

Permanent Labor Certification Program

Final Regulation

Frequently Asked Questions

February 14, 2006

If my application for certification is denied, how long do I have to wait before I can re-apply?

Upon receipt of the denial notification via U.S. mail, a new application may be filed at any time unless a request for review by the Board of Alien Labor Certification Appeals (BALCA) has been submitted. While a request for BALCA review is pending, a new application for the same occupation and the same alien cannot be filed. See 20 CFR 656.24(e)(6). (For more information, please see the FAQ "When does the Department of Labor consider a request for review to be pending with the Board of Labor Certification Appeals (BALCA) and how will the Department process such appeals?")

When does the Department of Labor consider a request for review to be pending with the Board of Labor Certification Appeals (BALCA) and how will the Department process such appeals?

The Department of Labor considers a request for review to be pending with BALCA under 20 CFR 656.24(e)(6) at the time either a request for BALCA review or a request for reconsideration is submitted to the Certifying Officer.

The Prevailing Wage Determination provided by the State Workforce Agency (SWA) was incorrect or incomplete. What do I do?

In submitting a PERM application, the employer declares that it has read and reviewed the application and that the information contained in the application is true and accurate. The employer is responsible for ensuring the PWD information provided by the SWA and entered on ETA Form 9089 is correct and for taking steps to obtain corrected PWDs from the SWA as needed.

We are aware there have been some issues with Prevailing Wage Determinations (PWD) provided by some SWAs, such as incorrect SOC codes or validity periods. Currently, we are working with all SWAs to ensure the new regulation and state requirements are clearly understood and implemented.

To address denials based on SWA errors during the first months of implementation of the PERM regulation, the Department has developed the following option for employers. If you have an application that was denied due to an error associated with an incorrect or incomplete PWD, and the application was submitted before March 25, 2006, you may submit a request for review to the appropriate Certifying Officer. The request for review must include a copy of the corrected PWD provided by the SWA or a copy of the initial PWD obtained from the SWA together with an explanation of how it should be corrected.

After March 25, 2006, the Department of Labor will hold the employer responsible for ensuring Prevailing Wage Determinations obtained from a SWA are complete and in compliance with the PERM regulation. DOL will deny requests for review that seek to correct or complete PWD information.

Therefore, prior to filing a permanent labor certification application, the employer should review PWDs for completeness and compliance with the PERM regulation. If necessary, the employer should request that the SWA fix any identified problems.

I need to enter the years of experience, education, or training on my ETA Form 9089. How do I do this? What if it's a range?

When entering the years of experience, education, or training on ETA Form 9089, the questions asking for this type of information specify the answer be provided in the number of months necessary. Therefore, if the employer requires 1 year experience in the job offered in ETA Form 9089, the number 12 (for 12 months) would be entered for the answer to Question H-6A.

However, if the employer would accept a range of experience in the job offered (such as 1 to 3 years), the employer must identify the actual minimum years/months of experience required to perform the job (please see 656.17(i) for additional information on Actual Minimum Requirements). The number that represents the Actual Minimum Requirement for the number of years/months experience would be the number entered in Question H-6A. If a range is indeed the Actual Minimum Requirement, the employer should use the low end of the range as the answer, since that represents the minimum level of requirement.