

## **PERM Actual Minimum Requirements**

**March 6, 2017**

### **Actual Minimum Requirements Frequently Asked Questions (FAQs)**

**Question:** When will this guidance be implemented?

**Answer:** The new guidance will be applicable to all applications filed on or after March 20, 2017.

**Question:** What information must an employer include in its response to Section H-14?

**Answer:** In order for the Certifying Officer to adjudicate an employer's application – in particular, whether the job requirements listed on the ETA Form 9089 represent the employer's "actual minimum requirements" under 20 CFR § 656.17(i)(1) – in Section H-14, the employer must define its requirements with respect to each skill listed in that section.<sup>1</sup> The employer's application must specify the amount of experience, training, and/or level of education it requires for each skill listed in Section H-14, for purposes of the job opportunity.

**Question:** How should an employer enter the specific skills and requirements of the job opportunity in Section H-14 of its ETA Form 9089?

**Answer:** As part of its response to Section H-14 (which is a free text field), an employer must specify the experience (such as the number of months or years), knowledge, proficiency, or coursework it requires in each skill listed in Section H-14. Given the proliferation and growing complexity of occupations and individual job opportunities, this level of detail is required to effectively implement 20 CFR § 656.17(i). That is, this detail helps an employer meet its obligation to disclose its actual minimum requirements, as required by that regulation.

The information is also necessary for the Certifying Officer to: (1) evaluate whether the Section H-14 requirements, like those listed elsewhere in Section H, are appropriate for the job opportunity and transparent to U.S. workers; (2) determine whether the foreign worker qualifies for the job opportunity; and (3) assess the qualifications of applicants, to determine if there are able, willing, qualified and available U.S. workers for the job opportunity.

Once this detail is added to Section H-14, an employer should ensure that its application, in Sections J and K, addresses how the foreign worker meets those requirements.<sup>2</sup> In instances

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<sup>1</sup> See FAQ on "alien experience" dated July 28, 2014, reflecting the Department's position, under 20 CFR § 656.17(i), that foreign worker beneficiary must meet all requirements of the job opportunity, including those of Section H-14.

<sup>2</sup> See FAQ on "alien experience" dated July 28, 2014, reflecting the Department's position, under 20 CFR § 656.17(i), that foreign worker beneficiary must meet all requirements of the job opportunity, including those of Section H-14.

where the employer will accept **any** level of experience, knowledge, proficiency, and/or coursework in the specific skill(s), the employer should make this clear in Section H-14 of its application.

➤ **Practice Tips:**

The following scenarios are provided to assist employers in listing their skill requirements in Section H-14.

**Scenario 1**

The job opportunity requires a bachelor's degree and 60 months of experience in the occupation. Section H-14 states that the position requires “**experience with** Java and C++,” or “**experience or knowledge** of Java and C++.” Section H-14 does not specify how much experience or knowledge the employer is willing to accept, or how that knowledge may be demonstrated.

- ❖ The application does not quantify the requirements for the job skills listed in Section H-14; the reference to “experience” is vague. This application is deniable because the Certifying Officer is not able to determine the employer’s actual minimum requirements, if the foreign worker is qualified for the job opportunity, or if U.S. workers were rejected for lawful, job-related reasons.
- ❖ The application must quantify the job skill requirements in Section H-14. With respect to experience in the two skills listed, it is acceptable to state, for example, that the position requires “12 months experience with Java and 18 months experience with C++.” In this example, the Certifying Officer can more readily and accurately determine the employer’s actual minimum requirements, whether the foreign worker is qualified for the job opportunity, and if U.S. workers were rejected for lawful, job-related reasons.
- ❖ The “knowledge” requirement must be accompanied by a definitive educational, training, and/or experience requirement.
- ❖ In addition, as posted in the FAQ dated July 28, 2014, the employer must address how the foreign worker meets the requirements in Section H, including the skill requirements set forth in Section H-14.

**Scenario 2:**

The job opportunity requires a bachelor's degree. The application does **not** list an experience requirement, either in the job offered (Section H-6) or in an alternate occupation (Section H-10). Section H-14 states that the position requires “**experience or coursework** with Java and C++”.

- ❖ While Section H-14 indicates that the employer will accept either experience or coursework, it fails to specify the employer’s expectations for either. Job experience is different from coursework. This application is deniable because the Certifying

Officer is unable to determine the employer's actual minimum requirements and whether they are normal to the occupation.

- ❖ The FAQ dated July 28, 2014 addresses how an employer can describe how the foreign worker beneficiary meets the job requirements listed in Section H, including Section H-14.

### **Scenario 3:**

The job opportunity requires a bachelor's degree and 60 months of experience in the occupation. Section H-14 states that the position requires “**proficiency or expertise** with Java and C++” but does not explain how proficiency or expertise is measured.

- ❖ For the reasons explained earlier, this application is deniable.
- ❖ The employer must measure or quantify proficiency or expertise required in the skills listed in Section H-14 in terms of education, training and/or experience. For example, the application could list the months of experience, particular coursework, level of training, or specific certifications the employer expects in each skill.

If the employer uses an assessment tool and/or test to measure an individual's proficiency or expertise in a specific skill, then Section H-14 must indicate the assessment tool and/or test the employer is using. The use of assessment tools and/or tests could trigger an audit of the application.

### **Scenario 4:**

According to the ETA Form 9089, the job opportunity requires a bachelor's degree and 60 months of experience in the occupation. The Notice of Filing (NOF) and the employer's website advertisement state that the position requires a bachelor's degree and 48 months of experience.

- ❖ If the application form conflicts with either the NOF or the employer's website advertisement, the application is deniable because the Certifying Officer cannot determine the actual minimum requirements for the job opportunity. An employer must confirm that the job requirements and any other information listed on its NOF and recruitment efforts are consistent with those listed on the employer's ETA Form 9089.

### **Scenario 5:**

The application does not describe the employer's alternative job requirements with sufficient specificity to establish that they are substantially equivalent to the employer's primary job requirements, as required by 20 CFR § 656.17(h)(4). For example, in Section H-8C or Section H-14, which are “free text” fields, the employer states that, in lieu of the primary requirements listed in H-4/4A/4B, H-5/5A/5B, and/or H-6/6A, the employer will accept “any suitable combination of education, training, and/or experience, as determined by a credentials evaluation service,” but offers no additional information.

The text in H-8C or H-14 does not list the specific combinations of foreign education, training and/or experience that the credentials evaluation service determined to be substantially equivalent to the employer's primary job requirements. The application is deniable because the Certifying Officer does not have sufficient information to determine if the foreign worker qualifies under the alternative requirements entered in Section H, or if U.S. workers qualifying under the alternate requirement were unlawfully rejected. The employer should identify the credentials service it used, and set forth the specific combination(s) or permutations that according to that service are substantially equivalent to the primary requirements.