

COMMON TRENDS IN DOL AUDITS: PRACTICE POINTERS

DOL has acknowledged its intention to increasingly focus on “program integrity” measures, i.e., audits and supervised recruitment. Specifically, DOL has set a goal to audit and/or place in supervised recruitment 30% of all cases (AILA Doc. # [12042544](#)). This practice pointer highlights the language found in many recent DOL audits and suggests strategies for responding.

1. Issue: Whether or not qualified workers applied for the position. (20 CFR §656.17(g)(2))

Sample Audit Language:

The U.S. Department of Labor is unable to determine if potentially qualified U.S. workers who applied for the job opportunity were rejected for lawful, job-related reasons. The Code of Federal Regulations (CFR) at 20 CFR §656.24(b)(2)(i) requires the Office of Foreign Labor Certification Certifying Officer to make a determination to grant or deny the labor certification based on whether there are able, willing, qualified and available U.S. workers to perform the job opportunity. The employer must consider a U.S. worker able and qualified for the job opportunity if the worker, by education, training, experience, or a combination thereof, is able to perform in the normally accepted manner the duties involved in the occupation as customarily performed by other U.S. workers similarly employed. Per 20 CFR §656.17(g)(2), a U.S. worker is able and qualified for the job opportunity if the worker can acquire the skills necessary to perform the duties involved in the occupation during a reasonable period of on-the-job training. It is not a lawful job-related reason to reject a U.S. worker for lacking the skills necessary to perform the duties involved in the occupation, where the U.S. workers are capable of acquiring the skills during a reasonable period of on-the-job training.

Please provide the resumes and applications for all U.S. workers who applied for the employer’s job opportunity listed on the ETA Form 9089. In addition, please provide a report that lists the following information for each U.S. worker rejected for the job opportunity: If appropriate, the date(s) the employer contacted the U.S. worker; the date the employer interviewed the U.S. worker; if appropriate, the reason(s) the employer did not interview the employee; the specific lawful job related reason(s) the U.S. worker was rejected; and how the U.S. worker was informed he or she did not qualify for the job opportunity. Also include information that documents the employer contacted the applicant(s) by phone (telephone logs), e-mail (dated copy of electronic transmission and/or by mail (copy of letter sent to applicant(s) along with a copy of certified mail/“signed” green return receipt card).

Practice Pointers:

- DOL has acknowledged during several stakeholder meetings that employers are not required to inform a U.S. worker of why she or he was not qualified. Providing such notice to U.S. workers is not required by the regulations. BALCA has also confirmed that employers are not required to contact a U.S. worker who is facially unqualified. See *Matter of Kennametal*, 2010-PER-01512 (BALCA March 27, 2012), citing *Matter of Dearborn Public Schools*, 1991-INA-222 (BALCA Dec. 7, 1993) (*en banc*) and *Matter of Gorchev & Gorchev Graphic Design*, 1989-INA-118 (BALCA Nov. 29, 1990) (*en banc*). DOL has indicated that it would revise the audit language to clarify that contacting all applicants is not required, but there is no estimate as to when this will be done.
- *Before filing the ETA 9089*, ensure that the employer has prepared a recruitment report that includes details on when and how applicants were contacted and the reason(s) U.S. workers

were rejected. The recruitment report may be a spreadsheet or report, but should provide specific reasons why each U.S. applicant was found not to be qualified, willing, and/or able.

- *Before filing the ETA 9089*, ensure that the employer understands the need to maintain all resumes and documentation of contact with applicants. Employers may wish to designate a person to maintain resumes and other documents concerning the evaluation and interview process. If the employer contacted applicants by telephone, e-mail, or mail, retain a telephone log and copies of these communications and any applicant responses in the compliance file.
- *Before filing the ETA 9089*, if U.S. workers were rejected for lacking the skills required to perform the job, the employer should prepare a detailed statement explaining why the worker is unable to perform the job duties and why the worker cannot acquire the necessary skills during a reasonable period of on-the-job training. The employer should describe any training the company offers and explain why that training is insufficient to enable the U.S. worker to acquire the necessary skills. Attach relevant documentation to support the statement.
- In the audit response, attach the recruitment report, any supporting documents, the U.S. worker resumes, and information about the rejected applicants. The recruitment report must specify the lawful job-related reasons each worker was found not to be qualified, willing and/or able for the job opportunity. It may be helpful for the report to also explain the employer's evaluation and review protocol.
- *See Matter of Select Int'l*, 2011-PER-01478 (BALCA Sept. 19, 2012) (AILA Doc. #[12092044](#)) regarding the duty of employers to investigate applicant qualifications; *Matter of JP Morgan Chase & Co.*, 2011-PER-01000 (BALCA July 16, 2012) (AILA Doc. #[12071746](#)) regarding rejecting job applicants who do not meet the minimum requirements without interview; *Matter of Goldman Sachs*, 2011-PER-01064 (BALCA June 8, 2012) (AILA Doc. #[12061160](#)) and *Matter of Kennametal*, 2010-PER-01512 (BALCA March 17, 2012) (AILA Doc. #[12032867](#)) regarding failure to investigate potentially qualified applicants.

