated or formed.

### 7. FEIN( Federal Employer Identification Number)

Insert the FEIN assigned to the employer. Do not include the hyphen.

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<sup>2</sup> 20 CFR §656.17(d).

<sup>3</sup> 20 CFR §§656.15 and 656.16.

***PERM Pro Tip***

Every employer, even an individual or private household, must obtain an FEIN. The employer cannot provide a Social Security number in this field.<sup>4</sup> If the employer does not have an FEIN, the PERM can be denied. The employer cannot cure the deficiency by getting an FEIN after the PERM is filed.<sup>5</sup>

**8. NAICS Code**

Insert the North American Industry Classification System (NAICS) code that most closely matches the overarching purpose of the employer's business. You can [search the most recent NAICS index](#) for an appropriate code.

**9. Is the Employer a Closely Held Corporation, Partnership, or Sole Proprietorship in Which the Alien Has an Ownership Interest, or Is There a Familial Relationship Between the Owners, Stockholders, Partners, Corporate Officers, Incorporators, and the Alien?**

Select "Yes" or "No", as appropriate. The purpose of this question is to determine whether a *bona fide* job opportunity available to all U.S. workers actually exists, as the situations listed above may indicate that the employee has an undue influence over the labor certification process.<sup>6</sup>

***PERM Pro Tip***

Answering "Yes" to this question will almost always trigger an audit. The employer should be prepared to demonstrate the existence of a *bona fide* job opportunity by providing the information detailed at 20 CFR §656.17(l). Thus, while answering yes is not necessarily fatal to the PERM application, the employer must be able to demonstrate that the family/ownership interest did not influence the hiring decision.

**SECTION D. EMPLOYER CONTACT INFORMATION**

Complete this section with contact information for the employer's contact person for this application. This will usually be a human resources official within the company. This information must be different from the agent or attorney information listed in Section E. This individual will be contacted by DOL to verify that the company has knowingly filed a PERM application on behalf of the employee. This individual can be different from the employer representative who signs the form in Section N.

***PERM Pro Tip***

Be careful to ensure the individual named in this section is accessible by e-mail and phone, is knowledgeable about the PERM process that is being undertaken on behalf of the employee, and understands that they need to promptly respond to the DOL's initial e-mail requesting verification of the filing of the PERM application. If this sponsorship check e-mail is not responded to within seven days, the DOL will attempt to contact the employer contact by phone. If the DOL verification is not completed, the application will be denied. Advise the employer contact to add the DOL e-mail ([plc.help@dol.gov](mailto:plc.help@dol.gov) and [plc.helpint@dol.gov](mailto:plc.helpint@dol.gov)) to their spam or junk mail filter. Also advise the employer contact as soon as the PERM has been filed so that they can watch for the e-mail. Finally, DOL will send an e-mail confirming that the "sponsorship check" has been completed.

**SECTION E. AGENT OR ATTORNEY INFORMATION**

This information must be different than the employer contact information provided in Section D. Complete this section with your contact information and your firm's FEIN. The attorney noted in this section will be required to sign the form in Section M. This is the individual that will be copied on e-mail correspondence from DOL, so it is also a good idea to insert the DOL e-mail addresses into your own spam/junk e-mail filter.

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<sup>4</sup> *Maria Gonzalez*, 2007-PER-00024 (Apr. 25, 2007).

<sup>5</sup> *Joan M. Bugajski-Lang*, 2007-PER-00079 (Dec. 17, 2007).

<sup>6</sup> 20 CFR §656.17(l).

## SECTION F. PREVAILING WAGE INFORMATION

One of the requirements of a PERM application is to obtain a Prevailing Wage Determination (PWD) from the DOL's National Prevailing Wage Center (NPWC) using form ETA 9141. The employer will be required to obtain a PWD in order to complete the ETA 9089. Caution: the published instructions for Form ETA 9089 still state that the PWD is obtained from the State Workforce Agency (SWA) with jurisdiction over the state in which the work will be performed. This is now incorrect, as authority for issuance of PWDs was moved from the SWAs to the NPWC in 2010.

### **PERM Pro Tip**

Obtain the PWD early in the case preparation process—before the recruitment begins. You don't want to be surprised by a high PWD and have to re-do any of the recruitment steps. Moreover, don't wait until the PWD is issued to start preparing the ETA 9089. Start drafting the ETA 9089 early in the case preparation process to aid in the strategy preparation and allow you to spot issues early on. You can enter placeholder information into the fields in order to “trick” the online system into allowing you to proceed to the next page of the form. Enter clearly erroneous information for your placeholders so you don't mistakenly forget to change it later, *e.g.*, 01/01/1901 for dates, etc.

#### **1. Prevailing wage tracking number (if applicable)**

Enter the Prevailing Wage tracking number from Form ETA 9141, Section E, Item 1. The field in the online system does not have enough characters to enter any of the hyphens, so you will need to omit those.

#### **2. SOC/O\*NET (OES) code**

Enter the Standard Occupational Classification (SOC) (O\*NET/OES) code assigned to the position in the PWD from Form ETA 9141, Section E, Item 3.

#### **3. Occupation Title**

Enter the occupation title that corresponds with the SOC (O\*NET/OES) code from Form ETA 9141, Section E, Item 3a. This is the occupational title that matches the SOC (O\*NET/OES) code, not the job title of the position offered in the PERM application (employer's job title).

#### **4. Skill Level**

Enter the Skill Level (I-IV) assigned to the position in the PWD from Form ETA 9141, Section E, Item 4a. Note that this is referred to as the “Wage Level” on Form ETA 9141.

#### **5. Prevailing Wage**

Enter the amount of the prevailing wage assigned to the position in the PWD from Form ETA 9141, Section E, Item 4. Select the appropriate check box for the rate (per hour, week, bi-weekly, month or year) from Form ETA 9141, Section E, Item 5. This should exactly match the PWD, *i.e.*, if the PWD is issued as a yearly wage, do not convert it to an hourly wage.

#### **6. Prevailing Wage Source**

Select the appropriate source of the PWD [OES, Collective Bargaining Agreement (CBA), Employer Conducted Survey, Davis-Bacon Act (DBA), Service Contract Act (SCA), Other] from Form ETA 9141, Section E, Item 6.

#### **6-A. If Other is Indicated in Question 6, Specify**

If “Other” was indicated in Item 6, enter the name of the other prevailing wage source from Form ETA 9141, Section E, Item 6a. This will only occur when NPWC has issued the PWD based on an alternate wage source submitted in connection with the prevailing wage request. Examples include BLS National Compensation Survey, Radford, Watson Wyatt, etc. If “Other” was not indicated in Question 6, leave this field blank.

#### **7. Determination Date**

Enter the date the PWD was issued from Form ETA 9141, Section E, Item 8 in MM/DD/YYYY format.

## 8. Expiration Date

Enter the date the PWD will expire from Form ETA 9141, Section E, Item 9 in MM/DD/YYYY format.

### ***PERM Pro Tip***

Note that the PERM application must be filed or the recruitment started while the PWD is still valid.<sup>7</sup>

## SECTION G. WAGE OFFER INFORMATION

### 1. Offered Wage

Enter the wage rate to be paid to the employee. If the wage offered is a single wage, enter the wage in the “From” field and leave the “To” field blank. Select the appropriate check box for the rate of pay. The wage must not be below the prevailing wage in Section F, Question 5.<sup>8</sup>

### ***PERM Pro Tip***

The salary offered does not need to be the salary that the employee is currently making. The PERM salary can be a “prospective” wage offer, *i.e.*, the anticipated wage that will be offered to the individual in the future. The employer must pay the offered wage at the time the beneficiary is granted legal permanent residence. *Caution:* the employer will be required to demonstrate that they continue to have the ability to pay the offered wage from the date the labor certification is filed through the I-140 petition process and up to the date on which the beneficiary is granted permanent resident status.

If the wage offered is expressed as a range, enter the bottom of the wage range in the “From” field and the top of wage the range in the “To” field. If you enter a range, the bottom figure in the range must not be below the prevailing wage in Section F, Question 5.

