

## Employer Involvement

“Actual  
Minimum  
Requirements”

ETA 9141

Special  
Requirements

AC21

Prevailing Wage  
Determinations

SVP + Wage Levels

Recruitment

Degree Evaluations

EB-2 vs. EB-3

Job Duties

iCert

Wage Levels

ETA 9089

Visa Backlogs

# WHO WE ARE



**Maggie Murphy** – Maggie practices in Austin, Texas and has extensive experience with PERM strategies, PERM campaigns, and PERM cases of all shapes and sizes. She works with several tech industry clients that have large foreign national workforce and frequently deals with Indian degree challenges.



**Jeffrey M. Zimskind** – Jeff practices in Allentown, PA and has extensive experience with PERM strategies, PERM campaigns, and PERM cases of all shapes and sizes. He works with several tech and pharma industry clients that have large foreign national workforces and frequently deals with Indian degree challenges. This photo of Jeff predates the implementation of the PERM regulation in 2005.



**Rebecca M. Massiatte** – Rebecca practices in Dallas, Texas and, like Maggie and Jeff, also has extensive experience with PERM strategies, PERM campaigns and PERM cases of all shapes and sizes. She works with clients in the manufacturing and technology industries, among others.

# CRITICAL RESOURCES

- **PERM Regulation 20 CFR Part 656:**  
[https://www.foreignlaborcert.doleta.gov/pdf/PERM\\_Final\\_Rule\\_12-27-04\\_FR.pdf](https://www.foreignlaborcert.doleta.gov/pdf/PERM_Final_Rule_12-27-04_FR.pdf)
- **U.S. Department of Labor's Foreign Labor Certification PERM Online Filing System:** <https://www.plc.doleta.gov>
- **Permanent Online System User Guide:**  
<https://www.plc.doleta.gov/onlinehelp.pdf>
- **PERM FAQ's:** [https://www.foreignlaborcert.doleta.gov/faqs\\_pdf.cfm](https://www.foreignlaborcert.doleta.gov/faqs_pdf.cfm).
- **iCERT Visa Portal System:** <http://flcdatacenter.com/>
- **Prevailing Wage Guidance:**  
[https://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](https://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf)
- **Online Wage Library:** <http://www.flcdatacenter.com/>

# Getting/Staying Up to Speed

- AILALink - <http://www.aila.org/about/announcements/new-resources-on-ailalink>
- BALCA Cases - <http://www.aila.org/research-library>
- DOL Stakeholder Minutes – on <http://www.aila.org/infonet>
- AILA's PERM Labor Certification Survival Guide, 2015-16 Ed. - <https://agora.aila.org/product/detail/2744>
- AILA Message Center - <http://messages.aila.org/forumdisplay.php?27-Labor-Certification%97PERM>

# Timing: When to Start & Employee Considerations

- Employers can generally initiate the LPR process any time
- Employees generally want to start right away!
- H-1B visa – 6 year limit
- L-1B/L-1A visa – 5/7year limit
- Spouse wants to work
- Children may be going to U.S. university and want immigrant visa for in-state tuition or to work without restriction after graduation
- Employee wants security of tenure in U.S.

# Key Issues Before Starting PERM

- Candidate has *at least* 1.5 years of H-1B time left.
- Candidate has relevant experience in addition to education.
- Recruiter's knowledge of potential pool of applicants can help in assessing whether similarly qualified U.S. workers are readily available.



# PERM Basics

- Program Electronic Review Management
- Effective on and after March 28, 2005
- Form 9089
- All costs MUST be paid by the Employer
- Attestation based and reviewed electronically
- Employer registration to file online ([plc.doleta.gov](http://plc.doleta.gov))
- 5 year retention requirement
- Permanent full time employment
- 180 day validity period
- Not transferable
- Must file approval with I-140 Immigrant Petition



# The Employer's Role in PERM

- Employer, manager, and attorney work to craft job description.
- Employer approves prevailing wage determination.
- Company works with attorney to gather business necessity documentation.
- Company conducts recruitment and judges applicants based on minimum requirements only, and submits recruitment results to attorney.
- Employer verifies that no qualified U.S. workers have been found.
- Employer and employee review draft of PERM application prior to submission.

