



# PERM

## Online Course

American Immigration Lawyers Association

## AILA PERM Online Course Outline

### MODULE 1: IS PERM APPROPRIATE FOR YOUR CLIENT?

#### *Faculty:*

*Ganesh Kalyanaraman (ML), Course Committee, Sacramento, CA*

*William A. Stock, AILA Past President, Philadelphia, PA*

*Kevin W. Miner, AILA Board of Governors/Business Immigration Response Team/DOL Liaison Committee/Author, Business Immigration: Law & Practice, 2nd Ed., Atlanta, GA*

#### *Module Outline:*

- **Video:** Welcome to the PERM Online Course – *Speaker: \*Tiffany Martinez, AILA New Members Division Steering Committee Vice Chair/Course Committee Chair, San Francisco, CA*
- **Reading:** How to Take the PERM Online Course
- **Video:** Overview and Ethical Considerations for Module 1: Is PERM Appropriate for Your Client?
- **Reading:** K. Aquino-Pham, *et al.*, “Immigration Policies from the Employer’s Perspective” *Immigration Practice Pointers* (AILA 2017–18 Ed.)
- **Reading:** E. Litwin and M. Seid, “Filing Labor Certification Applications Under the PERM Regulations” *Navigating the Fundamentals of Immigration Law* (AILA 2022–23 Ed.)
- **Video:** Review of Existing File on the Beneficiary
  - Nonimmigrant Limitations on Period of Admission: Will You Need to Expedite the Process or Change the Employees Status?
  - Aging Child
  - Foreign State Cross-Chargeability: Does a Spouse Have More Favorable Chargeability?
  - Payroll Source
  - Previous I-140
- **Reference Document:** Checklist for Review of Existing Nonimmigrant Visa (NIV) File
- **Video:** U.S. Permanent Residence Options
- **Video:** PERM Suitability
  - Ability-to-Pay
  - Timing
    - When Do You Need to File to Ensure H-1B extension?
    - Will You Need to Expedite the Recruitment?
- **Reference Document:** Checklist of PERM Suitability Factors
- **Exercise:** Write Memo Regarding Available Visa Options for Employee; Why and When to File PERM
- **Sample Document:** Introduction to Employer of What PERM Strategy to Use
- **Video:** Payment for the PERM
- **Reading:** “DOL FAQs on ‘Substitutions Plus’ Final Rule,” AILA Doc. No. 07071675

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*(ML) = Module Leader*

*\* = invited, not confirmed*



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- **Reference Document:** Questions to Ask the Employer
- **Video:** Questions to Ask Employer
- **Reading:** “DOL FAQ on Notification and Consideration of Laid-Off U.S. Workers for PERM Applications,” AILA Doc. No. 14022460
- **Reference Document:** Checklist for Attorney and Staff with Overview of Full PERM Process
- **Video:** Mock Interview with Employer and Beneficiary
- **Hypotheticals**
- **Resources List**
  - *A Curated List of Additional Publications, Recordings, and Resources*

## MODULE 2: JOB DESCRIPTION AND REQUIREMENTS

*Faculty:*

*Ian David Wagreich (ML), Course Committee/AILA Business Immigration Response Team/DOL Liaison Committee, Chicago, IL*

*Sonal J. Mehta Verma, Rockville, MD*

*Module Outline:*

- **Video:** Overview and Ethical Considerations for Module 2: Job Description and Requirements
- **Video:** Basics of the Job Description and Requirements
  - Pre-Filing Challenges and Setting the Stage for Success
  - Choosing the Appropriate Position
  - Sources of Employer’s Job Description
  - Developing Appropriate Job Requirements
- **Video:** Preparing the Job Description
  - Actual Minimum Requirements
  - Alternate Requirements
  - Utilizing the OOH and O\*Net
  - Minimum Educational Requirements and Issues
  - Translating Job Requirements into PERM Minimum Requirements
- **Reading:** A. Dgebuadze et al., "Square Pegs in Round Holes: Drafting Job Requirements for PERM" Immigration Practice Pointers (2019-20 Ed.)
- **Reading:** L. De Bono, *et al.*, “Hitting a Moving Target: Setting Up Your PERM to Ensure an Approvable I-140,” *2017 AILA PERM/H-2B Practice Conference Handbook*
- **Video:** Potential Audit Triggers
  - Random Audits
  - Targeted Audits
  - Business Necessity
  - Special Vocational Preparation (SVP) and Job Requirements Normal to the Occupation (H.12)