Some employers will insist on using a wage range because of the requirement to include the offered wage in the notice that must be posted at the worksite and they do not wish to post the employee’s actual salary in the notice. Alternately, the employer may be using one notice for PERM applications for multiple employees at the same time. If the employee’s wage is at the top of the range, the employer must be prepared to justify why the employee is paid at the top of the range and that U.S. workers with similar qualifications to the employee would make the same salary in order to comply with the regulatory requirement that the recruitment not contain wages or terms and conditions of employment that are less favorable to those offered to the employee.<sup>9</sup>

## SECTION H. JOB OPPORTUNITY INFORMATION (WHERE WORK WILL BE PERFORMED)

This is the section where the employer lays out the actual minimum educational, experience, and other requirements for the position. This is the backbone of the PERM application and serves as the standard against which any potential U.S. worker applicants will be compared and against which the employee will be compared to determine eligibility for the immigrant visa (I-140 petition). The employer may not tailor the minimum requirements specifically to the employee’s qualifications.<sup>10</sup>

### ***PERM Pro Tip***

The information entered in this section must match what you provided to the NPWC on Form ETA 9141 as the basis for your PWD.

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<sup>7</sup> 20 CFR §656.40(c); *Matter of Karl Storz Endoscopy-America*, 2011-PER-00040 (Dec. 1, 2011).

<sup>8</sup> 20 CFR §656.10(c)(1).

<sup>9</sup> 20 CFR §656.17(f)(7).

<sup>10</sup> 20 CFR §656.17(i).

### ***PERM Pro Tip***

As part of the I-140 Immigrant Petition for Alien Worker process the employer will be required to demonstrate that the employee met these minimum requirements at the time they started the offered position with the employer. If the employee is not currently employed in the offered position, the employer must demonstrate that the employee met the requirements prior to the date the PERM was filed. Draft the PERM application with the I-140 petition in mind. Make sure the beneficiary can demonstrate how he or she meets each and every requirement and obtain any necessary verification letters or other supporting documentation prior to filing the ETA 9141 prevailing wage request or the start of recruitment.

### **1-2. Primary Worksite**

Enter the full address for the worksite where the work will actually be performed. This does not need to match the employer's address in Section C. Note that this is the address that will be used as the basis to determine the appropriate area for comparing the prevailing wage and whether the employer has tested the appropriate labor market. The worksite address must match the worksite address on Form ETA 9141.

### ***PERM Pro Tip***

For a "roving" beneficiary, *i.e.*, an employee who performs services at numerous sites, use the petitioner's headquarters address.<sup>11</sup> Be sure to address the issue on the form, by inserting a statement summarizing the situation in Section H, Question 14.

### **3. Job Title**

Enter the name of the job being offered to the beneficiary. This should be the title that is customarily used by the employer. It may be different from the job title of the SOC occupational category discussed above. However, the job title should not be identical to another SOC occupational category.

### **4. Education: Minimum Level Required**

Select the minimum education required for the position offered.

#### **4-A. If Other is Indicated in Question 4, Specify the Education Required**

Select "Other" for degrees that are not listed, *e.g.*, M.D., J.D., D.V.M., D.O., etc.

#### **4-B. Major Field of Study**

Enter the major or field of study required for the education cited in Question 4. If there are multiple fields of study that are acceptable to meet minimum requirements, *e.g.*, Computer Science, Engineering or related, you may enter the first field of study here and enter the remaining fields of study in Question 7.

### ***PERM Pro Tip***

If the position requires a number of years of post-secondary education but not actual completion of a degree, *e.g.*, two years of college-level education in Computer Science, you may select "Other," enter the number of years of study required in Question 4-A and enter the field of study in Question 4-B.

### **5. Is Training Required in the Job Opportunity?**

If the minimum requirements for the position include training, answer "Yes" and enter the number of months (*not* years) of training required at Question 5-A and the field of training at Question 5-B. Examples would include internships, medical residencies, vocational training, etc. If no training is required, answer "No" and leave fields 5-A and 5-B blank.

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<sup>11</sup> *Matter of Paradigm Infotech, Inc.*, 2007-INA-00003-06 (June 15, 2007).

## 6. Is Experience in the Job Offered Required for the Job?

If experience in the position offered is required, answer “Yes” and enter the number of months (*not* years) of experience required at Question 6-A. Be careful to enter the number of months required, not the number of years. If no experience is required, answer “No” and leave Question 6-A blank.

## 7. Is There an Alternate Field of Study that is Acceptable?

If alternate fields of study are acceptable to meet the minimum educational requirements of the position, *e.g.*, Computer Science, Engineering or related, answer “Yes” to this question and enter the remainder of the alternate acceptable fields at Question 7-A. *Note:* if you have too many characters for this field, it does not automatically create an addendum page, so be sure to check a printed version of the form to make sure your alternate fields fit in this section.

### **PERM Pro Tip**

Easily decipherable abbreviations are acceptable, *e.g.*, “Comp Sci,” “Eng’g,” etc. Be careful not to abbreviate so much that your abbreviations become ambiguous, *e.g.*, “Eng” could mean English or Engineering.

## 8. Is There an Alternate Combination of Education and Experience that is Acceptable?

If an alternate combination of education and experience is acceptable to meet the minimum requirements for the position, *e.g.*, a Bachelor’s degree and 60 months of experience or a Master’s degree and 36 months of experience, answer “Yes” to this question and complete Questions 8-A through 8-C to indicate the alternate requirements. Be careful to note that the amount of experience required in this section only is expressed in years (*not* months). If there is no alternate combination that is acceptable, answer “No” and leave Questions 8-A to 8-C blank.

### **PERM Pro Tip**

Alternate requirements should be equal in terms of Specific Vocational Preparation (SVP) points.<sup>12</sup>

## 9. Is a Foreign Educational Equivalent Acceptable?

If a foreign equivalent degree is acceptable to meet the minimum educational requirements, answer “Yes” to this question. Obviously, you must answer “Yes” to this question if the employee has a foreign degree.

### **PERM Pro Tip**

The USCIS very strictly interprets the definition of foreign degree equivalence, requiring a “single source” foreign degree to be equivalent to a U.S. degree.<sup>13</sup> The definition of Bachelor’s degree equivalence used to qualify for H-1B status<sup>14</sup> that permits the combination of different levels of education or the combination of education and experience to equate to a U.S. degree is not acceptable in the immigrant visa context. At the outset, obtain a professional equivalency evaluation of the education that uses the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE) database to ensure equivalency that will meet the regulations. Always keep the I-140 in mind when preparing a PERM.

## 10. Is Experience in an Alternate Occupation Acceptable?

If experience in another occupation will meet the minimum experience requirements for the position, answer “Yes” to this question and indicate the number of months (*not* years) of experience required at Question 10-A. This should always match the number of months in Question 6-A. List the acceptable alternate job titles at Question 10-B. Again, if you have too many characters for this field, it does not automatically create an addendum page, so be sure to check a printed version of the form to make sure the alternate job titles fit in

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<sup>12</sup> *Globalnet Management, L.C.*, 2009-PER-00110 (Aug. 6, 2009).

<sup>13</sup> 8 CFR §§204.5(k)(3)(i)(A) (advanced degree professional) and 204.5(l)(3)(C) (professional).

<sup>14</sup> 8 CFR §§214.2(h)(4)(iii)(C) and (D)

this section. Easily decipherable abbreviations are also acceptable here, *e.g.*, “S’ware Eng’r,” “Sys An,” “Sr. Prog’r,” etc.

## 11. Job Duties

Enter the complete job description for the position here. Completely describe the duties of the position and any equipment used in the position. Enter any significant working conditions here, *e.g.*, travel, late shifts, etc. If the position entails any supervisory duties, you may list the number and title of employees supervised here. The job description entered in this field should match the job description provided in Part D.6 of Form ETA 9141. It must also be consistent with the description used in the recruitment advertisements. Note that this field of the online ETA 9089 will automatically create an addendum page if the minimum number of characters is exceeded.