# The Employee's Role in PERM

- The foreign national employee **must meet** the actual minimum requirements.
- Requirements are to be met through **work experience** and **education**:
  - **Ask employee to provide at start of PERM process to verify;**
  - **Get experience letters at beginning of PERM process.**
- Unless the foreign national employee has changed to a significantly different position, experience gained at the current employer cannot be used.

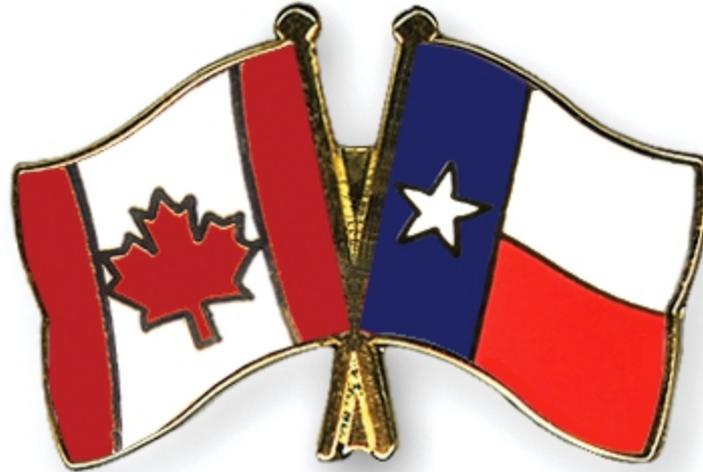
# Review Steps to Prepare PERM



- DOL registration
- Job description & requirements
- Verification of prior experience
- Significant dissimilarity of previous positions
- Prevailing wage determination
- Recruitment
- Quiet period
- Applicant Evaluation/Interviews
- Prepare Audit File
- Filing

# Case 1: Philip

Philip, a citizen of Canada, has worked for your client, Lone Star Extrusion, in Plano, Texas for 10 years. First in TN status and then, since January 2012, in H1-B status.





Philip was born in the Philippines. He attended high school in Montreal, Quebec. After high school he attended CEGEP for two years and then completed a three year degree in electrical engineering at McGill University in Montreal.

Philip worked for many years at a company called Frozen Lone Star Extrusion Canada. The company was an affiliate of your client until it was sold in 2007. At the time of the sale, Philip had held the position of Manager of Production Technology for three years.



- Philip was very highly thought of by his colleagues at Lone Star Extrusion in Plano, and when Frozen Lone Star Extrusion Canada was sold off, they offered him a job at the plant in Plano, which he accepted.
- He applied for and was accorded TN status as an engineer, and his wife and children were accorded TD status.



They continued to have TN/TD status until January 2012, when they applied at the Peace Bridge for H-1B/H-4 status following the approval of an H-1B petition filed by your client, Lone Star Extrusion in Plano.



Philip met his wife Candace when they were students at McGill. Candace's parents, also from the Philippines, immigrated to Canada before she was born. They have two children, Jean-Pierre (who now goes by Slim), who is 26 years old, an LPR, and lives in Atlanta with his U.S. Citizen wife, and Marie-Jose, now known as Clementine, who is 19 years old and is a sophomore at Texas A&M.

As Production Manager for Lone Star Extrusion in Plano, Philip is responsible for production, operations, technology, maintenance, training, safety, and quality for three extrusion lines. This work includes troubleshooting electrical and mechanical problems and coordinating the work of production employees and production line supervisors according to lean manufacturing principles. He doesn't directly supervise employees in the sense that they report to him, but he works closely with and coordinates the production team, which includes operators and supervisors.

Because Philip is so technically knowledgeable, he ends up spending about nine weeks out of the year at the other North American extrusion plants owned by your client, generally three weeks in Oregon, three weeks in Missouri, and three weeks in Guadalajara. Provided he can remain in the United States, it is anticipated that he will serve in the same role or a very similar role for many years.

