



2017 AILA PERM/ H-2B PRACTICE CONFERENCE

**AUGUST 18–19, 2017
SEATTLE, WA**

This intermediate to advanced-level two-day conference addresses both PERM and H-2B visa practice. Day 1 deals exclusively with PERM, covering recent trends, drafting and recruitment strategies, prevailing wage issues, ethics, and more. Day 2 focuses on H-2Bs, addressing recent developments, best practices for dealing with the various agencies, establishing temporary need, employer obligations, audits, and litigation. Attendees also have the option to come a day early and participate in an intensive marketing workshop featuring Legal Connect with Google. Join us in Seattle for this unique educational event!

Thursday, August 17, 2017

1:00 pm–6:00 pm

LEGAL CONNECT WITH GOOGLE

(Please note: CLE Credit for this optional workshop is not available)

Use Google to market your law firm! Legal Connect with Google is a free workshop designed exclusively for the legal industry. During this intensive workshop, Google representatives will guide attendees through a 12-page worksheet to evaluate the efficacy of their current online marketing efforts, with an eye towards identifying specific weaknesses or missed tactics. This is NOT a conference with talking heads delivering thinly veiled sales pitches from sponsored PowerPoints. Instead, it is a hands-on, interactive educational program that will empower attendees with actionable tools and tactics. Attendees must be licensed attorneys, bring both a laptop and mobile phone, and have access to their Google Analytics and Google Webmaster Tools accounts.

Faculty:

Conrad Saam, General Manager at Mockingbird Marketing, Seattle, WA

**Google Representatives*

Friday, August 18, 2017

Day Coordinator:

**TBD*

8:30 am–5:00 pm

REGISTRATION, INFORMATION, AND EXHIBITS

DAY 1: PERM

** = invited, not confirmed*

8:55 am–9:00 am

WELCOME AND GREETINGS

Deborah J. Notkin, AILA Conference Program Chair/Past President, New York, NY

9:00 am–10:00 am

BALCA AND RECENT PERM TRENDS

Our panel of experts will discuss recent BALCA decisions of note, and how they can impact current or future PERMs. The experts also will discuss motions to BALCA, and provide guidance regarding cases that may be removed from the BALCA queue.

- Use of Motions for Appeals at BALCA
- Recent Decisions That May Provide Guidance for PERMs
- En Banc Decisions Addressing Recruitment and Other Issues
- Understanding the Difference Between Panel Decisions and En Banc Decisions
- Requesting Reconsideration, Review, or Both
- BALCA and Prevailing Wage Appeals

Faculty:

Deborah J. Notkin (DL), AILA Conference Program Chair/Past President, New York, NY

Michelle Funk, McLean, VA

*Harry Sheinfeld, Senior Attorney, Board of Alien Labor Certification Appeals,
Washington, DC*

10:05 am–11:05 am

DRAFTING STRATEGIES FOR PERM

DOL's ETA 9089 is one of the most daunting and difficult of all immigration forms, presenting myriad drafting challenges and obstacles for practitioners. Our panel of experts will provide members with best practice recommendations addressing a variety of strategic drafting issues. These recommendations range from how to interpret basic questions on the ETA 9089, to successfully navigating the complex nuances of H.14 in light of the anticipated re-publication of PERM FAQ Round 14.

- H.4 to H.10: Presentation Issues Associated with an Employer's Primary vs. Alternate Requirements
- H.12: Determining Normalcy with Respect to Minimum Job Requirements
- H.14 Highlights
 - Presentation of Foreign Degree Equivalencies
 - Minimum Requirements Clarifiers
 - Travel Requirements and Other Unusual Terms of Employment
 - Proactive Disclosures to Mitigate Audit/Denial Risks
- H.15: Determining Whether Combination Occupation Disclosure Applies
- J.18 to J.20: Is There a Right or Wrong Answer?
- Section K Disclosures and Denial Prevention

Faculty:

Shannon Napier Barnes (DL), AILA SSA-DMV-SAVE Task Force Chair, San Diego, CA

Eleanor Pelta, AILA Past President, Washington, DC

Elizabeth Chatham, Phoenix, AZ

11:05 am–11:20 am

NETWORKING BREAK

11:20 am–12:20 pm

PREVAILING WAGE ISSUES: BEING PROACTIVE PAYS OFF!

In most PERM cases, obtaining the prevailing wage is the initial step in the process, something that must be done correctly the first time due to the ever-increasing processing times. Our panel of experts will provide insight on how OFLC has been handling prevailing wage requests based on stakeholder meetings. They also will discuss how to use current

* = invited, not confirmed

guidance to minimize uncertainty, and how to be proactive to avoid RFIs and other processing delays.