2. Issue: Whether or not a nexus between the employee referral program (ERP) and job opportunity for which the permanent labor certification is sought is established. (20 CFR §656.17(e)(1)(ii)(G))

Sample Audit Language:

The Department of Labor cannot determine whether the employer's employees were accurately notified of the employer's job opportunity listed on the 9089 through the employee referral program. When filing a permanent labor certification application for a professional job opportunity, the employer may use an employee referral program as one of the additional recruitment steps per 20 CFR §656.17(e)(1)(ii)(G). Where the employer has used an employee referral program for one of these steps, the employer must demonstrate a nexus between the employee referral program and the job opportunity for which the permanent labor certification application is being filed.

Please provide documentation that demonstrates a nexus between the referral program and the job opportunity for which the application is being filed.

Examples of documentation that are relevant to this request are as follows:

- *Dated copies of the employer’s notice or memoranda advertising the employee referral program and specifying the incentives offered.*
- *Documentation explaining how current employees are notified of job opportunities eligible for the employer’s employee referral program.*
- *Proof that employees were provided notice of the job opportunity for which the application is being filled in relation to the employee referral program.*
- *Any additional documentation related to the sponsoring employer’s employee referral program.*

Practice Pointers:

- *Matter of Sanmina-Sci Corp., 2010-PER-00697 (BALCA Jan. 19, 2011) requires that “an employer must minimally be able to document that (1) its employee referral program offers incentives to employees for referral of candidates; (2) that the employee referral program was in effect during the recruitment effort the employer is relying on to support its labor certification application; and (3) that the employer’s employees were on notice of the job opening at issue.” However, DOL still requires additional proof of a nexus between the ERP and the offered job.*
- *Review the DOL FAQ (AILA Doc. #[10080472](#)), Matter of Clearstream Banking, S.A., 2009-PER-00015, (BALCA Mar. 30, 2010), and the regulation cited above for the proposition that the requirement of a nexus is extra-regulatory and cannot be imposed by DOL.*
- *Before submitting the ETA 9089 ensure that the employer has all ERP documentation compiled and that such documentation is dated within 180 days of submitting the application. This documentation should explain the program and context of the documentation.*
- *If applicable, in the audit response, explain that the ERP does not need to be re-announced with each job posting as the policy is applicable to all openings, which should be reflected in the ERP documentation.*
- *If utilizing the company’s external website as a form of recruitment, consider including a reference to “Employee Referral Program,” if applicable.*
- *If the company disseminates notice of positions via in-house media, consider including a statement that the position is eligible under the “Employee Referral Program,” if applicable.*
- *See Matter of Bottomline Tech., 2011-PER-02325 (BALCA Oct. 18, 2012) (AILA Doc #[12102647](#)) regarding documentation of ERPs; Matter of Marlabs, Inc., 2010-PER-01574 (BALCA Mar. 16, 2012) (AILA Doc #[12031939](#)) regarding reliance upon attestation of ERP dates in the ETA 9089.*

3. Issue: Whether to include a copy of the job order in response to the audit. (20 CFR §656.17(e)(1)(i)(A))

Sample Audit Language:

A copy of the job order placed with the SWA serving the area of intended employment downloaded from the SWA Internet job listing site, a copy of the job order provided by the SWA, or other proof of publication from the SWA containing the content of the job order, where a job order is required by the

recruitment provisions of 20 CFR 656 and/or a job order is listed on the ETA Form 9089 as a recruitment source.

