

# INDEX

*Practice Aids and Appendices (see p. 305)  
are not incorporated in this index.*

## A

- ability to pay**, *see* Prevailing wage
- admissibility**, *see* Inadmissibility
- advertisements**, 173–76, 186–89, 191–93
- aging out**, 69–70
- appeals**
  - audit letter, failure to respond, 216
  - of debarment or LC denial or revocation, 111, 236–37
  - of denial of Schedule A petition, 296
  - of wage determinations, 162–64
- athletes**
  - ETA Form 9089, preparing, 23
  - wage source, 147–48
- attorneys**
  - apprising employers of consequences of sponsoring worker without proper work authorization, 129
  - apprising employers of their obligations when starting the PERM process, 121–29
  - client questionnaires, 51–55, 113–30
  - ethics and professional responsibility, 41–48
    - bona fide job offer, attestation on LC, 45
    - candor toward tribunal, 43–44
    - changed job duties or location, 46–47
    - competency, 42
    - conflicts of interest, 42–43
      - dual representation, 44–45
    - crimes and criminal prosecution, 44
    - diligence, 43
    - IRCA issues, 47
    - job-permanence and intent issues, 47
    - recruitment, involvement in, 45–46
    - suggesting job titles and duties, 46
  - initial consultation, 49–50
  - issue spotting, *see* Issue-spotting
  - online accounts for ETA Form 9089, 4, 9
- audits**, 215–31
  - case study, 108–11
  - improvements for PERM audit program, 230–31
  - missing documentation, 224
  - random audits, 217–20
  - surviving an audit, 108
  - triggering events, 106–07, 224–25
  - types of audits, 217
  - typographical and other nonsubstantive errors, 222–24

## B

- BALCA review**, *see* Appeals
- bars**, *see* Three-year, ten-year, and permanent bars
- bona fide job offer**
  - alien's influence and control over job opportunity, 101–11
  - attorney attestation on LC, 45–46

- Bureau of Labor Statistics (BLS) statistics**, 150–51, 165–70
- business necessity**, 225
  - college and university teachers, 274–75
  - documentation, 221–22
  - identifying employer's requirements, 136–37
  - preparing PERM application, 18–19

## C

- changed job duties or location**, 68
  - attorney-ethics issues, 46–47
- closely held corporations**
  - audits, 230
- collective-bargaining agreements**, 147–48
- colleges**, *see* Education, training, and experience; F-1 students; Teachers, college or university
- concurrent filing**
  - Schedule A occupations, 291
- conflicts of interest**, *see* Attorneys, *subhead*: Ethics and professional responsibility
- contractors**
  - experience gained as contractor, 89–90
- corporate information**
  - issue-spotting, 116–17
- crimes and criminal prosecution**
  - attorney ethics, 44
  - inadmissibility, issue-spotting, 59
- cross-chargeability**, 69
- crosswalking**, *see* Job description and duties

## D

- Davis-Bacon Act**, 148
- debarment**, 235–36
  - appeals, 236–37
- degrees**, *see* Education, training, and experience
- Dictionary of Occupational Titles (DOT)**, *see* Job description and duties
- documents and documentation**
  - alternative requirements, 227–28
  - business necessity, 221–22
  - client preparation, 52–53
  - identifying document-related issues, 70–71
  - layoff requirements, compliance, 228–29
  - missing documentation, handling during audit, 224
  - qualifications for position, proof, 137–38, 141
  - random audits, 218–20
  - retention of documents, 237
  - special-requirements documentation, 206
  - “substantially comparable” job or experience, 228
  - training documentation, 205