- Avoiding DOL Misclassification of Job Titles and Job Duties
- Impact of Requirements on Leveling
- Avoiding and Responding to RFIs
- Using Employer Alternative Surveys
- Options When the Wage Comes in Too High

Faculty:

Vincent W. Lau (DL), Cambridge, MA

Lisa Baker Jones, Santa Clara, CA

Rosanna M. Fox, New York, NY

12:20 pm–1:00 pm

LUNCH (INCLUDED WITH REGISTRATION)

1:00 pm–1:50 pm

PRACTICUMS (ETA 9089 AND ETA 9141), FIXES FOR ELECTRONIC PROBLEMS, AND CURRENT AUDITS

Panelists at this lunch session will provide hands-on tips for drafting ETA Forms 9089 and 9141 to help practitioners identify and avoid issues known to cause processing delays and denials. They will identify ways to ensure consistency between these forms, addressing special requirements, licenses, and skills. They also will discuss dealing with unquantified experience requirements, and the use of free text fields on the ETA Form 9089 to ensure clarity relating to requirements and the beneficiary's qualifications. Finally, panelists will provide practical suggestions for troubleshooting PERM account setup delays, processing delays, and erroneous denials.

- Proving Business Existence and Creating a PERM Account for a New Client
- The PERM Job Summary: Getting on the Same Page with Job Duties and Minimum Requirements
- The “Three Cs” of Drafting Sections H.11 and H.14: How to Be Clear, Concise, and Consistent
- Drafting the ETA 9141 and Ensuring Consistency with the ETA 9089
- Responding to Prevailing Wage RFIs
- Troubleshooting Overdue Prevailing Wage and PERM Adjudications
- How to Use the Reconsideration Process Effectively

Faculty:

*Kevin W. Miner (DL), AILA Board of Governors/Department of Labor Liaison Chair,
Atlanta, GA*

Bob White, Schaumburg, IL

1:55 pm–2:55 pm

RECRUITMENT: MORE THAN ONE WAY TO GO

Recruitment for the PERM process is not just a matter of checking off requirements. Developing a successful recruitment plan takes advanced planning, and must cater to an employer's business, industry, and budget. Our experts will teach you how to navigate the labyrinthine PERM requirements and develop a plan that withstands an audit.

- Keeping the Costs of Recruitment Down
- Handling Sensitive Issue of Wages
- Exploring Alternative Recruitment Options
- Using the Full Gamut of Options
- Special Handling Issues
- Supervised Recruitment
- Setting Up the Employer's Recruitment Requirements and the Recruitment Report

* = invited, not confirmed

Faculty:

Cora-Ann Victoria Pestaina (DL), New York, NY

Jill S. Bloom, Phoenix, AZ

David A. M. Ware, AILA Health Care Professionals Committee Chair, Metairie, LA

3:00 pm–4:00 pm

HITTING A MOVING TARGET: SETTING UP YOUR PERM TO ENSURE AN APPROVABLE I-140

Congratulations, your PERM has been approved! Now what? Come listen to our panel of experts share their experiences in an engaging discussion on converting successful PERMs into I-140 petition approvals, and the virtue and value of planning ahead.

- Drafting the PERM with the I-140 Adjudication in Mind
- Meeting the Minimum Educational Requirements and Dealing with Degree Equivalencies
- Creative Alternatives to Document Evidence of Experience and Skills
- The Impact of *Matter of O– A–*
- Documenting an Employer’s Ability to Pay

Faculty:

Lorna A. De Bono (DL), AILA NSC Liaison Committee Chair, Los Angeles, CA

Ronald Y. Wada, AILA Author, AILA's Focus on EB-2 & EB-3 Degree Equivalency, San Francisco, CA

Avalyn Castillo Langemeier, Houston, TX

4:00 pm–4:15 pm

NETWORKING BREAK

4:15 pm–5:15 pm

ETHICS: TRICKIER THAN YOU THINK

PERM ethics issues can be thorny and create problems for the uninformed attorney. Panelists will discuss how to develop and maintain an ethical approach to your PERM practice.

- Keeping Requirements Consistent Across PERM, I-140, and NIV
- Paying for the Fees and Costs of PERM
- Ensuring Proper Driver of the PERM Process
- Dual Representation in the PERM Context
- Determining the Beneficiary’s Admissibility at the Outset

Faculty:

Susan M. MacLean (DL), AILA CIS Ombudsman Liaison Committee Chair, Chicago, IL

Ester Greenfield, Seattle, WA

Robin O’Donoghue Cambridge, MA

Saturday, August 19, 2017

8:30 am–5:00 pm

REGISTRATION, INFORMATION, AND EXHIBITS

DAY 2/TRACK I: A FOCUS ON THE H-2B VISA PROGRAM

9:00 am–10:00 am

THE H-2B TEMPORARY WORKER VISA PROGRAM: OVERVIEW AND RECENT DEVELOPMENTS

Our panel of experts will demystify the H-2B program for new and experienced

* = invited, not confirmed

practitioners. They will address current H-2B regulations, H-2B cap relief, when the H-2B can and should be used, the H-2B process, and how attorneys can add value to the H-2B program.

