

DOL Practice Alert: Employee Qualifications in PERM Section K

This practice advisory from the AILA DOL Committee is to alert members regarding the need to list the foreign national's qualifications in Section K of the ETA Form 9089 based on requirements listed in Section H that are not gained through previous work experience. Members will recall that in the minutes from the DOL Stakeholder Meeting on December 12, 2013 (AILA Doc. No. [14011449](#)), AILA asked DOL about PERM denials based upon a license or certification requirement that was listed in Section H.14 of the ETA Form 9089, but where Section K did not list that the foreign national held the license or certification (primarily due to the limitation of the form not providing a logical place to do so). DOL's answer is summarized as follows:

Answer: In general, if an employer states that a specific position requires a license, the employer should indicate that the beneficiary has the license. The appropriate place to list the license is under K.9 so that the analyst can compare the requirements and the beneficiary's qualifications. OFLC will issue an FAQ to spell this out more clearly. When stakeholders asked OFLC to consider in the future, issuing an FAQ in advance of the change in practice, OFLC agreed to take this into consideration if there is a decision to make a policy change. OFLC is continuing to examine how to address cases already denied on the basis that Section K did not list the license or certification. Employers with denials on this basis may wish to file a Request for Reconsideration of the denied case to at a minimum preserve the issue until OFLC develops further guidance.

The AILA DOL Committee continues to receive reports of PERM denials for failing to list these types of qualifications in Section K, and is collecting examples of such denials (See AILA Doc. No. [14022555](#)). Examples of such qualifications, include, but are not limited to:

- Licensure, or eligibility for license, e.g., Medical License, Teacher Certification, Professional Engineer (PE).
- Knowledge or coursework acquired in a course of study.
- Professional certificates or diplomas, e.g., Microsoft certification, Health and Safety Certificate, CPR Certificate, Engineer-in-Training Certificate.
- Board Certification, or Certification Eligible, e.g., Board Certification in Internal Medicine, Board Certification in Immigration Law.
- Second degree, if required by employer, e.g., Bachelor's in Civil Engineering, in addition to a Ph.D.
- Degree or other credential required at H.4, "education: minimum level required," does not match the foreign national's credential at J.11, "highest level achieved relevant to the requested occupation" [e.g., H.4 requires a BS in Chemical Engineering; J.11 indicates

foreign national has a (relevant) Ph.D. in Process Engineering, but foreign national also has a BS in Chemical Engineering that cannot be entered anywhere in Section J or K].

Since indications are that the upcoming FAQ will likely require listing such qualifications in Section K, members are advised to include this information now. Once the FAQ is issued, DOL may deny cases without taking into consideration whether applications were filed prior to the FAQ. Even though members may have received approvals without including this information previously, DOL appears to be focusing on this issue more closely now. Therefore, the AILA DOL Committee advises members to adjust their practice accordingly, by listing the foreign national's qualifications in Section K of the ETA Form 9089 based on requirements listed in Section H that are not gained through previous work experience.