Practice Pointers:

- Employers are not required to submit a copy of the job order. The regulation cited above requires “placement” of the job order for 30 days and states that including the start and end dates of the job order on the ETA 9089 “shall serve as documentation” that the required job order was placed. DOL’s lack of authority to require more than the regulation specifies was confirmed in *Matter of A Cut Above Ceramic Tile*, 2010-PER-00224 (BALCA Mar. 8, 2012) (*en banc*)([AILA Doc. # 12030962](#)).
- Recent audits have removed the language requesting a copy of the job order from the audit requests.
- However, DOL is always free to request a copy of the job order directly from the SWA. If the employer believes there is a potential discrepancy in the job order that can be adequately explained in the audit response, the employer might prefer to include a copy of the job order and an explanation as to why it complies with the regulations. Alternatively, practitioners report receiving approvals where no copy of the job order was included in the audit response. In this case, the practitioner should retain a copy of the job order as placed, as well as the job order as published, as documentation outside of the audit response.
- This issue has been arising more frequently as a number of SWA job order systems have automated features that do not lend themselves to the PERM process (such as omitting employer names, drop-down menus that allow only certain ranges of experience such as 2-5 years when the employer requires 3 years, and drop-down menus that require selections for certain benefits or for drug-testing or background checks, when such benefits or requirements would not normally be listed in ads or on the ETA 9089).
- *See Matter of Prosoft Associates*, 2011-PER-01209 (BALCA Aug. 3, 2012) (AILA Doc. #[12080741](#)) regarding drug testing and background checks as hiring requirements on the SWA job order; *Matter of Cognizant Technology Solutions US Corp.*, 2011-PER-01697 (BALCA Nov. 29, 2012) (AILA Doc #[12120345](#)) where BALCA reversed the denial because the evidence demonstrated that the employer entered the actual minimum requirements into the job order form, but that a deficient form caused those requirements to be converted.

4. Issue: Whether or not laid off workers have been adequately considered and notified of the job opportunity. (20 CFR §656.17(k))

Sample Audit Language #1:

On the ETA Form 9089, the employer has indicated, by marking “yes” in Section I.26 and Section I.26A, that it has had a layoff of a U.S. worker in the area of intended employment in the occupation for which certification is sought or in a related occupation, and it has notified and considered any potentially qualified laid off U.S. worker for the job opportunity.

Please provide documentation clearly establishing the following:

- *The number of U.S. workers in the occupation or in a related occupation, that were laid off by the employer;*
- *A listing of all relevant occupations, per the question above;*
- *How the employer notified all its potentially qualified laid-off workers of the job opportunity; and*
- *The results of such notification and consideration, including the number of hires and/or the number of the employer's laid-off U.S. workers rejected, categorized by the lawful job-related reasons for such rejection.*

Sample Audit Language #2:

The employer must provide in a signed affidavit advising whether any employees employed as [job title] or in a related occupation in the [city, state] have been laid off in the six months prior to filing the application and, if so, the number of employees laid off. (A related occupation is one where a majority of the essential duties are the same as those involved in the occupation for which certification is sought.)

If the employer did experience layoffs in the area of intended employment in the six months prior to filing the application, it must provide a brief explanation of the nature of the layoff and include the effective date(s) and the occupation(s) involved.

If a layoff as referenced above occurred and potentially qualified U.S. workers were laid off, the employer must provide the following:

- *A list of the occupations involved;*
- *The steps undertaken to notify and consider any potentially qualified laid off U.S. workers for the job opportunity;*
- *The employer must include all the notified and considered U.S. workers' names, job titles, places of employment and the divisions/departments where they worked;*
- *The results of such notification and consideration, including the number of hires and/or the number of the employer's laid-off U.S. workers rejected;*
- *The reason(s) for why the position was not filled by a potentially qualified laid off U.S. worker to include the categorized lawful job-related reasons for why a U.S. worker was rejected, if applicable;*
- *Proof that any laid-off U.S. workers not notified and considered by the employer were not potentially qualified for the job opportunity; and*
- *A copy of the notification that was given to the laid off employees.*

Practice Pointers:

- *Before submitting the ETA 9089, the employer should review its terminations to determine whether any of them would be considered a "layoff"— i.e., involuntary separation of a: (1) U.S. worker; (2) in the occupation or a related occupation; and (3) in the area of intended employment.*
- *In addressing a statement that layoffs occurred, specify exactly which layoffs are applicable. Explain the nature of the business and the layoffs in that context.*

- Compare the job duties of the sponsored position on the PERM application with the job duties of the layoffs to document whether or not they are the same or related occupation (defined as having in common a majority of essential duties).
- Document how the employer provided notice of the sponsored job opportunity to all potentially qualified employees who were laid off in the prior six months. This could be done with letters sent to employees, a notification included as part of their termination/separation package on how to apply to labor certification roles, or through some other means of notification.
- Document how laid off employees were considered and determined not to be qualified for the position. Include resumes and/or manager affidavits addressing qualifications.
- Argue that notification is not required if the laid off worker is not qualified, as the regulation requires only that “potentially qualified” workers be notified and considered.
- Note that DOL may also request, in an audit, information about layoffs that occur after the PERM application is filed. The “notify and consider” regulation only applies to layoffs that occurred prior to filing the PERM application; however, when layoffs occur post-filing, the employer should affirm that the sponsored position exists. If the layoffs were for unrelated occupations, that should also be addressed, to document to DOL that the laid off staff do not now constitute “available” workers.
- *See Matter of Select Int’l*, 2011-PER-01478 (BALCA Sept. 19, 2012) (AILA Doc #[12092044](#)) regarding the duty of employers to investigate applicant qualifications; *Matter of JP Morgan Chase & Co.*, 2011-PER-01000 (BALCA July 16, 2012) (AILA Doc #[12071746](#)) regarding rejecting job applicants who do not meet the minimum requirements without interview; *Matter of Goldman Sachs*, 2011-PER-01064 (BALCA June 8, 2012) (AILA Doc #[12061160](#)) and *Matter of Kennametal*, 2010-PER-01512 (BALCA Mar. 17, 2012) (AILA Doc #[12032867](#)) regarding failure to investigate potentially qualified applicants.

5. Issue: Whether or not the foreign worker gained qualifying experience in a substantially comparable position. (20 CFR §656.17(i)(5)(ii))

Sample Audit Language:

The employer required [number] months of experience as [job title] or related position in Section H.10 of the ETA Form 9089. However, the foreign worker gained [number] months of qualifying experience by working with the employer in a position that appears to be substantially comparable to the job opportunity. This determination is based on the [number] hours per week in the [job title] position. Please submit one or more of the following:

- *Documentation to show that the position in which the foreign worker gained the qualifying experience (Section K.) is not substantially comparable to the job offered (Section H.3/Section H.11), i.e., not requiring performance of the same job duties more than 50 percent of the time compared to the position for which certification is being sought. Such documents may include position descriptions and the percentage of time spent on the various duties, organizational*

charts, and payroll records comparing the job offered (Section H.3/Section H.11) to the position; or

- *Documentation demonstrating that it is no longer feasible to train a worker to qualify for the position; or*
- *Documentation that clarifies whether the foreign worker gained the required experience with a different employer listed in Section K. on the ETA Form 9089; or*
- *If applicable, documentation that clarifies that the foreign worker meets the alternative requirements listed on the ETA Form 9089 (Section H.8 – Section H.10)*

Practice Pointers:

- Provide detailed charts reflecting the job duties for each of the positions and the percentage of time spent performing each duty to show that overlapping same or similar duties are less than 50%.
- *Before submitting the ETA 9089, ensure that the alien’s employment history in Section K describes separately each different position he or she has held with the employer. The job descriptions should clearly distinguish each position. Consider including the percentage of time spent on each duty for each listed position held with the employer and/or including a statement in K.9. that “job duties are more than 50% different from previous position.”*

6. Issue: Whether the alien or a third party paid for any part of the PERM process (20 CFR §656.12(b)).

Sample Audit Language:

Please provide declarations from the employer and the foreign worker, each signed by the respective individual under penalty of perjury, stating whether the employer received payments of any kind by the foreign worker or a third party for any activity related to obtaining permanent labor certification, including payment of the employer’s attorney’s fees, whether as an incentive or inducement to filing, or as a reimbursement for costs incurred in preparing or filing a permanent labor certification application. Such payments include but are not limited to legal fees; administrative fees; advertising costs and/or any other costs or fees related to the filing of the application; wage concessions, such as deductions from wages, salary, or benefits; kickbacks, bribes or tributes; in-kind payments; free labor; and/or any other form of payment for services essential to the labor certification process. Note that any payment of fees by the foreign worker or third party for benefit of the employer constitutes a “receipt of payment” by the employer, despite the fact that such payments may have been made directly to a party other than the employer – e.g., the employer’s attorney, Department of State, etc.