Lone Star Extrusion has indicated that the minimum requirements for the posting of Production Manager are a bachelor's degree in electrical or mechanical engineering and 15 years of experience as a production manager, including five years of experience working with Lone Star Extrusion's proprietary extrusion machinery and process.

Philip's current salary is \$90,000 and it is envisioned that in two years his salary would be in the neighborhood of \$95,000. Lone Star Extrusion has indicated to you informally that if it would make a big difference in the immigration process, they would be willing to go up to something like \$98,000.

Because he was born in the Philippines and therefore is chargeable to the Philippines for immigrant visa purposes, it is important that Philip be EB-2, since the cutoff date for EB-3 Philippines in the visa bulletin is in 2008 and by the time they could adjust status his daughter Clementine would have aged out.

- EB-1 managerial based on management role in Canada with formerly affiliated company?
- Use of experience gained with formerly affiliated company in Canada.
- Experience letter from formerly affiliated company in Canada.
- Implications of cross chargeability.
- What has to be done and by when to maximize chances of preserving CSPA eligibility for Clementine? Is it even possible if labor certification application is audited?
- Does Slim's status provide any potentially helpful options?

## Foreign Labor Certification Data Center Online Wage Library

[www.flcdatacenter.com](http://www.flcdatacenter.com)



### Wage Library

Quick Search  
Search Wizard

### Case Disclosure Data Archive

H1B Data  
H2A Data  
H2B Data  
Perm Data

Also available:  
File Archive

Skill Level  
Explanation

SVP Explanation

FLC Wage Data  
updated  
July 1, 2015

Job Zones updated  
January 6, 2016  
See change  
history

Technical Support  
& Help FAQ page.

### FLC Wage Results [New Quick Search](#) [New Search Wizard](#)

You selected the All Industries database for 7/2015 - 6/2016.

Your search returned the following: [Print Format](#)

**Area Code:** [19124](#)  
**Area Title:** Dallas-Plano-Irving, TX Metropolitan Division  
**OES/SOC Code:** 17-2071  
**OES/SOC Title:** Electrical Engineers  
**GeoLevel:** 1  
**Level 1 Wage:** \$30.64 hour - \$63,731 year  
**Level 2 Wage:** \$37.44 hour - \$77,875 year  
**Level 3 Wage:** \$44.23 hour - \$91,998 year  
**Level 4 Wage:** \$51.03 hour - \$106,142 year  
**Mean Wage (H-2B):** \$44.24 hour - \$92,019 year

This wage applies to the following O\*Net occupations:

#### [17-2071.00 Electrical Engineers](#)

Research, design, develop, test, or supervise the manufacturing and installation of electrical equipment, components, or systems for commercial, industrial, military, or scientific use.

O\*Net™ JobZone: 4

Education & Training Code: 5-Bachelor's degree

For information on determining the proper occupation and wage level see the new Prevailing Wage Guidance on the [Skill Level](#) page.

The prevailing wage must be at, or above the federal or state or local minimum wage, whichever is higher. The federal minimum wage is \$7.25/hr effective July 24, 2009.

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You selected the All Industries database for 7/2015 - 6/2016.

Your search returned the following: [Print Format](#)

**Area Code:** 19124  
**Area Title:** Dallas-Plano-Irving, TX Metropolitan Division  
**OES/SOC Code:** 11-9041  
**OES/SOC Title:** Architectural and Engineering Managers  
**GeoLevel:** 1  
**Level 1 Wage:** \$46.02 hour - \$95,722 year  
**Level 2 Wage:** \$56.65 hour - \$117,832 year  
**Level 3 Wage:** \$67.29 hour - \$139,963 year  
**Level 4 Wage:** \$77.92 hour - \$162,074 year  
**Mean Wage (H-2B):** \$67.29 hour - \$139,963 year

This wage applies to the following O\*Net occupations:

#### **11-9041.00 Architectural and Engineering Managers**

Plan, direct, or coordinate activities in such fields as architecture and engineering or research and development in these fields.