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- Special Requirements: Foreign Language, Licensure
- Employer Layoffs
- Experience in Unrelated Field
- **Video:** Travel, Telecommuting, and Roving Beneficiaries
  - Where to Recruit
  - Peripatetic Workers
  - Various Unanticipated Worksites
  - Farmer Memorandum
- **Reading:** A. Dgebuadze et al., "The Current State of Play and Evolving Issues in PERM Practice Post-Pandemic" Immigration Practice Pointers (2022-23 Ed.)
- **Reading:** "DOL Policy Guidance on Alien Labor Certification Issues," AILA Doc. No. 94052390
- **Hypotheticals**
- **Reference Document:** Job Comparison Chart
- **Reference Document:** Job Descriptions and Requirements Questionnaire
- **Exercise:** Drafting Effective Job Descriptions and Requirements
- **Resource List**
  - *A Curated List of Additional Publications, Recordings, and Resources*

### MODULE 3: BENEFICIARY'S QUALIFICATIONS AND PREVAILING WAGE DETERMINATION

#### Faculty:

*Tiffany Chang Wu (ML), AILA Southern California Chapter Chair, Irvine, CA*

*Tiffany Lam-Bentley, Dallas, TX*

#### Module Outline:

- **Video:** Overview and Ethical Considerations for Module 3: Beneficiary's Qualifications and PWD
- **Reading:** "Practice Pointer: Understanding SVP in PERM" (April 24, 2020), AILA Doc. No. 20042062
- **Video:** Introduction to the PWD
  - Standard Occupational Classification (SOC) Code: Job Title and Description
  - Leveling: Requirements
    - Education
    - Experience
    - Travel
    - Supervisory Requirements
  - Alternate Combination of Education and Experience
- **Video:** Wage Issues
  - Anticipating Issues
  - Filing Multiple PWDs

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- Alternate Wage Surveys
- Requests for Information (RFIs) and Incorrect PWDs
- **Reading:** AILA's Department of Labor Liaison Committee, "Practice Pointer: Impact of New Form ETA 9141 on Prevailing Wage Determinations" (October 22, 2021), AILA Doc. No. 21081231
- **Reading:** AILA's Department of Labor Liaison Committee, "Using a Private Wage Survey as the Basis for Requesting a Prevailing Wage Determination with the New Form ETA 9141" (Nov. 23, 2021), AILA Doc. No. 21112305
- **Video:** After the PWD Is Issued
  - Prevailing Wage and PERM Offered Wage
  - PWD and Expiration Dates
  - PERM Filing Dates and PWD
- **Exercise:** Determining Anticipated PWD Wage and Leveling
- **Reading:** "Practice Advisory: Listing Alternative PERM Job Requirements on Form 9141," AILA Doc. No. 12072645
- **Reading:** "DOL Practice Pointer: Tips and Strategies to Avoid Unnecessary Delays in the Prevailing Wage Process," AILA Doc. No. 17090539
- **Video:** Beneficiary's Qualifications
  - Preliminary Information
    - Questionnaire
    - Resumé
    - Education and Experience
  - Education
    - Field of Study
    - Degree Prior to Employer
    - Copies of Education Credentials, Certifications, and Licenses
    - Electronic Database for Global Education (EDGE) Evaluations
  - Experience and Skills: Documentation of Requirements
  - Alternate Combination of Education and Experience
  - *Delitizer* Experience
  - Documenting the Beneficiary's Qualifications on ETA Form 9089
- **Sample Document:** Employer Verification Letter/Reference Letter from Beneficiary
- **Reading:** "DOL Practice Alert: Listing Employee Qualifications in PERM Section K," AILA Doc. No. 14041655
- **Reading:** "DOL Practice Pointer: Rise and Fall of *Kellogg*," AILA Doc. No. 15042910
- **Hypotheticals**
- **Reference Document:** Pre-Recruitment Checklist
- **Resource List**
  - *A Curated List of Additional Publications, Recordings, and Resources*