Practice Pointers:

- Ensure prior to the beginning of the process that only the employer has paid for any part of the process.
- Provide affidavits from both the employer and employee explaining that the employee has not contributed to payment of fees in connection with the labor certification process.

7. Issue: Whether U.S. applicants in a special handling case were found to be less qualified than the alien (20 CFR §656.18(b)).

Sample Audit Language:

The U.S. Department of Labor is unable to determine if potentially qualified U.S. workers who applied for the job opportunity were rejected for lawful, job-related reasons. Departmental regulations at 20 CFR § 656.24(b)(2)(i) requires the Certifying Officer to make a determination to grant or deny the labor certification based on whether there are able, willing, qualified, and available U.S. workers to perform the job opportunity. The employer must consider a U.S. worker able and qualified for the job opportunity if the worker, by education, training, experience, or a combination thereof, is able to perform in the normally accepted manner the duties involved in the occupation as customarily performed by other U.S. workers similarly employed. In accordance with the Department's regulations at 20 CFR § 656.17(g)(2), a U.S. worker is able and qualified for the job opportunity if the worker can acquire the skills necessary to perform the duties involved in the occupation during a reasonable period of on-the-job training. It is not a lawful job-related reason to reject a U.S. worker for lacking the skills necessary to perform the duties involved in the occupation, where the U.S. workers are capable of acquiring the skills during a reasonable period of on-the-job training.

Practice Pointers:

- AILA has received reports that DOL is applying the wrong standard of review of U.S. worker applicants in special handling cases. Until this is resolved, employers should point out the correct regulatory standards at 20 CFR §656.18(b) and 20 CFR §656.24(B092)(ii) and explain how each U.S. worker was found to be less qualified than the alien.
- See *Matter of Select Int'l*, 2011-PER-01478 (BALCA Sept. 19, 2012) (AILA Doc #[12092044](#)) regarding the duty of employers to investigate applicant qualifications; *Matter of JP Morgan Chase & Co.*, 2011-PER-01000 (BALCA July 16, 2012) (AILA Doc #[12071746](#)) regarding rejecting job applicants who do not meet the minimum requirements without interview; *Matter of Goldman Sachs*, 2011-PER-01064 (BALCA June 8, 2012) (AILA Doc #[12061160](#)) and *Matter of Kennametal*, 2010-PER-01512 (BALCA Mar. 17, 2012) (AILA Doc #[12032867](#)) regarding failure to investigate potentially qualified applicants.

8. Issue: Whether or not the recruitment indicates the geographic area of employment with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the job opportunity. (20 CFR §656.17(f))

Sample Audit Language #1:

In accordance with Department regulations at 20 CFR §656.17(f), employers must indicate the geographic area of employment with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the job opportunity.

- Since this is an application for permanent employment, the employer must provide documentation outlining the possible work site locations and time periods for the offered position. Examples of acceptable documentation may include the following:
 - A signed affidavit from the employer
 - Itinerary
 - Contracts with clients

- Letters/statements from clients, etc.

Sample Audit Language #2:

In addition to the information requested in the body of the letter, please provide responses in accordance with the following. A review of your Application for Permanent Employment Certification indicates a possible "telecommuting" benefit and/or "roving" travel requirement as defined below.

- *Telecommuting Benefit:*
 - *National Telecommuting: positions that allow the employee to reside anywhere in the U.S. and perform work exclusively from the worker's home.*
- *Roving Requirement:*
- *Roving Without a Residential Requirement:*
 - *National: positions that allow the employee to reside anywhere in the U.S., and require travel to worksites anywhere in the country.*
 - *Regional: positions that require the employee to reside within a specific region and travel to worksites anywhere within the region identified.*
- *Roving With a Residential Requirement: Positions that require the employee to reside within commuting distance of headquarters or another office of the employer, and require travel to worksites anywhere in the country or a specific region.*

In accordance with the above definitions, please provide a response to the following questions including any relevant supporting documentation.