O\*Net™ JobZone: 5

Education & Training Code: 4-Work experience, plus a bachelor's or higher degree

#### **11-9041.01 Biofuels/Biodiesel Technology and Product Development Managers**

Define, plan, or execute biofuels/biodiesel research programs that evaluate alternative feedstock and process technologies with near-term commercial potential.

O\*Net™ JobZone: 4

Education & Training Code: No Level Set

For information on determining the proper occupation and wage level see the new Prevailing Wage Guidance on the [Skill Level page](#).

The prevailing wage must be at, or above the federal or state or local minimum wage, whichever is higher. The federal minimum wage is \$7.25/hr effective July 24, 2009.

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Your search returned the following: [Print Format](#)

**Area Code:** 19124  
**Area Title:** Dallas-Plano-Irving, TX Metropolitan Division  
**OES/SOC Code:** 11-3051  
**OES/SOC Title:** Industrial Production Managers  
**GeoLevel:** 1  
**Level 1 Wage:** \$29.27 hour - \$60,882 year  
**Level 2 Wage:** \$39.57 hour - \$82,306 year  
**Level 3 Wage:** \$49.86 hour - \$103,709 year  
**Level 4 Wage:** \$60.16 hour - \$125,133 year  
**Mean Wage (H-2B):** \$49.87 hour - \$103,730 year

This wage applies to the following O\*Net occupations:

**11-3051.00 Industrial Production Managers**

Plan, direct, or coordinate the work activities and resources necessary for manufacturing products in accordance with cost, quality, and quantity specifications.

O\*Net™ JobZone: 4  
Education & Training Code: 5-Bachelor's degree

**11-3051.01 Quality Control Systems Managers**

Plan, direct, or coordinate quality assurance programs. Formulate quality control policies and control quality of laboratory and production efforts.

O\*Net™ JobZone: 4  
Education & Training Code: No Level Set

**11-3051.02 Geothermal Production Managers**

Manage operations at geothermal power generation facilities. Maintain and monitor geothermal plant equipment for efficient and safe plant operations.

O\*Net™ JobZone: 3  
Education & Training Code: No Level Set

**11-3051.03 Biofuels Production Managers**

Manage biofuels production and plant operations. Collect and process information on plant production and performance, diagnose problems, and design corrective procedures.

O\*Net™ JobZone: NA  
Education & Training Code: No Level Set

**11-3051.04 Biomass Power Plant Managers**

Manage operations at biomass power generation facilities. Direct work activities at plant, including supervision of operations and maintenance staff.

O\*Net™ JobZone: 4  
Education & Training Code: No Level Set

**11-3051.05 Methane/Landfill Gas Collection System Operators**

Direct daily operations, maintenance, or repair of landfill gas projects, including maintenance of daily logs, determination of service priorities, and compliance with reporting requirements.

O\*Net™ JobZone: NA  
Education & Training Code: No Level Set

**11-3051.06 Hydroelectric Production Managers**

Manage operations at hydroelectric power generation facilities. Maintain and monitor hydroelectric plant equipment for efficient and safe plant operations.

O\*Net™ JobZone: NA  
Education & Training Code: No Level Set

For information on determining the proper occupation and wage level see the new Prevailing Wage Guidance on the [Skill Level page](#).

The prevailing wage must be at, or above the federal or state or local minimum wage, whichever is higher. The federal minimum wage is \$7.25/hr effective July 24, 2009.

- Why start out with the Notice of Filing?
- Notice of Filing (see handout) Contains All of the Critical Info
  - Employers Name
  - Location of Employment
  - Job Title
  - Job Duties (including travel)

- Why start out with the Notice of Filing?
- Notice of Filing Contains All of The Critical Info
  - Education Requirements
  - Experience Requirements
  - Special Requirements (including travel)
  - Salary (range?)
  - Employer Contact Information
  - In-House Media

How to get the information necessary to prepare a draft?  
(see handout)

Why call your questionnaire “PERM/I-140 Questionnaire”?

- All during process must look ahead to I-140.
- Including employer’s ability to pay.

- Job title – Descriptive or stick with “official” job title?

Developer/Analyst III?

- **or** -

Lead Budget ERP Developer?

Junior Associate?