## 12. Are the Job Opportunity’s Requirements Normal for the Occupation?

Assess the minimum requirements against the SVP that is stated in the job zone for the SOC (O\*NET/OES) Code assigned by the PWD. You can access the [O\\*NET online](#). If the requirements are within the SVP, then answer “Yes” to this question. If the answer to this question is “No,” the employer must be prepared to provide documentation demonstrating that the job requirements are supported by business necessity.<sup>15</sup>

### **PERM Pro Tip**

If the requirements for the position exceed the SVP, be sure to include documents that justify the business necessity in the file to be provided in the event of an audit.

## 13. Is Knowledge of a Foreign Language Required to Perform the Job Duties?

Answer “Yes” or “No,” as appropriate. If the answer to this question is “Yes,” the employer is required to provide documentation demonstrating that the language requirements are supported by business necessity, as indicated either by the nature of the occupation, *e.g.*, translator, or the need to communicate with the employer’s employees or clients, who cannot communicate in English.<sup>16</sup>

### **PERM Pro Tip**

Answering “Yes” to this question will almost always trigger an audit. The DOL interprets business necessity for the foreign language requirement very strictly and tends to view most foreign language requirements as unnecessarily restrictive and designed to unfairly disqualify otherwise potentially qualified U.S. workers. The employer must be prepared to provide strong evidence documenting the business necessity for the foreign language requirement. Where knowledge of a foreign language is very clearly inherent to the position, *e.g.*, Spanish, language teacher, you can also add language to Section H. Question 14 that explains the requirement, *e.g.*, “fluency and knowledge of the Spanish language is inherent to the qualifications of a Spanish teacher and not a special requirement.” This may help to forestall an audit.

## 14. Specific Skills or Other Requirements

List any special skills or requirements for the position here, *e.g.*, software languages, hardware, operating systems, etc. Again, any special requirements listed on the ETA 9141 should also be listed here. If you enter too many characters in this field, the PERM online system will automatically create an addendum page.

### **PERM Pro Tip:**

You can also use this field as a “catch all” to add any information that doesn’t clearly fit in any of the other fields. Examples include:

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<sup>15</sup> 20 CFR §656.17(h).

<sup>16</sup> 20 CFR §656.17(h)(2).

- To include the “*Kellogg* language” (“Any suitable combination of education, training, or experience is acceptable.”), required if alternate education and experience requirements were presented and the employee is currently employed by the employer and qualifies by way of the alternate.<sup>17</sup>
- To expand upon, clarify or qualify information provided in prior fields, *e.g.*, qualifying 60 months of experience in H.6-A and H.10-A as progressive, post-baccalaureate in order to clarify eligibility for EB-2 at the I-140 stage, explaining a foreign language requirement, etc.
- To explain any alternate location arrangements for the position, *e.g.*, required travel, telecommuting, etc.

### **15. Does This Application Involve a Job Opportunity that Includes a Combination of Occupations?**

Answer “Yes” to this question if the job duties combine two clearly separate occupational classifications, as defined by the SOC (O\*NET/OES) Code.

#### ***PERM Pro Tip***

Answering “Yes” to this question will almost always trigger an audit and the employer must be prepared to provide documentation demonstrating that it has normally employed persons for that combination of occupations, that workers in the industry customarily perform the combination of occupations and/or that the requirements are justified by business necessity.<sup>18</sup>

### **16. Is the Position Identified in this Application Being Offered to the Alien Identified in Section J?**

The answer to this question should always be “Yes”; otherwise, there is no need to go through the PERM labor certification process.

### **17. Does the Job Require the Alien to Live on the Employer’s Premises?**

Select “Yes” or “No,” as appropriate. Live-in requirements are acceptable for household domestic service workers only if the employer can demonstrate the requirement is essential to perform, in a reasonable manner, the duties of the position and there are no cost-effective alternatives to a live-in arrangement.<sup>19</sup>

### **18. Is the Application for a Live-In Household Domestic Service Worker?**

Select “Yes” or “No,” as appropriate. If yes, answer Question 18-B to indicate whether or not the petitioner and beneficiary had executed the required employment contract and whether the petitioner has provided a copy to the beneficiary.<sup>20</sup>

## **SECTION I. RECRUITMENT INFORMATION**

This is the section that defines the type of recruitment, *i.e.*, Recruitment for Nonprofessional Occupations.<sup>21</sup> Recruitment for Professional Occupations,<sup>22</sup> or Special Recruitment for College and University Teachers,<sup>23</sup> that must be performed and asks you to summarize the recruitment steps taken.

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<sup>17</sup> 20 CFR §656.17(h)(4)(i)–(ii); *Matter of Kellogg*, 94-INA-465, 1998 BALCA LEXIS 161 (BALCA Feb. 2, 1998) (en banc); *Demos Consulting Group, Ltd.*, 2007-PER-00020 (May 16, 2007).

<sup>18</sup> 20 CFR §656.17(h)(3).

<sup>19</sup> 20 CFR §656.17(j).

<sup>20</sup> 20 CFR §656.19.

<sup>21</sup> 20 CFR §656.17(e)(2).

<sup>22</sup> 20 CFR §656.17(e)(1).

<sup>23</sup> 20 CFR §656.18.

## Subsection a. Occupation Type

### 1. Is this Application for a Professional Occupation, Other than a College or University Teacher?

Select “Yes” or “No,” as appropriate. Professional occupations are those for which a bachelor’s degree (or equivalent) is normally required.<sup>24</sup> Petitioners must undertake additional recruitment steps for professional occupations, in addition to the basic recruitment steps required for all applications.<sup>25</sup>

#### **PERM Pro Tip**

The DOL has published a list of occupations that it considers “professional” even though a bachelor’s degree may not be required, *e.g.*, store managers, so be careful to check whether the employer would be required to conduct the additional recruitment steps for professional occupations. The list can be found at Appendix A to the preamble to the PERM Final Rule.<sup>26</sup>

### 2. Is this Application for a College or University Teacher?

Select “Yes” or “No,” as appropriate. PERM applications for college or university professors may follow a separate recruitment process that, contrary to the normal labor certification practice, permits the employer to demonstrate that the employee was selected in a competitive recruitment and selection process through which the employee was found to be more qualified than any U.S. workers who applied.<sup>27</sup> If “Yes” is selected, answer questions 2-A and 2-B and complete Subsection b. If “No” is selected, leave Questions 2-A, 2-B and Subsection b blank.

#### **2-A. Did You Select the Candidate Using a Competitive Recruitment and Selection Process?**

Select “Yes” or “No,” as appropriate. If yes, then complete Subsection b to document the recruitment steps and qualifications for the special recruitment process. The answer for a special recruitment case must be “Yes.” The regulations permit, and indeed require, a competitive recruitment and selection process.<sup>28</sup>

#### **2-B. Did You Use the Basic Recruitment Process for Professional Occupations?**

Select “Yes” or “No,” as appropriate. If yes, complete Subsection c.

## Subsection b. Special Recruitment and Documentation Procedures for College and University Teachers

Complete only if the answer to Question I.a.2-A is “Yes,” *i.e.*, that the employer is following the special recruitment process. Otherwise, leave this section blank.

### 3. Date Alien Selected

Enter the date the beneficiary was selected for the position in MM/DD/YYYY format. This will be different from the employee’s start date and must be within 18 months from the date the PERM application is filed.

### 4. Name and Date of National Professional Journal in Which Advertisement was Placed

Enter the exact name of the national professional journal in which the original advertisement for the position was placed and the date it was published in MM/DD/YYYY format.

### 5. Specify Additional Recruitment Information in this Space. Add an Attachment if Necessary.

If the college/university employer completed any additional advertising in connection with the recruitment process, enter it here.

<sup>24</sup> 20 CFR §656.3.

<sup>25</sup> 20 CFR §656.17(e)(1).

<sup>26</sup> 69 Fed. Reg. 77326 (Dec. 27, 2004).

<sup>27</sup> 20 CFR §656.18.

<sup>28</sup> 20 CFR §656.18(b).

### Subsection c. Professional/Non-Professional Information

Complete this section unless the Form ETA 9089 is being completed for a Sheepherder or Schedule A case.