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### MODULE 4: RECRUITMENT

#### *Faculty:*

*Lauren Ross (ML), San Francisco, CA*

*Jennifer Minear, AILA First Vice President, Richmond, VA*

*Nadia A. Deans Kalata, Atlanta, GA*

#### *Module Outline:*

- **Video:** Overview and Ethical Considerations for Module 4: Recruitment
- **Reference Document:** Recruitment Steps Flow Chart
- **Video:** Pre-Recruitment Steps
  - Role of Attorney in the PERM Recruitment Process
  - Gather Information About Prior Recruitment and Company– or Industry-Wide Layoffs
  - PERM Special Handling for University Professors
  - Batching Recruitment
  - Use of Third Party to Place Recruitment: Pros and Cons
- **Reading:** “High-Volume Corporate Immigration Strategies: Striking a Delicate Balance Between Efficiency, Scalability and Risk Management,” *Corporate Counsel Business Journal*
- **Sample Document:** Notice of Filing Postings for Union and Non-Union Employees
- **Video:** Planning the Recruitment: Timing Is Key
  - Required Recruitment Steps
  - Job Order
  - Sunday Newspaper Advertisements
  - Notice of Filing Posting: Considerations for Employers with Unions
    - *Refer to Sample Notices for Union and Non-Union Employers*
  - Additional Recruitment Steps for Professional Positions
    - *Practical Considerations for Choosing Secondary Recruitment Options—i.e., Cost or Industry Standards*
- **Reading:** “Practice Pointer: Use of Employee Referral Programs in PERM Recruitment,” AILA Doc. No. 13052847
- **Sample Document:** Sample Recruitment Plan and Email to Employer
- **Sample Document:** Email to Employer Re: Resume Review
- **Reference Document:** Recruitment Checklist
- **Video:** Developing a Recruitment Plan
  - Discussing Recruitment Options with the Employer
  - Drafting a Recruitment Plan for Employer Approval
  - Options for Placement of Recruitment: Third-Party Company, Attorney, or Employer
    - *Refer to Sample Recruitment Plan and Email to Employer*
    - *Refer to Recruitment Checklist*
  - When to Close Recruitment and Timing Considerations

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- **Video:** Screening Applicants
  - Résumé Review Guidelines
    - *Refer to Sample Email to Employer Re: Résumé Review*
  - Employer Contact with Candidates and Interview Scheduling
  - Interview Requirements
    - *Refer to Sample Email to Employer Re: Resume Review*
  - Interview Results and Preparation of Recruitment Report
    - Reasons for Candidate Disqualification
    - Preparing Table of Recruitment Results and Recruitment Report
    - What to Do If Qualified Candidate Is Found
- **Video:** Mock Candidate Interview with Employer and Candidate
- **Exercise:** Draft a Sample Job Announcement
  - Include All Required Elements
- **Hypotheticals**
- **Resource List**
  - *A Curated List of Additional Publications, Recordings, and Resources*

### MODULE 5: FILING

#### *Faculty:*

*Avalyn Castillo Langemeier (ML), Course Committee, Houston, TX*

*Sarah K. Peterson, AILA Board of Directors/DOL Liaison Committee Chair, Minneapolis, MN*