- 1. Can the employee for the job opportunity live anywhere in the U.S. and perform the duties listed on your ETA Form 9089? Please explain any geographical job requirement for the position.*
- 2. Does the job opportunity listed on your ETA Form 9089 have a telecommuting benefit? Please explain this benefit in detail.*
- 3. Does the job opportunity listed on your ETA Form 9089 require travel to either regional or national worksites? Please explain in detail.*

Practice Pointers:

- If recruitment has not occurred, in order to reduce the likelihood of an audit on this basis, an employer may wish to affirmatively state in its recruitment any limitations on where applicants may reside or state that there are no limitations.
- An employer may also wish to state "no telecommuting" if that is not an option, as DOL has recently questioned whether telecommuting is offered when a foreign national who is already working in the offered position has a home address that is a long distance away from the offered work location.
- If the job was offered based on various unanticipated worksites and future locations are not yet known, the employer should document that this was disclosed in the recruitment materials. Likewise for any other relevant language reflected in the advertisements.

- 20 CFR §656.17(f)(4) states, “Indicate the geographic area of employment with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the job opportunity.”
 - Argue that in the absence of a travel requirement, advertisements are not required to reflect where applicants will likely need to reside.
 - Argue that in the event there is no geographic location at which an applicant would likely need to reside, advertisements should not have to reflect where the applicant will likely need to reside. Provide information and documentation to explain why there is no geographic location at which an applicant would likely need to reside. If the application has not already been filed, consider including such language in the recruitment.
- See *Matter of M-I, LLC*, 2011-PER-01256 (BALCA Aug. 23, 2012) (AILA Doc #[12082642](#)) and *Matter of Deloitte FAS*, 2011-PER-00342 (BALCA Mar. 29, 2012) (AILA Doc #[12040346](#)) regarding travel requirement language in advertisements; *Matter of Sun Microsystems*, 2011-PER-00501 (BALCA Mar. 29, 2012) (AILA Doc #[12040347](#)) regarding specifying “unanticipated worksites” in the Notice of Filing.

9. Issue: Whether or not travel or telecommuting requirements are adequately described on the Form ETA 9089. (20 CFR §656.17(f))

Sample Audit Language #1:

According to Items H.1 and H.2 of the submitted form, the job opportunity is located at [City, State]. Further, Section K indicates the foreign worker has been employed by Company A at the same location as the job opportunity as listed in Items H.1 and H.2 since [Date]. However, Items J.2 and J.3 list the foreign worker’s address as [Different City, State]. The employer did not indicate any travel requirements on the ETA Form 9089. Please provide a signed statement, from the employer, which indicates whether travel or telecommuting is required for the job opportunity.

Sample Audit Language #2:

The foreign worker listed on the ETA Form 9089 resides in [city, state], however, section H of the ETA Form 9089 provides [city, state] as the worksite. Moreover, the form indicates the foreign worker is currently working for the employer and the address provided for the employer is the [city, state] address. Please explain how the foreign worker performs the job duties of the job opportunity given the distance between [city, state] and [city, state]. Please provide complete details in your response including:

Is the employee permitted and/or expected to perform the duties of the job opportunity listed on the ETA Form 9089 from his residence and/or place of his/her choosing? Please respond with a “Yes” or “No” and provide complete details in your response.

Is the employee permitted and/or expected to perform the duties of the job opportunity from some place other than the employer’s headquarters or the worksite listed on the ETA Form 9089? Will the employee be expected to work at multiple worksites in this job? Please respond with a “Yes” or “No” and provide complete details (to include details regarding the worksite locations) in your response.

Practice Pointer:

- If travel is required, reference where travel is reflected on the Form 9089 and in the recruitment materials. (Note that AILA has received reports of audits being issued with the language above when a travel requirement was explicitly included in H.14 and the second line of the employer's address included language noting that other worksites would be assigned, although the audit language states the employer did not indicate a travel requirement on the form. It is still recommended to include notations regarding travel requirements in H.14, as well as indications of other possible work sites in the second line of the work site address in H.1. *See also*, AILA Doc. No. [07041264](#) for DOL guidance on how to recruit and complete the ETA 9089 for roving/telecommuting employees.)