#### ***PERM Pro Tip***

Keep copies of proof of at least the first and last day of each of the recruitment steps below. Recruitment documentation is required to be maintained for five years after filing and will also be requested in the event of an audit by the DOL.

#### ***6. Start Date for the SWA Job Order***

Enter the date that the job order (SWA job bank advertisement) was first posted on the website maintained by the SWA with jurisdiction over the place of employment in MM/DD/YYYY format.<sup>29</sup>

#### ***7. End Date for the SWA Job Order***

Enter the last date that the job order was posted online with the SWA job bank website in MM/DD/YYYY format.

#### ***PERM Pro Tip***

The SWA job order must run at least 30 days (beware of February!) and must conclude at least 30 days before filing of the ETA 9089.<sup>30</sup>

#### ***8. Is There a Sunday Edition of the Newspaper in the Area of Intended Employment?***

Select “Yes” or “No,” as appropriate. If yes, proceed to Question 9. If the job opportunity is in a rural area that does not have a newspaper with a Sunday edition, the employer may use the newspaper with the widest circulation in the area of intended employment.<sup>31</sup>

#### ***Name of Newspaper (of General Circulation) in Which the First Advertisement was Placed***

Enter the name of the newspaper in which the first advertisement was placed. Use the full title of the newspaper.<sup>32</sup>

#### ***PERM Pro Tip***

Be sure to use the newspaper with the widest circulation in the area; DOL has been known to question employers’ choice of newspapers. Circulation statistics are generally available online.

#### ***10. Date of First Advertisement Identified in Question 9:***

Enter the date of the first advertisement in MM/DD/YYYY format.

#### ***11. Name of Newspaper or Professional Journal (if Applicable) in Which Second Advertisement was Placed***

Enter the name of the newspaper or professional journal in which the second advertisement was placed. Indicate whether a newspaper or journal was used by selecting the appropriate box. If a newspaper was used for the second advertisement, it should be the same newspaper as the first advertisement that was placed and referenced in Question 9. A professional journal can only be used when the offered position requires an advanced degree.<sup>33</sup>

<sup>29</sup> 20 CFR §656.17(e)(1)(i)(A).

<sup>30</sup> 20 CFR §656.17(e)(1)(i)(A).

<sup>31</sup> 20 CFR §656.17(e)(2).

<sup>32</sup> 20 CFR §656.17(e)(1)(i)(B).

<sup>33</sup> 20 CFR §656.17(e)(1)(ii)(4).

**12. Date of Second Newspaper Advertisement or Date of Publication of Journal Identified in Question 11:**

Enter the date of the second advertisement in MM/DD/YYYY format.

**Subsection d. Professional Recruitment Information**

Complete if the answer to I.a.1 is “Yes” or if the answer to I.a.2-B is “Yes.” Recruitment for professional positions requires at least three extra recruitment activities from a menu of ten available options, as specified in the regulations at 20 CFR §656.17(e)(1)(ii). Complete the dates that at least three additional recruitment steps were started and completed in MM/DD/YYYY format.

**Subsection e. General Information**

All applicants must complete this section.

**23. Has the Employer Received Payment of Any Kind for the Submission of this Application?**

Select “Yes” or “No,” as appropriate. If yes, describe details of the payment including the amount, date and purpose of the payment at Question 23-A.

**PERM Pro Tip**

If the answer is “Yes,” the PERM application will, at a minimum, be denied. The regulations prohibit the sale, barter, or purchase of a labor certification. Moreover, payment of any portion of fees or costs, including attorney’s fees, to prepare the PERM application by the employee is strictly prohibited.<sup>34</sup> Evidence of sale, barter, purchase, or payment of PERM-related fees or costs can result in denial or revocation of the PERM application<sup>35</sup> and/or debarment of the employer and/or the attorney from filing PERM applications in the future.<sup>36</sup>

**24. Has the Bargaining Representative for Workers in the Occupation in Which the Alien Will Be Employed Been Provided with Notice of this Filing at Least 30 Days But Not More Than 180 Days Before the Date the Application Is Filed?**

Select “Yes,” “No,” or “N/A,” as appropriate. If the position is subject to a collective bargaining agreement (is unionized), then notice must be provided to the collective bargaining representative during the required period.<sup>37</sup> Required elements of the notice are set forth at 20 CFR §656.10(d)(3).

**PERM Pro Tip**

Note that there is no place on the form to enter the date the notice was provided. The employer must retain evidence the notice was provided to the collective bargaining representative for the file and provide it in the event of an audit.

**25. If There is No Bargaining Representative, Has a Notice of This Filing Been Posted for 10 Business Days in a Conspicuous Location at the Place of Employment, Ending at Least 30 Days Before But Not More Than 180 Days Before the Date the Application Is Filed?**

Select “Yes,” “No,” or “N/A,” as appropriate. If the position is not subject to a collective bargaining agreement, then notice must be provided to the petitioner’s other employees by posting at the worksite for at least 10 business days during the required period.<sup>38</sup> Note that “business days” are not defined in the regulations, but are traditionally considered to be weekdays (Monday through Friday), excluding federal holidays. However, where employees work on a weekend or holiday and can see the notice, those days are considered

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<sup>34</sup> 20 CFR §656.12.

<sup>35</sup> 20 CFR §656.32.

<sup>36</sup> 20 CFR §656.31(f).

<sup>37</sup> 20 CFR §656.10(d)(1)(i).

<sup>38</sup> 20 CFR §656.10(d)(1)(ii).

“business days” for the purposes of meeting this requirement.<sup>39</sup> Required elements of the notice are set forth at 20 CFR §656.10(d)(3).

**PERM Pro Tip**

Note that there is no place to enter the dates the notice was posted on the form. However, the employer must retain evidence the notice was posted for the file and provide it in the event of an audit. Also note that if the employer utilizes in-house media, such as printed newsletter or an intranet, to notify its workforce of employment opportunities, the employer must also publish the same notice in this in-house media for at least ten business days during the required period.<sup>40</sup> There is no place on the form to even indicate the in-house media option, let alone list the dates of the notice was published there. However, the employer must retain evidence the notice was published in the in-house media for the file and provide it in the event of an audit. If the employer has no in-house media, it may be advisable to also include a statement to that effect in the file.

**26. Has the Employer Had a Layoff in the Area of Intended Employment in the Occupation Involved in this Application or in a Related Occupation Within the Six Months Immediately Preceding the Filing of this Application?**

Select “Yes” or “No,” as appropriate. If yes, the employer is required to notify the laid off U.S. workers and consider them the job opportunity for which certification is sought.<sup>41</sup> Select “Yes,” “No,” or “N/A,” as appropriate, for Question 26-A.

**PERM Pro Tip**

Answering “Yes” to this question will likely trigger an audit. The employer should retain documentation in the file that it notified laid off U.S. workers of the job opportunity involved in the application and the results of the notification and consideration.

**SECTION J. ALIEN INFORMATION**

This section contains basic biographic and contact information about the employee as well as some initial information regarding how the employee meets the minimum requirements. The individual in this section must be different from the agent or attorney information listed in Section E.

**PERM Pro Tip**

Make sure the information provided on the form clearly demonstrates how the employee meets all of the minimum requirements for the position, including educational attainment, experience and any special requirements, training or certifications. You may need to use certain fields to insert information if the form does not designate a field for it, *e.g.*, listing the attainment of a license in the field for the job description of the employee’s current job.

**1. Alien’s Name**

Enter the name of the individual on whose behalf the employer is filing the labor certification application. This should match the employee’s legal name on his or her passport.

**2–5. Current Address and Phone Number**

Enter the current residential address and the phone number of the employee in (xxx) xxx-xxxx format.

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<sup>39</sup> *Matter of Il Cortile Restaurant*, 2010-PER-00683 (Oct. 12, 2010).

<sup>40</sup> 20 CFR §656.10(d)(1)(ii).

<sup>41</sup> 20 CFR §656.17(k).

## 5. Country of Citizenship

Enter the employee's country of citizenship. If the employee has dual or multiple citizenships, enter the country that issued the passport that the employee's most recent visa was embossed in and that the employee used to enter the United States.