**domestic workers**

audits, 229–30  
ETA Form 9089, preparing, 17

**drafting approvable PERM applications**, 203–13

**dual representation**, 44–45

**E**

**E-3 status**, *see* Free trade agreements

**EB-1 category**

outstanding-professor and extraordinary-ability petitions,  
279–80, 291–94

**EB-2 category**

job titles, importance of, 211  
and three-year degrees, 94–96

**EB-3 category**

job titles, importance of, 211  
and three-year degrees, 96–98

**education, training, and experience**, 83–111, 119–21

*see also Kellogg case; O\*NET; SVP*

contractor-gained experience, 89–90

degrees

acceptability, 206

different field, degree in, 140

equivalencies, 206–08

master's degree, 208

medical degree, 208, 253–55

three-for-one equivalencies, 209

three-year baccalaureate degrees, 93–98, 138–39

related degree, 209

ETA Form 9089, preparing, 14–16, 204–06

identification of beneficiary's "employer," 90–91

infeasibility to train, 88–89

lack of experience in position to be certified, 91–98

progressive experience, 208–09

reasonable period of on-job training, 182–83, 194–95

students, *see* F-1 students

"substantially comparable" job or experience, 84–88, 228

SVP / O\*NET comparison chart, 39

**employer-related issues**

identifying, 113–30, 131–41

**employer reorganization**, 36

**employment-based preference categories**, *see* EB-1 category;

EB-2 category; EB-3 category

**ETA Form 9089**, 1–39

audit-triggering events, alien influence and control, 106–08

employer reorganization, 36

item-by-item instructions and tips, 5–33

attorney/agent information (Sec. E), 9

business necessity, 18–19

declarations (Secs. K, L, M), 32–33

domestic workers, 17

employer information (Sec. C), 6–9

experience required, 14–16, 98

foreign-language proficiency, 19

foreign-worker information (Sec. J), 29–33

job information (Sec. H), 10–21

prevailing-wage information (Sec. F), 9–10

recruitment information (Sec. I), 21–29

specific skills, licenses, and certifications, 13–14

training and education, 14, 98

wage-offer information (Sec. G), 10

multiple filings, 34–35

post-adjudication issues, 34–37

registration online, 1–5

attorney accounts, 4

information needed, 2–3

sub-accounts, 4

verification of employer, 3

Schedule A occupations, 5, 10–11, 22, 283

validity period, 35

withdrawal and refiling, 34

**ethics**, *see* Attorneys

**exchange visitors**, *see* J-1 exchange visitors

**experience**, *see* Education, training, and experience

**F**

**F-1 students**, 65

**familial issues, identifying**, 68–70

**foreign-language proficiency**

audits, 226–27

preparing PERM application, 19, 135–36

**forms**, *see* ETA Form 9089; I-485

**fraud**, 57–59

Schedule A petitions, 296

**free trade agreements**

workers in TN, E-3 or H-1B1 status, 64–65, 291

**G**

**grandfathering under §245(i)**, 67–68

**H**

**H-1B status**, 61–62

**H-1B1 status**, *see* Free trade agreements

**health-care professions**, *see* Hospitals; Medical trainees; Nurses  
and physical therapists; Physicians

**health-related grounds of inadmissibility**, 59–60

**hospitals**

as employer, 255–56

**I**

**I-485**

issue-spotting, 50–51

**Immigration Reform and Control Act of 1986**, *see* IRCA

**INA §245(i)**, 67–68

**inadmissibility**

- chart, 73–82
- criminal grounds, 59
- fraud-related grounds, 57–59
- health-related grounds, 59–60
- three-year, ten-year, and permanent bars, 60–61

**influence and control over job opportunity**

- bona fide job opportunity, 101–11

**interns, see** Medical trainees**intracompany transferees, see** L-1 intracompany transferees**IRCA (Immigration Reform and Control Act of 1986)**

- attorney-ethics issues, 47

**issue-spotting, 49–55, 57–71, 113–30, 131–41**

- chart to verify admissibility, 73–82

**J****J-1 exchange visitors, 63–64****job description and duties**

- see also* O\*NET; SVP
- alternative requirements, 227–28
- combination of occupations, 136–37, 227
- crosswalking, 152–53
- identifying employer requirements, 131–32
- OES/SOC/DOT classifications, 151–53
- preparing PERM application, 10–21
- prevailing-wage determination, 151–53
- titles, importance of, 211

**job-position offers, 118–19****job qualifications, see** Qualifications for position**K****Kellogg case, 121, 139, 140, 183, 221, 227–28**

- ETA Form 9089, preparing, 17–18

**L****L-1 intracompany transferees, 62–63****labor certification (LC)**

- see also specific headings*
- appeals, 236–37
- “basic” LC process, 171–83, 280–81
- determination, 233–34
- document retention, 237
- invalidation of, 235
- revocation of approved LC, 234–35
- streamlined process for nurses and physical therapists, 290
- suspension and debarment, 235–36

