PERM Labor Certification Applications for Health Care Professionals

by the AILA Health Care/Physicians Committee

Program Electronic Review Management (PERM) applications are used for a wide variety of jobs. Few occupations are as carefully regulated as are health care professionals. AILA’s Health Care/Physicians Committee here offers a guide to issues that arise in preparing PERM applications for doctors and other health care workers.

Licenses

In many health care occupations (physicians, physical therapists, physician assistants, nurse practitioners, and so on), a practitioner must be licensed in the state of intended employment. Some employers require that the health care worker hold the license at the time of hire; others may extend an offer of employment before the applicant has obtained the license, with the understanding that the worker will have one in place by the start of employment.

Attorneys use several different approaches in documenting licensure requirements on the U.S. Department of Labor’s (DOL) Form ETA 9089, Application for Permanent Employment Certification (ETA 9089). Some list it as a future requirement, i.e., they indicate in box H.14 that the position requires that the employee be licensed before employment commences. Others simply state that the license is required without specifying whether the license must be in place at the time of hire or on the first day of work. Some attorneys do not list a licensure requirement at all on PERM applications filed for physicians.

In 2013, DOL began denying many PERM applications filed on behalf of physicians and other licensed professionals if the license was listed as a requirement in box H.14 but was not also indicated as being possessed by the sponsored worker in section K of the form. For example, if box H.14 indicated that an Illinois medical license was required for the PERM-sponsored physician position, and if section K indicated that the sponsored physician was currently working as a clinical physician in Illinois (which, of course, one cannot do without a license), DOL denied the PERM application if the job description in section K did not also contain a separate reference to confirm that the physician held an Illinois medical license. This was an unannounced change in PERM adjudications practice.

In late 2013, DOL agreed to reopen and certify the cases that it had denied solely on this basis. As of early 2014, DOL is working to identify and remand affected cases currently at the Board of Alien Labor Certification Appeals (BALCA). If the case has been denied but not yet forwarded to BALCA, it can be reopened by filing a motion to reconsider. If you receive a denial of an ETA 9089 on the