## 6. Country of Birth

Enter the employee's country of birth.

## 7. Alien's Date of Birth

Enter the employee's date of birth in MM/DD/YYYY format. Again, ensure this matches the date of birth in the employee's passport.

### ***PERM Pro Tip***

Take care to ensure you have correctly stated the employee's date of birth, keeping in mind that most other countries use a DD/MM/YYYY format for characterizing dates instead of the U.S. MM/DD/YYYY format.

## 8. Class of Admission

Enter the visa classification that represents the employee's current status, *e.g.*, H-1B, L-1B. If the employee is not currently in the United States, leave this section blank.

## 9. Alien Registration Number (A#)

If the employee has been assigned an alien registration number (A#) by the USCIS, enter it here. If not, leave this field blank.

### ***PERM Pro Tip***

USCIS does not usually assign an individual an A# until they are the beneficiary of an immigrant visa petition or have been placed in immigration court proceedings. Most "first time" PERM beneficiaries will not yet have an A#. Employees who are the beneficiary of a PERM application filed by a second or subsequent employer (perhaps to take advantage of 8 CFR §204.5(e) by recapturing a previous priority date) may already have an alien registration number.

## 10. Alien Admission Number (I-94)

Enter the number from the employee's Form I-94 Arrival/Departure Record from their most recent entry to the United States, if the employee is in the United States. On April 30, 2013, U.S. Customs and Border Protection (CBP) will eliminate the paper Form I-94 for individuals who are admitted at air and sea ports of entry.<sup>42</sup> Individuals who require an I-94 admission number may obtain it from [CBP's website](#).

## 11. Education

Select the box that represents the highest level of education relevant to the requested occupation achieved by the employee. Keep in mind that this field will be used to determine whether the employee meets the minimum educational requirements set forth in Section H, Question 4 or 8. If you selected "Other," specify the type of education or degree in question 11-A.

## 12. Specify Major Field(s) of Study

Enter the major or field of study for the employee's education cited in Question 11. Again, keep in mind that this field will need to show how the employee meets the minimum educational requirements for the offered position, specifically the field of education as set forth in Section H, Question 4-B, 7-A or 8-A/B.

## 13. Year Relevant Education Completed

Enter the year that the employee completed the education referred to in Question 11.

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<sup>42</sup> 78 Fed. Reg. 18457 (Mar. 27, 2013).

**14. Institution Where Relevant Education Specified in Question 11 Was Received**

Enter the name of the school where the employee completed the education referred to in Question 11. Enter the name of the school that granted the degree.

***PERM Pro Tip***

Many educational institutions abroad, especially those in India, have a system whereby the individual studies at a smaller college that is affiliated with a larger university, which ultimately grants the degree. Take care to also enter the name of the institution that granted the degree, *i.e.*, the name of the school as printed on the diploma, as well as the name of the college where the individual studied, *e.g.*, Small City College, affiliated with Big State University.

**15–16. Address of Conferring Institution**

Enter the address of the educational institution referred to in Question 14.

**17. Did the Alien Complete the Training Required for the Requested Job Opportunity, as Indicated in Question H.5?**

If training was indicated as a minimum requirement for the position in Section H, Question 5, select “Yes” or “No” to indicate whether the employee completed the required training. Select “N/A” if the answer to Section H, Question 5 was “No,” *i.e.*, that training was not required for the position.

**18. Does the Alien Have the Experience as Required for the Requested Job Opportunity Indicated in Question H.6?**

If experience in the job offered was indicated as a minimum requirement for the position in Section H, Question 6, select “Yes” or “No” to indicate whether the employee meets the minimum experience requirement. Select “N/A” if no experience was required in Section H, Question 6.

**19. Does the Alien Possess the Alternate Combination of Education and Experience as Indicated in Question H.8?**

If an alternate combination of education and experience was enumerated in Section H, Question 8, select “Yes” or “No” to indicate whether the employee meets the alternate minimum education and experience requirement. Select “N/A” if no alternate combination was set forth in Section H, Question 8.

**20. Does the Alien Have the Experience in an Alternate Occupation Specified in Question H.10?**

If experience in an alternate occupation was indicated in Section H, Question 10, select “Yes” or “No” to indicate whether the employee meets the minimum experience requirement for the alternate occupation. Select “N/A” if no experience was required in Section H, Question 6.

***PERM Pro Tip***

Keep in mind that, in almost all circumstances, the employee must have met the minimum educational and experience requirements for the position before they started the position with the employer.<sup>43</sup> However, there are a few exceptions:

- If the employer can demonstrate that the experience gained with the employer was in a position “not substantially comparable” to the position that is the subject of the labor certification.<sup>44</sup> Substantially comparable is defined as a position requiring performance of the same job duties more than 50 percent of the time<sup>45</sup>; or
- If the employer can demonstrate it is no longer feasible to train a U.S. worker to qualify for the position.<sup>46</sup>

<sup>43</sup> 20 CFR §656.17(i)(3).

<sup>44</sup> 20 CFR §656.17(i)(3)(i).

<sup>45</sup> 20 CFR §656.17(i)(5)(ii).

<sup>46</sup> 20 CFR §656.17(i)(3)(ii).

## 21. Did the Alien Gain Any of the Qualifying Experience with the Employer in a position Substantially Comparable to the Job Opportunity Requested?

Select “Yes” or “No” to indicate whether the employee gained any of their qualifying experience with the employer in a position that is substantially comparable to the position being offered in Section H.

### ***PERM Pro Tip***

Answering “Yes” to this question will result in a denial. The employee may not meet the actual minimum requirements of the position through experience gained with the same employer in a substantially comparable position unless the employer can demonstrate it is no longer feasible to train a new worker.<sup>47</sup>

## 22. Did the Employer Pay for Any of the Alien’s Education or Training Necessary to Satisfy Any of the Employer’s Job Requirements for this Position?

Select “Yes” or “No” to indicate whether the education or training that the employee is relying on to demonstrate that they meet the minimum requirements for the position was paid for by the employer.

### ***PERM Pro Tip***

Answering “Yes” to this question will almost certainly trigger an audit of the PERM application. While the regulations permit an employee to use education or training paid for by the employer, the employer must be able to demonstrate that it also offers similar training to domestic worker applicants.<sup>48</sup>

## 23. Is the Alien Currently Employed by the Petitioning Employer?

Select “Yes” or “No” to indicate whether the employee is currently employed with the employer.

## SECTION K. ALIEN WORK EXPERIENCE

List all jobs that the employee has held during the past three years. You should also list any other relevant experience that demonstrates how the employee meets the minimum qualifications for the offered position, even if the experience was more than three years ago.

### ***PERM Pro Tip***

This is a good opportunity to review the employee’s maintenance of status history. Collect any nonimmigrant status documents, *e.g.*, I-797s, visas, I-20s, DS-2019s, EADs, etc., from the employee and compare them against his or her work history to spot any gaps in status or employment authorization that may indicate potential ineligibility for adjustment of status pursuant to INA §245.

### Subsection a. Job 1

#### 1. Employer Name

Enter the full legal name of the employer. This should be the actual employer, not the name of the company where the employee was placed if he or she was working as a consultant. If the employee is currently employed with the petitioning employer, this should match the information provided in Section C, Question 1.

#### 2–3. Address

Enter the full address of the employer. If the employee served as a consultant, use the address of the actual employer, not the location where the individual rendered services.

#### 4. Type of Business

Enter a brief description of the employer’s business.

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<sup>47</sup> 20 CFR §656.17(i)(3).

<sup>48</sup> 20 CFR §656.17(i)(4).

**5. Job Title**

Enter the employee's job title.

**6. Start Date**

Enter the date the employee started work with this employer in MM/DD/YYYY format.

**7. End Date**

Enter the date the employee ended work with this employer in MM/DD/YYYY format.

**8. Number of Hours Worked Per Week**

Enter the number of hours worked per week by the employee in this position.