*Helene Dang, Houston, TX*

#### *Module Outline:*

- **Document:** Important Update to PERM Filing
- **Video:** Department of Labor Open Forum recording from AILA Annual Conference 2023
- **Video:** Workshop: Deep Dive into PERM Issues from AILA Annual Conference 2023
- **Reading:** “Practice Alert: OFLC Provides Updates Concerning the New Form ETA-9089 and Its Implementation in FLAG,” AILA Doc. No. 23071205; July 12, 2023.
- **Reading:** “Practice Pointer: Tips on New ETA 9089 from 2023 FBA Immigration Law Conference,” AILA Doc. No. 23060601; June 6, 2023.
- **Reading:** “ICYMI: Practice Alert: DOL Liaison Committee Provides User Feedback Testing for New PERM Module in FLAG System,” AILA Doc. No. 23040408; April 4, 2023.

#### *Optional Additional Course Materials*

- **Video:** Overview and Ethical Considerations for Module 5: Filing
- **Video:** General Considerations for Filing
  - Deadlines for Filing ETA Form 9089
  - U.S. Department of Labor (DOL) Frequently Asked Questions (FAQs)
  - The Importance of Avoiding Inadvertent and Typographical Errors

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- Employee and Employer Review
- Sign Under Penalty of Perjury
- When Paper Filing Is Your Only Option: Practical Tips
- Withdrawal of ETA Form 9089 and Filing a Second PERM
- **Reference Document:** Filing Deadline Checklist
- **Video:** Minimum Requirements: How to Complete ETA Form 9089
  - Minimum Education
  - Minimum Experience
  - Minimum Training
  - Minimum Skills
- **Video:** Alternate Requirements: How to Complete the ETA Form 9089
  - Alternate Requirements
  - *Kellogg* Language
- **Sample Document:** Completion of H.14 with Primary and Alternate Requirements
- **Reading:** “Practice Tip: Indicating Alternate Degree/Experience Requirements on ETA 9089,” AILA Doc. No. 13052241
- **Video:** Special Requirements and Unusual Issues: How to Complete the ETA Form 9089
  - Section H, including H.14
  - Section K
- **Reading:** “Practice Pointer: Using Section H.14 of ETA Form 9089 to Reduce the Potential for an Audit,” AILA Doc 18071030
- **Video:** Showing the Beneficiary Meets the Requirements: How to Complete the ETA Form 9089
  - Education
  - Training
  - Experience and Substantially Dissimilar Experience
  - Skills
  - Special Requirements
- **Sample Document:** Completion of Section K
- **Exercise:** Completion of Questions H.4 Through H.14
- **Hypotheticals**
- **Resources List**
  - *A Curated List of Additional Publications, Recordings, and Resources*

### MODULE 6: AUDIT

Faculty:

Vincent Lau (ML), AILA DOL Liaison Committee Vice Chair/Course Committee, Cambridge, MA

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

Magaly Rojas Cheng, Cambridge, MA

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- **Video:** Overview and Ethical Considerations for Module 6: Audit
- **Video:** Documenting Recruitment Efforts
  - Tips from Regulations
  - FAQs
  - The Board of Alien Labor Certification Appeals (BALCA)
- **Reference Document:** Audit File and Recruitment Effort Checklist
- **Video:** Recruitment Report: Tips and Best Practices
- **Sample Document:** Recruitment Report
- **Reference Document:** Evaluation
- **Reading:** “DOL Presentation from Webinar on PERM Audit Response Submission Practice Tips,” AILA Doc. No. 17071731
- **Reading:** “Practice Pointer: Why You Should Use the PERM Case Management System,” AILA Doc. No. 18110930
- **Sample Document:** Email Correspondence Alerting Client of Audit
- Explain Steps to Be Taken and Anticipated Timeline
- **Sample Document:** Cover Letter to DOL in Connection with Audit Response
- **Reading:** "Practice Pointer: Responding to PERM Audits Requesting Extensive Employer Financial Documentation" (Nov. 9, 2021), AILA Doc. No. 21110912
- **Video:** Documenting Business Necessity
- **Video:** Triggers for an Audit
- **Reading:** “DOL Practice Pointer: Are You Audit Ready?” AILA Doc. No. 14042961
- **Exercise:** Spotting Audit Triggers in Sample 9089 Forms
- **Video:** Responding to an Audit, with the Appeal in Mind
- **Hypotheticals**
- **Resources List**
  - *A Curated List of Additional Publications, Recordings, and Resources*
- **Reading:** “DOL Practice Pointer: Are You Audit Ready?” AILA Doc. No. 14042961

