Pre-Filing PERM Issues:
Preparing the ETA 9089 with the I-140 in Mind

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Drafting the Job Description

- Job description/requirements must be established by the employer
- Minimum requirements-not "wish list"
- Consistency: company wide/industry wide
- Special consideration for combination of occupations

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Impact on PWD and Offered Wage

- PWD based on primary, rather then alternate requirements
- OES Worksheet
- Supervisory duties, special skills, certifications and licenses

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Minimum Requirements

- Verify foreign national's experience and credentials
- Clarity is key, ambiguity will result in an RFE for the recruiting materials

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Degree Equivalencies

- EB-2 and EB-3 Professional require degree
  - Equivalent experience is not acceptable
  - 8 CFR 204.5(k)(2); 8 CFR 204.5(l)(2)
- Verify equivalency
  - Not all credential evaluations are equal
  - EDGE is first among equals – USCIS views EDGE as authoritative

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Degree Equivalencies (cont'd)

- Single Source Rule
  - Singularly misunderstood
- Ambiguity of "First Professional Degree"
  - Medical degrees, i.e. Bachelor of Medicine, Bachelor of Surgery
  - Physical Therapists and the Foreign Credentials Commission for Physical Therapists (FCCPT)

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Alternate Requirements

- *Kellogg* language – Use the *Kellogg* language
- Three year degrees and EB-2 are not a match
- Identify acceptable alternative educational degrees in ETA-9089, Item H.8
- Equivalent foreign degrees, H.9, a trap for the unwary
- Item H.14 is for qualification of requirements and special requirements, but degree requirements should be first stated in H.6 and H.8

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PERM vs. I-140

- SVP levels must be similar (not required to be identical)
  - See *Globalnet* and *Agma Systems*
  - MS+3 = BS+5
  - Alternative BS+4, close, may pass muster at DOL, but will not be approved for EB-2
- Distinguish between equivalent degree and experience equivalent to a degree

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Documenting & Evaluating Worker/Applicant Credentials

- H.14 is for special requirements – use it!
- Take care when requiring "progressively-responsible" experience
- Make sure the employee qualifies – gather employment verification letters and EDGE degree evaluations beforehand
- Recruitment Report and Employer Analysis

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OES Job Zones = Michelle

Job Zone	Equivalence
1	0-6 months
2	3 months – 1 year
3	1-2 years
4	2-4 years
5	4 years and above

General Associates Degree = 0 years
Specific Associates Degree = 2 years
Bachelor's Degree = 2 years
Master's Degree = 4 years

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Business Necessity

- Requirements must bear a reasonable relationship to the occupation in the context of the employer's business, and are essential to perform the job in a reasonable manner
- Prepare business necessity documentation in advance!
- Specific details-not broad statements

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Ability to Pay & Actual Wage

- Read the Regulation, 8 CFR 204.5(g)(2)
  - Annual reports
  - Federal Tax Returns
  - Audited financial statements
  - Qualifying Employers, statement of Chief Financial Officer
- Matter of Sonegawa, 12 I&N Dec. 612 (Reg. Comm. 1967)
- Evidence wage has been paid

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Ability to Pay Problem Areas

- Multiple petitions over time
- Consolidated financial statements

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Questions & Answers

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