**9. Job Details**

Enter a description of the job duties performed by the employee in this position. Describe any tools, machines, equipment, skills, qualifications, certifications, licenses, etc. used by the employee in this role. Be sure to include the phone number of the employer and the name of the employee's supervisor in this field. If the employee is currently employed by the employer in the same position for which labor certification is being sought, this section should match the job description provided at Section H, Question 11.

***PERM Pro Tip***

Gather verification letters from past employers when past employment experience is required or the employee gained required skills during previous employment. These should be gathered as early as possible in the process. The information in the verification letters should be consistent with the descriptions in this part of the Form ETA 9089.

## Sample Form ETA 9089, Application for Permanent Employment Certification

OMB Approval: 1205-0451  
Expiration Date: 08/31/2014

Application for Permanent Employment Certification  
ETA Form 9089  
U.S. Department of Labor



**Please read and review the filing instructions before completing this form. A copy of the instructions can be found at <http://www.foreignlaborcert.dolceta.gov/pdf/9089inst.pdf>**

Employing or continuing to employ an alien unauthorized to work in the United States is illegal and may subject the employer to criminal prosecution, civil money penalties, or both.

### A. Refiling Instructions

1. Are you seeking to utilize the filing date from a previously submitted Application for Alien Employment Certification (ETA 750)?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
1-A. If Yes, enter the previous filing date <b>N/A</b>		
1-B. Indicate the previous SWA or local office case number OR if not available, specify state where case was originally filed: <b>N/A</b>		

### B. Schedule A or Sheepherder Information

1. Is this application in support of a Schedule A or Sheepherder Occupation?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If Yes, do NOT send this application to the Department of Labor. All applications in support of Schedule A or Sheepherder Occupations must be sent directly to the appropriate Department of Homeland Security office.		

### C. Employer Information (Headquarters or Main Office)

1. Employer's name <b>Smith and Jones Logistics</b>			
2. Address 1 <b>123 Main Street</b>			
Address 2 <b>Suite 400</b>			
3. City <b>Chicago</b>	State/Province <b>IL</b>	Country <b>USA</b>	Postal code <b>60601</b>
4. Phone number <b>(888) 987-6543</b>	Extension		
5. Number of employees <b>12</b>	6. Year commenced business <b>2009</b>		
7. FEIN( Federal Employer Identification Number) <b>00-0000000</b>	8. NAICS Code <b>541614</b>		
9. Is the employer a closely held corporation, partnership, or sole proprietorship in which the alien has an ownership interest, or is there a familial relationship between the owners, stockholders, partners, corporate officers, incorporators, and the alien?			
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			

### D. Employer Contact Information (This section must be filled out. This information must be different from the agent or attorney information listed in Section E).

1. Contact's last name <b>Public</b>	First name <b>Joan</b>	Middle initial <b>Q</b>	
2. Address 1 <b>789 Elm Street</b>			
Address 2 <b>Suite 100</b>			
3. City <b>Los Angeles</b>	State/Province <b>CA</b>	Country <b>USA</b>	Postal code <b>90001</b>
4. Phone number <b>(213) 555-1212</b>	Extension		
5. E-mail address <b>jpublic@jslogistics.com</b>			

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**E. Agent or Attorney Information (If applicable)**

1. Agent or attorney's last name <b>Law</b>	First name <b>Josephine</b>	Middle initial <b>M</b>	
2. Firm name <b>Law &amp; Associates, P.C.</b>			
3. Firm EIN <b>12-3456789</b>	4. Phone number <b>(800) 123-4567</b>	Extension <b>x2</b>	
5. Address 1 <b>456 Maple Street</b>			
Address 2 <b>Suite 3</b>			
6. City <b>Anywhere</b>	State/Province <b>IL</b>	Country <b>USA</b>	Postal code <b>60600</b>
7. E-mail address <b>jmlaw@lawassociates.com</b>			

**F. Prevailing Wage Information (as provided by the State Workforce Agency)**

1. Prevailing wage tracking number (if applicable) <b>I20011111222222</b>	2. SOC/O*NET(OES) code <b>13-1081</b>
3. Occupation Title <b>Logisticians</b>	4. Skill Level <b>Level II</b>
5. Prevailing wage <b>\$ 59,467</b>	Per: (Choose only one) <input type="checkbox"/> Hour <input type="checkbox"/> Week <input type="checkbox"/> Bi-Weekly <input type="checkbox"/> Month <input checked="" type="checkbox"/> Year
6. Prevailing wage source (Choose only one) <input checked="" type="checkbox"/> OES <input type="checkbox"/> CBA <input type="checkbox"/> Employer Conducted Survey	<input type="checkbox"/> DBA <input type="checkbox"/> SCA <input type="checkbox"/> Other
6-A. If Other is indicated in question 6, specify: <b>N/A</b>	
7. Determination date <b>04/01/2012</b>	8. Expiration date <b>06/30/2012</b>

**G. Wage Offer Information**

1. Offered wage From: <b>\$ 60,000</b>	To: (Optional) <b>\$</b>	Per: (Choose only one) <input type="checkbox"/> Hour <input type="checkbox"/> Week <input type="checkbox"/> Bi-Weekly <input type="checkbox"/> Month <input checked="" type="checkbox"/> Year
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**H. Job Opportunity Information (Where work will be performed)**

1. Primary worksite (where work is to be performed) address 1 <b>123 Main Street</b>			
Address 2 <b>Suite 400</b>			
2. City <b>Chicago</b>	State <b>IL</b>	Postal code <b>60601</b>	
3. Job title <b>Logistician</b>			
4. Education: minimum level required: <input type="checkbox"/> None <input type="checkbox"/> High School <input type="checkbox"/> Associate's <input checked="" type="checkbox"/> Bachelor's <input type="checkbox"/> Master's <input type="checkbox"/> Doctorate <input type="checkbox"/> Other			
4-A. If Other is indicated in question 4, specify the education required: <b>N/A</b>			
4-B. Major field of study <b>Supply Chain Management</b>			
5. Is training required in the job opportunity? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	5-A. If Yes, number of months of training required: <b>N/A</b>		

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**H. Job Opportunity Information Continued**

5-B. Indicate the field of training: <b>N/A</b>	
6. Is experience in the job offered required for the job? 6-A. If Yes, number of months experience required: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <b>24</b>	
7. Is there an alternate field of study that is acceptable? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
7-A. If Yes, specify the major field of study: <b>Logistics</b>	
8. Is there an alternate combination of education and experience that is acceptable? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
8-A. If Yes, specify the alternate level of education required: <input type="checkbox"/> None <input type="checkbox"/> High School <input type="checkbox"/> Associate's <input type="checkbox"/> Bachelor's <input type="checkbox"/> Master's <input type="checkbox"/> Doctorate <input type="checkbox"/> Other	
8-B. If Other is indicated in question 8-A, indicate the alternate level of education required: <b>N/A</b>	
8-C. If applicable, indicate the number of years experience acceptable in question 8: <b>N/A</b>	
9. Is a foreign educational equivalent acceptable? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
10. Is experience in an alternate occupation acceptable? 10-A. If Yes, number of months experience in alternate occupation required: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <b>24</b>	
10-B. Identify the job title of the acceptable alternate occupation: <b>Supply Chain Analyst or related field.</b>	
11. Job duties – If submitting by mail, add attachment if necessary. Job duties description must begin in this space. <b>Analyze &amp; coordinate logistical functions including acquisition, distribution, internal allocation, delivery &amp; final disposal of resources. Coordinate delivery of materials with suppliers &amp; of final products with customers using truck, rail, air, &amp; sea transport.</b>	
12. Are the job opportunity's requirements normal for the occupation? <i>If the answer to this question is No, the employer must be prepared to provide documentation demonstrating that the job requirements are supported by business necessity.</i> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
13. Is knowledge of a foreign language required to perform the job duties? <i>If the answer to this question is Yes, the employer must be prepared to provide documentation demonstrating that the language requirements are supported by business necessity.</i> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
14. Specific skills or other requirements – If submitting by mail, add attachment if necessary. Skills description must begin in this space. <b>Must be proficient with Logitrak software. Must have at least 1 year experience in ocean freight management.</b>  <b>(Note: any suitable combination of education, training or experience is acceptable.)</b>	