- **or** -

Business Immigration Lawyer?

Associate Quality Control Manager II?

- **or** -

Quality Control Manager?

## Job Duties

The job duties should be crisp – only those that are essential and important – and should be drafted in such a way that the requirements flow logically from them

- No need to over-include (e.g. pulls black chair out, rotates chair, sits in chair, smiles, turns on computer, smiles again, enters password, opens Outlook, deletes spam email, then schedules lunch)

Job duties should be sufficiently broad such that they are likely still to be accurate when employee files Form I-485, possibly following a promotion or two

- Less of a concern with non-China/India EB-2s, and non-China/India/Philippines EB-3s

## Addressing Travel

- How to describe?
- Interplay with prevailing wage level
- Looking towards the future

## Job Duties: Addressing Travel

*Here – “he ends up spending about nine weeks a year at the other North American extrusion plants owned by your client, generally three weeks in Oregon, three weeks in Missouri, and three weeks in Guadalajara. Provided he can remain in the United States, it is anticipated that he will serve in the role or a very similar role for the next many years.”*

- What should we say?
- Where should we say it?

## Educational Requirements

Here – employer says “*bachelor’s degree in electrical or mechanical engineering*”

- Is Canadian (Quebec) three-year degree an issue?
- What are advantages/issues if Master’s degree is primary requirement?
- M+3/B+5 PW anomaly for Job Zone 4 jobs
- Remember that all requirements must be **employer’s actual minimum requirements**

## Experience Requirements

Here - employer says “**15 years of experience as a production manager**, including five years of experience working with Lone Star Extrusion’s proprietary extrusion machinery and process”

- Excessive experience requirements?
- Even if reduced to a bachelor’s degree and five years of experience so that EB-2 remains possible, wage is still likely to be way too high.
- Level 4 for Electrical Engineers and Industrial Production Managers, Level 2 for Architectural and Engineering Managers.
- Dumbing it down – prevailing wage implications of Bachelor’s plus two years of experience.
- Dumbing it down – applicant availability implications of Bachelor’s plus two years of experience.
- Consider using a private wage survey such as Towers Watson

## Experience Requirements

- What kind of experience does it have to be? Maybe extrusion production management? Maybe more specific than that?
- Need for back and forth with employer.
- Compare:
  - Law degree and two years of litigation experience (the whole world)
  - with -
  - Law degree and two years of medical malpractice experience

## Special Requirements

Here - employer says “*15 years of experience as a production manager, including five years of experience working with Lone Star Extrusion’s proprietary extrusion machinery and process*”

- Experience with proprietary technology or processes
  - Issues?
  - Alternatives?
  - Need for back and forth with employer.
  - Dig down: what are the truly essential skills, knowledge, experience?
- M+3/B+5 PW anomaly for JobZone 4 requirements
- Actual minimum requirements.

## Special Requirements

- Are they too specific? For example, is experience in Word necessary, or will someone with WordPerfect experience be able to catch on quickly?
- Is it really necessary to have had experience troubleshooting 8 different kinds of extrusion manufacturing equipment? Realistically, would someone with, for instance, 6 out of the 8, be able to slide into the job? Five out of the 8? Maybe they **have** to have 5 of them, but only 1 out of the other 3?

## Special Requirements

- Compare:

*“Excellent production equipment troubleshooting skills.”* It is going to be difficult to explain why an applicant was disqualified on the basis that his or her troubleshooting skills were merely “very good” but not “excellent.”

with:

*“Did your experience include at least three years during which your job duties included troubleshooting the following production equipment: \_\_\_\_, \_\_\_\_, \_\_\_\_, etc.?”*

- Always keep in mind – what are **employer’s** actual minimum requirements.