**layoff provisions, 197–202**

- documentation of compliance, 228–29

**layoffs, 121****location of worksite, see** Worksite-location issues**M****medical trainees (interns, residents, fellows), 240–48****Modular Container test, 101–06, 230****multiple filings**

- of ETA Form 9089, 34–35

**multiple representation, 44–45****N****NAFTA, see** Free trade agreements**national interest waivers, 257–58****notice requirement, 177–78, 193–94**

- Schedule A, 284, 297–98

**nurses and physical therapists, 283–91**

- state-by-state credentialing chart, 299–303

**O****OES/SOC classifications, see** Job description and duties**O\*NET**

- see also* Job description and duties
- comparison with SVP guidelines, 39
- identifying employer requirements, 132
- step-by-step guide, 143–45

**online forms**

- ETA 9089, *see* ETA Form 9089

**P****PERM, see** *specific headings***physical therapists, see** Nurses and physical therapists**physicians, 239**

- academic physicians, 249–51
- general issues, 248–59
- independent contractors and self-incorporation, 256–57
- national interest waivers, 257–58
- timing of LC application, 251–53

**portability, 67**

- medical trainees, 245

**prevailing wage, 147–70**

- ability to pay, 212–13
- physicians, 255–57
- arts and performing-arts occupations, 295
- college and university teachers, 271–72
- completing ETA Form 9089, 9–10
- impact of job requirements on wage levels, chart, 38
- levels of wages, 154–60
- procedures and forms, 161–64
- Schedule A, 284, 285
- wage source, 147–51

**priority dates, 66–68**

- Schedule A petitions, 296

**processing times**

- retrogression, *see* Retrogression

## professional responsibility

**professional responsibility**, *see* Attorneys

**promotions during PERM process**, 68

## Q

### qualifications for position

college and university teachers, 274  
proof, 137–38, 141

## R

### recruitment

171–83, 185–96  
attorney involvement, 45–46  
ETA Form 9089, preparing, 21–29  
mandatory steps, 173–77  
procedures, 186–96  
professional occupations, additional steps, 177, 190–93  
recruitment report, 178–83, 194–96, 220–21  
special recruitment, college or university teachers, 261–81  
state job order, 176–77, 189–90

### retrogression

278–79  
Schedule A occupations, 291

## S

### Schedule A occupations

283–303  
college and university teachers, 280  
concurrent filing, 291  
filing ETA Form 9089, 5, 10–11, 22, 283, 295–96  
Group II occupations, generally, 291–96  
nurses, 284–86, 287–91  
performing artists, 294–95  
physical therapists, 286–87, 287–91  
retrogression, 291  
sample Notice of Posting, 297–98

### schools and colleges

*see* Education, training, and experience;

F-1 students; Teachers, college or university

### Service Contract Act

148

### shepherders

23

### specific skills, licenses, and certifications

ETA Form 9089, preparing, 13–14

### status

issue-spotting, 61–65  
special recruitment precluded because of status, 277–78

### students

*see* F-1 students

### “substantially comparable” job or experience

84–88, 228

### surveys, wage

148–50, 165–70

### suspension of labor certification

235–36  
appeals, 236–37

### SVP (specific vocational preparation)

comparison with O\*NET guidelines, 39  
identifying employer requirements, 132–35  
requirements exceeding SVP level for occupation, 225–26  
step-by-step guide, 143–45

## T

### teachers, college or university

academic physicians, 249–51  
ETA Form 9089, preparing, 23  
special recruitment, 261–81  
eligible institutions and positions, 264–65  
step-by-step process, 265–77  
wage scales, 147–48

### three-year, ten-year, and permanent bars

60–61

### three-year degrees

*see* Education, training, and experience

### timing of PERM application filing

114–16

### TN status

*see* Free trade agreements

### training

*see* Education, training, and experience

### typographical and other nonsubstantive errors

222–24

## U

### universities

*see* Education, training, and experience; F-1 students; Teachers, college or university

### unlawful presence

60–61

## V

### VisaScreen

287–91

## W

### wage levels

154–60

### wage offers

118

preparing ETA Form 9089, 10

### wage source

*see* Prevailing wage

### withdrawal and refiling

of ETA Form 9089, 34

### work authorization

apprising employers of consequences of sponsoring worker without proper work authorization, 129

### worksite-location issues

117, 211–12