OMB Approval: 1205-0451  
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ETA Form 9089  
U.S. Department of Labor**H. Job Opportunity Information Continued**

15. Does this application involve a job opportunity that includes a combination of occupations?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
16. Is the position identified in this application being offered to the alien identified in Section J?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
17. Does the job require the alien to live on the employer's premises?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
18. Is the application for a live-in household domestic service worker?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
18-A. If Yes, have the employer and the alien executed the required employment contract and has the employer provided a copy of the contract to the alien?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA

**I. Recruitment Information****a. Occupation Type – All must complete this section.**

1. Is this application for a <b>professional occupation</b> , other than a college or university teacher? Professional occupations are those for which a bachelor's degree (or equivalent) is normally required.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2. Is this application for a college or university teacher? <b>If Yes, complete questions 2-A and 2-B below.</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2-A. Did you select the candidate using a competitive recruitment and selection process?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2-B. Did you use the basic recruitment process for professional occupations?	<input type="checkbox"/> Yes <input type="checkbox"/> No

**b. Special Recruitment and Documentation Procedures for College and University Teachers – Complete only if the answer to question I.a.2-A is Yes.**

3. Date alien selected: <b>N/A</b>
4. Name and date of national professional journal in which advertisement was placed: <b>N/A</b>
5. Specify additional recruitment information in this space. Add an attachment if necessary. <b>N/A</b>

**c. Professional/Non-Professional Information – Complete this section unless your answer to question B.1 or I.a.2-A is YES.**

6. Start date for the SWA job order <b>06/15/2012</b>	7. End date for the SWA job order <b>07/15/2012</b>
8. Is there a Sunday edition of the newspaper in the area of intended employment?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
9. Name of newspaper (of general circulation) in which the first advertisement was placed: <b>The Chicago Tribune</b>	
10. Date of first advertisement identified in question 9: <b>07/22/2012</b>	
11. Name of newspaper or professional journal (if applicable) in which second advertisement was placed: <b>The Chicago Tribune</b>	<input checked="" type="checkbox"/> Newspaper <input type="checkbox"/> Journal

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**I. Recruitment Information Continued**

12. Date of second newspaper advertisement or date of publication of journal identified in question 11:  
**07/29/2012**

**d. Professional Recruitment Information – Complete if the answer to question I.a.1 is YES or if the answer to I.a.2-B is YES. Complete at least 3 of the items.**

13. Dates advertised at job fair From: _____ To: _____	14. Dates of on-campus recruiting From: _____ To: _____
15. Dates posted on employer web site From: <b>08/01/2012</b> To: <b>08/07/2012</b>	16. Dates advertised with trade or professional organization From: _____ To: _____
17. Dates listed with job search web site From: <b>07/16/2012</b> To: <b>07/23/2012</b>	18. Dates listed with private employment firm From: _____ To: _____
19. Dates advertised with employee referral program From: _____ To: _____	20. Dates advertised with campus placement office From: _____ To: _____
21. Dates advertised with local or ethnic newspaper From: <b>09/03/2012</b> To: _____	22. Dates advertised with radio or TV ads From: _____ To: _____

**e. General Information – All must complete this section.**

23. Has the employer received payment of any kind for the submission of this application? <b>N/A</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
23-A. If Yes, describe details of the payment including the amount, date and purpose of the payment : <b>N/A</b>	
24. Has the bargaining representative for workers in the occupation in which the alien will be employed been provided with notice of this filing at least 30 days but not more than 180 days before the date the application is filed?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
25. If there is no bargaining representative, has a notice of this filing been posted for 10 business days in a conspicuous location at the place of employment, ending at least 30 days before but not more than 180 days before the date the application is filed?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA
26. Has the employer had a layoff in the area of intended employment in the occupation involved in this application or in a related occupation within the six months immediately preceding the filing of this application?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
26-A. If Yes, were the laid off U.S. workers notified and considered for the job opportunity for which certification is sought?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA

**J. Alien Information (This section must be filled out. This information must be different from the agent or attorney information listed in Section E).**

1. Alien's last name <b>Doe</b>	First name <b>John</b>	Full middle name <b>David</b>	
2. Current address 1 <b>55 Daisy Lane</b>			
Address 2 <b>Apt. 12</b>			
3. City <b>Downers Grove</b>	State/Province <b>IL</b>	Country <b>USA</b>	Postal code <b>60615</b>
4. Phone number of current residence <b>(312) 555-1212</b>			
5. Country of citizenship <b>Madagascar</b>	6. Country of birth <b>Madagascar</b>		
7. Alien's date of birth <b>01/01/1975</b>	8. Class of admission <b>H-1B</b>		
9. Alien registration number (A#) <b>N/A</b>	10. Alien admission number (I-94) <b>123456789 10</b>		
11. Education: highest level achieved relevant to the requested occupation:			
<input type="checkbox"/> None <input type="checkbox"/> High School <input type="checkbox"/> Associate's <input checked="" type="checkbox"/> Bachelor's <input type="checkbox"/> Master's <input type="checkbox"/> Doctorate <input type="checkbox"/> Other			

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11-A. If Other indicated in question 11, specify <b>N/A</b>			
12. Specify major field(s) of study <b>Supply Chain Management</b>			
13. Year relevant education completed <b>2004</b>			
14. Institution where relevant education specified in question 11 was received <b>Prestigious University</b>			
15. Address 1 of conferring institution <b>123 Big Donor Hall</b>			
Address 2			
16. City <b>College Town</b>	State/Province	Country	Postal code
<b>Madagascar</b>			
17. Did the alien complete the training required for the requested job opportunity, as indicated in question H.5?		<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	
18. Does the alien have the experience as required for the requested job opportunity indicated in question H.6?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA	
19. Does the alien possess the alternate combination of education and experience as indicated in question H.8?		<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	
20. Does the alien have the experience in an alternate occupation specified in question H.10?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA	
21. Did the alien gain any of the qualifying experience with the employer in a position substantially comparable to the job opportunity requested?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA	
22. Did the employer pay for any of the alien's education or training necessary to satisfy any of the employer's job requirements for this position?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
23. Is the alien currently employed by the petitioning employer?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

**K. Alien Work Experience**

List all jobs the alien has held during the past 3 years. Also list any other experience that qualifies the alien for the job opportunity for which the employer is seeking certification.

**a. Job 1**

1. Employer name <b>Smith and Jones Logistics</b>	State/Province	Country	Postal code
2. Address 1 <b>123 Main Street</b>			
Address 2 <b>Suite 400</b>			
3. City <b>Chicago</b>	IL	USA	60601
4. Type of business <b>Shipping and Logistics Consulting</b>		5. Job title <b>Logistician</b>	
6. Start date <b>10/01/2007</b>	7. End date	8. Number of hours worked per week <b>40</b>	

Job 1 continued on next page

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**K. Alien Work Experience Continued**

9. Job details (duties performed, use of tools, machines, equipment, skills, qualifications, certifications, licenses, etc. Include the phone number of the employer and the name of the alien's supervisor.)  
**Analyze & coordinate logistical functions including acquisition, distribution, internal allocation, delivery & final disposal of resources. Coordinate delivery of materials with suppliers & of final products with customers using truck, rail, air, & sea transport.**

**b. Job 2**

1. Employer name <b>Madagascar Widget Manufacturing Co. Ltd.</b>	2. Address 1 <b>1 Main Street</b>	Address 2	
3. City <b>Antananarivo</b>	State/Province <b>Madagascar</b>	Country <b>Madagascar</b>	Postal code
4. Type of business <b>Widget Manufacturing</b>	5. Job title <b>Supply Chain Analyst</b>		
6. Start date <b>08/01/2005</b>	7. End date <b>09/15/2007</b>	8. Number of hours worked per week <b>40</b>	
9. Job details (duties performed, use of tools, machines, equipment, skills, qualifications, certifications, licenses, etc. Include the phone number of the employer and the name of the alien's supervisor.) <b>Analyze &amp; coordinate logistical functions for acquisition, distribution, &amp; delivery of resources related to manufacture of widgets. Develop &amp; implement technical project management tools such as plans, schedules, &amp; responsibility &amp; compliance matrices. Direct team activities, establish task priorities, schedule &amp; track work assignments to ensure the continuous</b>			

**c. Job 3**

1. Employer name <b>Madagascar Shipping Co. Ltd.</b>	2. Address 1 <b>23 First Avenue</b>	Address 2	
3. City <b>Antananarivo</b>	State/Province <b>Madagascar</b>	Country <b>Madagascar</b>	Postal code
4. Type of business <b>Ocean freight lines</b>	5. Job title <b>Logistician</b>		
6. Start date <b>06/03/2004</b>	7. End date <b>07/28/2005</b>	8. Number of hours worked per week <b>40</b>	

Job 3 continued on next page

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9. Job details (duties performed, use of tools, machines, equipment, skills, qualifications, certifications, licenses, etc. Include the phone number of the employer and the name of the alien's supervisor.)