**Ask client the following when you send draft of the Notice of Filing for review:**

- Are the duties correctly worded?
- Are any of the duties listed not essential, or are they, as currently worded, likely to change in the next year or two or three?
- Are any truly essential duties not listed?
- Are any of the educational, experience or other special requirements that are listed not essential in order to perform the duties. Or are any of them redundant or necessarily included by virtue of another requirement? E.g., if one of the requirements is one year of experience performing appendectomies, it probably isn't necessary to also require experience with pre-surgical scrubbing up.
- Are any truly essential educational, experience or other special requirements not listed?
- Are these the actual minimum requirements for the job – i.e., is it correct to say that unless physically threatened you would not hire anyone for this job who did not meet each of these requirements?
- Can each requirement be justified by business necessity? Keeping in mind that ultimately, Philip's manager will have to sign a declaration under oath explaining in detail why each requirement "bears a reasonable relationship to the occupation in the context of the employer's business and is essential to perform the job in a reasonable manner."
- Will we be able to document that Philip met every single requirement prior to joining Lone Star Extrusion?

Simply transfer information from Notice of Filing onto the prevailing wage form.

Other information you'll need:

- ACWIA?
- Using wage survey?
- Suggested SOC code
- Job Title of Supervisor (from questionnaire)

If using OWL, consider attaching the wage chart as a pdf to the PWD (*see handout*)

Supervision of other employees – how many and who are they?  
(from questionnaire)

- Be as specific as possible to avoid RFI

Perhaps include something like this in E.a.5?

“Note to E.a.4 and the job duties above: To be precise, while no employees are directly supervised, as indicated in the job duties above, an important aspect of the position involves coordinating and guiding the production team, which includes operators and supervisors, particularly with respect to equipment, production efficiency, materials management and safety issues. In order to perform this job, it is necessary to work closely with the production team in these areas.”

You finally get the prevailing wage – now what?

- Analyze ability to pay
- Is there one good reason **not** to use a salary range?

### Salary Range Essentials:

- The bottom of the range is at least the prevailing wage
- The top of the range is at least the FN's current salary
- The top of the range is at least the current salary of others who hold the same position, and
- The top of the range is at least what you anticipate the FN's salary will be by the time the I-140 is filed.

- Start before you get prevailing wage determination? BEST PRACTICE - wait until PWD comes back before starting recruitment
- BUT - any special timing considerations?
- For example, what if you are nearing the start of employee's 6<sup>th</sup> year of H-1B status?
- Any time-saving tricks?
- Never done a PERM? Helping an employer set up an account with the state workforce agency (SWA) and iCert.
- Placing recruitment for the employer vs. letting them do it themselves
- How to keep track of recruitment

- In-House Media

- Does the language on the electronic in-house media Notice of Filing need to be exactly the same as the language on the physical in-house Notice of Filing?
- The regulations require that the employer publish the notice internally using in-house media--whether electronic or print--in accordance with the normal internal procedures used by the employer to notify its employees of employment opportunities in the occupation in question. The language should give sufficient notice to interested persons of the employer's having filed an application for permanent employment labor certification for the relevant job opportunity. It is not required to mirror, word for word, the physical posting. In most cases, the physical posting language will be the most efficient way to electronically post the Notice of Filing; in others, the software program used to create the electronic in-house posting may be unable to accept all of the language used in the physical Notice of Filing. In every case, the Notice of Filing that is posted to the employer's in-house media must state the rate of pay and apprise the reader that any person may provide documentary evidence bearing on the application to the Certifying Officer. If there is insufficient space to include the Certifying Officer's address, then information as to where the address can be found must be provided.

- **What about TV monitors in the reception area?**



- Considerations pertaining to the three extra recruitment steps for professional positions. For example:
  - Radio
  - Local newspaper (can it be same as Sunday newspaper?)
  - What **is** the appropriate Sunday newspaper?
  - Campus placement office(s) - where and how many?
  - Internet job search website - which one?
  - Effect of Indeed and similar aggregation sites.
  - Employee referral programs.
  - Doing four or even five instead of three?

- Introductory questions to consider:
  1. Are you legally authorized to work in the United States?
  2. Will you now or in the future require sponsorship by Lone Star Extrusion for employment visa status in order to begin or continue working in the United States?
  3. If the salary for this position is within the range of \$95,000 to \$105,000 per year, depending on experience, are you interested in the full-time, permanent position of Extrusion Production Manager?
    - a). **If no** to 3 – if we determined that you met the requirements for this position, and that your experience warranted a salary offer at the maximum of the \$95,000 to \$105,000 range, would that be acceptable to you?
  4. When are you available to fill the full-time, permanent position of Extrusion Production Manager?