- Which H-2B Regulations Apply?
- How to Get H-2B Numbers and Sponsoring H-2B Workers Even When the Cap Is Reached
- In Which Types of Situations Can an Employer Use the H-2B or H-2A?
- The Filing Process: When and Where to File
- The Role of the Attorney: Adding Value to the H-2B Process

Faculty:

Jeff Joseph (DL), Aurora, CO

Loan T. Huynh, AILA DOL Liaison Committee Vice Chair, Minneapolis, MN

Laurie-Ann Flanagan, D.C. Legislative and Regulatory Services, Washington, DC

10:05 am–11:05 am

SURVIVING THE H-2B OBSTACLE COURSE (DOL, SWA, USCIS, AND DOS)

The H-2B program requires the ability to navigate several government agencies and their individual interpretations of the H-2B regulations. Panelists will discuss best practices for dealing with the many obstacles complicating the process of getting H-2B workers into the United States.

- Should You Even Start the H-2B Course with DOL?
 - Is the Need Temporary? Are You Better Off with PERM?
 - Timing Strategies to Meet the Date of Need and the H-2B Cap
 - Prevailing Wage Issues and the Use of Alternative Wage Surveys
 - Getting the Job Order Posted at SWAs
- It's Been Certified: Dealing with USCIS
 - The Cap, and Temporary Need Before USCIS
 - Eligible Countries List and Sponsoring H-2B Workers Off the List
- Are They Here Yet? Consular Processing Issues for H-2Bs
 - Tips for Crossing the Line (Appointment Scheduling, Hotel, and Transportation)
 - Overcoming INA §214(b) Intent Issues
 - Rules Regarding H-2 Recruiters/Agents

Faculty:

Ashley Foret Dees (DL), Lake Charles, LA

Heather Leigh Frayre, Dallas, TX

Jessica Feinstein, Omaha, NE

11:05 am–11:20 am

NETWORKING BREAK

11:20 am—12:20 pm

ESTABLISHING TEMPORARY NEED

Before taking on an H-2B case, whether the employer has a temporary need must first be established. Panelists will discuss various important aspects of temporary need, including its regulatory definition, how to document it, relevant case law, and current trends in interpretation.

- Peakload vs. Seasonal
- One-Time Occurrence
- Documenting Temporary Need
- Can Temporary Need Change from Year-to-Year?
- Who Decides Temporary Need: DOL or USCIS?

Faculty:

Amy Novak (DL), Vail, CO

Sujata P. Ajmera, Austin, TX

12:20 pm–1:35 pm

LUNCH (INCLUDED WITH REGISTRATION)

1:35 pm–2:35 pm

EMPLOYER OBLIGATIONS AND ASSURANCES

The most critical role for an attorney in H-2B practice is to ensure that clients know their obligations and understand the assurances to which they must attest. This is what sets the H-2B visa apart from other nonimmigrant visas. Panelists will discuss best practices for dealing successfully with the complex obligations and assurances employers must attest to under the H-2B program.

- Joint Employers/Labor Contractors
- Corresponding Employment and What It Means
- What Are Permissible and Impermissible Deductions and Earning Statement Requirements?
- Reporting Requirements to USCIS and DOL
- Fees: Is It All the Responsibility of Employers? What Fees Can H-2B Employees Pay?

Faculty:

Margaret D. Stock (DL), AILA Author, Immigration Law & the Military, 2nd Ed., Anchorage, AK

Jarrod Sharp, FEWA, Bay City, TX

Michele Contreras, Cherry Hill, NJ

2:40 pm–3:40 pm

H-2B AUDITS AND WAGE AND HOUR DIVISION INVESTIGATIONS

H-2B employers continue to be the target of Wage and Hour Division (WHD) investigations. Panelists will discuss the most common wage and hour infractions/violations in H-2B investigations, and how these can be avoided.

- Audit Files and Record Keeping Requirements
- Common Audit Violations
- WHD Investigations and Hearings: An Overview and Practical Insights

Faculty:

Loan T. Huynh (DL), AILA DOL Liaison Committee Vice Chair, Minneapolis, MN

Jeanne M. Malitz, San Diego, CA

Ann Margaret Pointer, Atlanta, GA

3:40 pm–3:55 pm

NETWORKING BREAK

3:55 pm–4:55 pm

YOU CAN'T ALWAYS GET WHAT YOU WANT ... UNLESS YOU SUE!

Litigation in the H-2B world is a tumultuous process due to the short timeframe involved in H-2B cases. Learn from experienced H-2B litigators regarding practicing before BALCA and appearing before U.S. district courts on H-2B issues.

- Litigating H-2B Issues: BALCA Appeal and U.S. District Courts
- Prevailing Wage Issues/Alternative Wage Issues
- Current Litigation Trends: Housing, Definition of Worksite, Mobile Workforce, etc.

Faculty:

Jeanne M. Malitz (DL), San Diego, CA

Kevin Robert Lashus, Austin, TX

Laurie-Ann Flanagan, D.C. Legislative and Regulatory Services, Washington, DC

4:55 pm

CONFERENCE CONCLUDES

* = *invited, not confirmed*

Conference Program Committee

Deborah J. Notkin, AILA Conference Program Chair/Past President, New York, NY

Kevin W. Miner, AILA Board of Governors/DOL Liaison Chair, Atlanta, GA

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Lorna A. De Bono, AILA NSC Liaison Committee Chair, Los Angeles, CA

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Jeff Joseph, Aurora, CO

Vincent W. Lau, Cambridge, MA

Grace Woods, AILA Senior Director of Education, Washington, DC