**Coordinate & manage ocean freight delivery of materials to suppliers & manufacturers using Logitrak software. Develop & implement technical project management tools to streamline shipping processes & create efficiencies. Maintain & develop positive business relationships with customers' key logistics personnel.**

**L. Alien Declaration**

**I declare under penalty of perjury that Sections J and K are true and correct. I understand that to knowingly furnish false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a federal offense punishable by a fine or imprisonment up to five years or both under 18 U.S.C. §§ 2 and 1001. Other penalties apply as well to fraud or misuse of ETA immigration documents and to perjury with respect to such documents under 18 U.S.C. §§ 1546 and 1621.**

**In addition, I further declare under penalty of perjury that I intend to accept the position offered in Section H of this application if a labor certification is approved and I am granted a visa or an adjustment of status based on this application.**

1. Alien's last name <b>Doe</b>	First name <b>John</b>	Full middle name <b>David</b>
2. Signature	Date signed	

**Note** – The signature and date signed do not have to be filled out when electronically submitting to the Department of Labor for processing, but must be complete when submitting by mail. If the application is submitted electronically, any resulting certification MUST be signed *immediately upon receipt* from DOL before it can be submitted to USCIS for final processing.

**M. Declaration of Preparer**

1. Was the application completed by the employer? If No, you must complete this section.	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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**I hereby certify that I have prepared this application at the direct request of the employer listed in Section C and that to the best of my knowledge the information contained herein is true and correct. I understand that to knowingly furnish false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a federal offense punishable by a fine, imprisonment up to five years or both under 18 U.S.C. §§ 2 and 1001. Other penalties apply as well to fraud or misuse of ETA immigration documents and to perjury with respect to such documents under 18 U.S.C. §§ 1546 and 1621.**

2. Preparer's last name <b>Law</b>	First name <b>Josephine</b>	Middle initial <b>M</b>
3. Title <b>Attorney</b>		
4. E-mail address <b>jmlaw@lawassociates.com</b>		
5. Signature	Date signed	

**Note** – The signature and date signed do not have to be filled out when electronically submitting to the Department of Labor for processing, but must be complete when submitting by mail. If the application is submitted electronically, any resulting certification MUST be signed *immediately upon receipt* from DOL before it can be submitted to USCIS for final processing.

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**N. Employer Declaration**

By virtue of my signature below, I **HEREBY CERTIFY** the following conditions of employment:

1. The offered wage equals or exceeds the prevailing wage and I will pay at least the prevailing wage.
2. The wage is not based on commissions, bonuses or other incentives, unless I guarantees a wage paid on a weekly, bi-weekly, or monthly basis that equals or exceeds the prevailing wage.
3. I have enough funds available to pay the wage or salary offered the alien.
4. I will be able to place the alien on the payroll on or before the date of the alien's proposed entrance into the United States.
5. The job opportunity does not involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap, or citizenship.
6. The job opportunity is not:
  - a. Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute involving a work stoppage; or
  - b. At issue in a labor dispute involving a work stoppage.
7. The job opportunity's terms, conditions, and occupational environment are not contrary to Federal, state or local law.
8. The job opportunity has been and is clearly open to any U.S. worker.
9. The U.S. workers who applied for the job opportunity were rejected for lawful job-related reasons.
10. The job opportunity is for full-time, permanent employment for an employer other than the alien.

I **hereby designate** the agent or attorney identified in section E (if any) to represent me for the purpose of labor certification and, by virtue of my signature in Block 3 below, I **take full responsibility** for the accuracy of any representations made by my agent or attorney.

I **declare** under penalty of perjury that I have read and reviewed this application and that to the best of my knowledge the information contained herein is true and accurate. *I understand that to knowingly furnish false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a federal offense punishable by a fine or imprisonment up to five years or both under 18 U.S.C. §§ 2 and 1001. Other penalties apply as well to fraud or misuse of ETA immigration documents and to perjury with respect to such documents under 18 U.S.C. §§ 1546 and 1621.*

1. Last name <b>Smith</b>	First name <b>John</b>	Middle initial
2. Title <b>Founder/CEO</b>		
3. Signature	Date signed	

**Note** – The signature and date signed do not have to be filled out when electronically submitting to the Department of Labor for processing, but must be complete when submitting by mail. If the application is submitted electronically, any resulting certification **MUST** be signed *immediately upon receipt* from DOL before it can be submitted to USCIS for final processing.

**O. U.S. Government Agency Use Only**

Pursuant to the provisions of Section 212 (a)(5)(A) of the Immigration and Nationality Act, as amended, I hereby certify that there are not sufficient U.S. workers available and the employment of the above will not adversely affect the wages and working conditions of workers in the U.S. similarly employed.

This Certification is valid from \_\_\_\_\_ to \_\_\_\_\_

\_\_\_\_\_  
Signature of Certifying Officer

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Case Number

\_\_\_\_\_  
Filing Date

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This Certification is valid from \_\_\_\_\_ to \_\_\_\_\_

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**P. OMB Information**

*Paperwork Reduction Act Information Control Number 1205-0451*

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Respondent's reply to these reporting requirements is required to obtain the benefits of permanent employment certification (Immigration and Nationality Act, Section 212(a)(5)). Public reporting burden for this collection of information is estimated to average 1 1/4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate to the Division of Foreign Labor Certification \* U.S. Department of Labor \* Room C4312 \* 200 Constitution Ave., NW \* Washington, DC \* 20210.

**Do NOT send the completed application to this address.**

**Q. Privacy Statement Information**

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), you are hereby notified that the information provided herein is protected under the Privacy Act. The Department of Labor (Department or DOL) maintains a System of Records titled Employer Application and Attestation File for Permanent and Temporary Alien Workers (DOL/ETA-7) that includes this record.

Under routine uses for this system of records, case files developed in processing labor certification applications, labor condition applications, or labor attestations may be released as follows: in connection with appeals of denials before the DOL Office of Administrative Law Judges and Federal courts, records may be released to the employers that filed such applications, their representatives, to named alien beneficiaries or their representatives, and to the DOL Office of Administrative Law Judges and Federal courts; and in connection with administering and enforcing immigration laws and regulations, records may be released to such agencies as the DOL Office of Inspector General, Employment Standards Administration, the Department of Homeland Security, and the Department of State.

Further relevant disclosures may be made in accordance with the Privacy Act and under the following circumstances: in connection with federal litigation; for law enforcement purposes; to authorized parent locator persons under Pub. L. 93-647; to an information source or public authority in connection with personnel, security clearance, procurement, or benefit-related matters; to a contractor or their employees, grantees or their employees, consultants, or volunteers who have been engaged to assist the agency in the performance of Federal activities; for Federal debt collection purposes; to the Office of Management and Budget in connection with its legislative review, coordination, and clearance activities; to a Member of Congress or their staff in response to an inquiry of the Congressional office made at the written request of the subject of the record; in connection with records management; and to the news media and the public when a matter under investigation becomes public knowledge, the Solicitor of Labor determines the disclosure is necessary to preserve confidence in the integrity of the Department, or the Solicitor of Labor determines that a legitimate public interest exists in the disclosure of information, unless the Solicitor of Labor determines that disclosure would constitute an unwarranted invasion of personal privacy.