### MODULE 7: POST-DECISION ISSUES

#### *Faculty:*

*Brenda Oliver (ML), Course Committee, Washington, DC*

*Yvonne Toy, San Francisco, CA*

*Jared C. Leung, AILA DOS Liaison Committee, Tempe, AZ*

#### *Module Outline:*

- **Video:** Overview and Ethical Considerations for Module 7: Post-Decision Issues
  - Filing of I-140: Certified PERM Within 180 Days

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- Negative PERM Decision: 30 Days to Decide to Request for Reconsideration (RFR)/Appeal vs. Refile
- **Video:** “Congratulations! PERM Has Been Certified”: Filing the I-140
  - Does the Offered Position Remain?
  - Does the Beneficiary Meet the Requirements?
  - File the I-140 Alone or Concurrent: Reviewing the *Visa Bulletin*
  - Ensuring the Company’s Ability-to-Pay
  - Considering the Future: Adjustment of Status or Consular Processing
- **Reading:** “AILA Comments on Draft RFE Template for Form I-140,” AILA Doc. No. 15060832
- **Reference Document:** I-140 Questionnaire and Checklist of Documents
- **Video:** Successor-in-Interest: Is the Petitioner the Same as the PERM Sponsor?
  - Corporate Reorganization
  - Establishing a Relationship Between the I-140 Petitioner and PERM Sponsor
  - New Petitioner’s Ability-to-Pay Proffered Wage
- **Reading:** “USCIS Memo on Successor-in-Interest Determinations in Adjudication of Form I-140 Petitions,” AILA Doc. No. 09090362
- **Video:** AC21 Issues
  - Filing I-140 Premium Processing
  - Does the Foreign National Need an Approved I-140 to Remain Work Eligible?
  - Retaining the Priority Date
  - Same or Similar Occupation
- **Reading:** “AC21 Guidance Amended Regarding I-140 Portability,” AILA Doc. No. 06092763
- **Sample Document:** Client Requesting Retention of Earlier Priority Date
- **Exercise:** Completing an I-140 Petition Using Changed Fact from PERM
- **Video:** I Have Some Bad News: PERM Was Denied
  - Basis for Denial
  - Two-Step Response to DOL: RFR and Appeal
  - Going Directly to Appeal
  - Refiling Instead of RFR or Appeal
- **Video:** Mock Dialogue: Denial Discussion with Client
  - Explaining to Client That PERM Was Denied
  - What Does a Denial Mean?
  - Alternative Considerations and Strategies
- **Reading:** “DOL Practice Pointer: Does a Compliant PERM Case That Has an Inadvertent Typo or Other Harmless Error Have a Chance?” AILA Doc. No. 16011901
- **Sample Document:** Sample BALCA Appeal
- **Hypotheticals**
- **Resources List**
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*Vincent Lau, AILA DOL Liaison Committee Vice Chair, Cambridge, MA*  
*Ian David Wagreich, AILA Business Immigration Response Team/DOL Liaison Committee, Chicago, IL*  
*Elizabeth L.A. Garvish, Atlanta, GA*  
*Ganesh Kalyanaraman, Sacramento, CA*  
*Avalyn Castillo Langemeier, Houston, TX*  
*Brenda Oliver, Washington, DC*

*Kate Molski, AILA Learning and Development Specialist, Washington, DC*

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