- Keeping records of contacts.
- Certified letters.
- What if employer has old resumes on file from a career fair they did last summer?
- How long do they have to be collecting applications?
- The attorney will handle all that review, right?
- Employer can't tell from the resume if the applicant qualifies... she might, she has the right degree and has been working for 10 years...do we have to interview her?
- Sample evaluation sheet (see handout)

- Raj is a citizen and national of India. He just transferred to eStores in November 2015. eStores is an e-commerce business that designs and services websites for stores and businesses, to allow them to sell their products over the internet. This is newly-emerging technology, and so they highly value their software and systems developers. Raj was hired as a Developer and works primarily with QA/QC testing of e-commerce programs and systems.



- He works at the main office in Palo Alto, California. He has a sweet cubicle, there is a video game room and fro-yo machine “on campus,” and he has about 5,000 shares in the company. eStores is currently privately held, but they expect to go public in 2-3 years. His current salary is \$125,000.
- Raj started working in H-1B status in November 2008. eStores filed his H-1B transfer and received a full three years of work authorization because he has an approved I-140 with his previous employer (EB-3, priority date is May 14, 2010).
- His current H-1B expires November 11, 2018.
- His previous PERM and I-140 are for an EB-3 professional position.
- Raj really wants an EB-2. He has told you that about 10 times in the last 2 days, and he thinks it should be a “no-brainer” because he has a “Master’s degree and well over 7 years of experience.”
- He has “almost” 5 years of experience designing and testing eCommerce applications.

- As Raj completes his PERM questionnaire and starts sending his documents for review, you notice a few things about his qualifications:
  - He has a three-year bachelor's degree in Computer Technology from India
  - He has a two-year Master's degree in Computer Engineering from India
  - He has 4 years and 5 months of progressively-responsible experience in software development for eCommerce applications (the primary competitor of eStores)
- The HR manager gave you the company's PERM questionnaire which indicates:
  - There are currently 7 other workers in the "Developer" title, although only three of them do quality assurance/testing.
- Raj is considered a "tester". Of the 7 "Developers," two have Master's degrees, 4 have bachelor's degrees, and one has 25 years of experience and no degree ("but he's a genius"). Of the three testers, 1 has a Master's degree and the other has no degree/25 years of experience. Raj is a superstar – they anticipate he will be promoted to "Major Developer," which is a supervisory role, in the next 18 months.
- They don't have a Major Developer right now for the testers, so this will be a new position. The Major Developer will supervise 2-3 Developers and oversees all of the final testing.
- So, heavier focus on testing and recommending/overseeing design changes after testing.

## Issue Spotting –

- H-1B is valid until November 11, 2018 – he has already maxed out on H-1B time, this extension was based on the approved I-140 for his prior EB-3 case. Has the previous employer withdrawn that I-140? (Let's assume yes – which means that we should try and have the PERM certified and I-140 approved for this employer before November 2018.)
  - Or at least PERM filed before November 2017
- Need degree evaluation of foreign degrees, and the evaluation must cite EDGE. In order for EB-2, must be able to show that the employee has a U.S. advanced degree, or equivalent (equivalent = U.S. Bachelor's degree + five years of progressively responsible experience in the field). Indian degree equivalencies: will this 3 + 2 combo work?
- If need to show 5 years of progressively-responsible experience, how do we do this?
  - Can we help draft employment verification letters? what do they need to include?

- Issue spotting -
  - EB-2 vs. EB-3 Visa Backlogs
  - Is the current job an EB-2 position?
  - Difference in dates for filing vs. processing
- Using older priority date and moving from EB-3 to EB-2
  - 8 CFR S204.5(e)
- What are the requirements for the promoted position at eStores?  
Would they be willing to file for the promoted position?
- Are there any special skills needed? Experience with unique technology?
- Can they foresee paying a Level 4 wage in the next 2-4 years?

## LET'S GET STARTED!

### Materials needed:

- Job description
- Actual Minimum Requirements
- Any special skills?
- Any unique technology required?
- How many people will he supervise?
- Is travel required?

### From Employee:

- Diplomas, transcripts, certifications
- Updated resume
- Evaluation of Foreign Education Materials

## Foreign Labor Certification Data Center Online Wage Library

[www.flcdatacenter.com](http://www.flcdatacenter.com)



### Wage Library

[Quick Search](#)  
[Search Wizard](#)

### Case Disclosure Data Archive

[H1B Data](#)  
[H2A Data](#)  
[H2B Data](#)  
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### Also available:

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Explanation](#)

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[FLC Wage Data  
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July 1, 2015](#)

[Job Zones updated  
January 6, 2016  
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history](#)

[Technical Support  
& Help FAQ page.](#)

### FLC Wage Results [New Quick Search](#) [New Search Wizard](#)

You selected the All Industries database for 7/2015 - 6/2016.

Your search returned the following: [Print Format](#)

**Area Code:** 41940  
**Area Title:** San Jose-Sunnyvale-Santa Clara, CA MSA  
**OES/SOC Code:** 15-1132  
**OES/SOC Title:** Software Developers, Applications  
**GeoLevel:** 1  
**Level 1 Wage:** \$47.28 hour - \$98,342 year  
**Level 2 Wage:** \$57.86 hour - \$120,349 year  
**Level 3 Wage:** \$68.45 hour - \$142,376 year  
**Level 4 Wage:** \$79.03 hour - \$164,382 year  
**Mean Wage (H-2B):** \$68.45 hour - \$142,376 year

This wage applies to the following O\*Net occupations:

#### **15-1132.00 Software Developers, Applications**

Develop, create, and modify general computer applications software or specialized utility programs. Analyze user needs and develop software solutions. Design software or customize software for client use with the aim of optimizing operational efficiency. May analyze and design databases within an application area, working individually or coordinating database development as part of a team. May supervise computer programmers.

[O\\*Net™ JobZone: 4](#)

[Education & Training Code: No Level Set](#)

For information on determining the proper occupation and wage level see the new [Prevailing Wage Guidance](#) on the [Skill Level](#) page.

The prevailing wage must be at, or above the federal or state or local minimum wage, whichever is higher. The federal minimum wage is \$7.25/hr effective July 24, 2009.

Foreign Labor Certification Data Center  
Online Wage Library

www.ficdatacenter.com



Wage Library

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FLC Wage Results [New Quick Search](#) [New Search Wizard](#)

You selected the All Industries database for 7/2015 - 6/2016.

Your search returned the following: [Print Format](#)

**Area Code:** 41940  
**Area Title:** San Jose-Sunnyvale-Santa Clara, CA MSA  
**OES/SOC Code:** 15-1199  
**OES/SOC Title:** Computer Occupations, All Other  
**GeoLevel:** 1  
**Level 1 Wage:** \$31.62 hour - \$65,770 year  
**Level 2 Wage:** \$44.37 hour - \$92,290 year  
**Level 3 Wage:** \$57.13 hour - \$118,830 year  
**Level 4 Wage:** \$69.88 hour - \$145,350 year  
**Mean Wage (H-2B):** \$57.13 hour - \$118,830 year

This wage applies to the following O\*Net occupations:

**15-1199.00 Computer Occupations, All Other**

All computer occupations not listed separately.  
O\*Net™ JobZone: NA  
Education & Training Code: No Level Set

**15-1199.01 Software Quality Assurance Engineers and Testers**

Develop and execute software test plans in order to identify software problems and their causes.  
O\*Net™ JobZone: 4  
Education & Training Code: No Level Set

**15-1199.02 Computer Systems Engineers/Architects**

Design and develop solutions to complex applications problems, system administration issues, or network concerns. Perform systems management and integration functions.  
O\*Net™ JobZone: 4  
Education & Training Code: No Level Set

**15-1199.03 Web Administrators**

Manage web environment design, deployment, development and maintenance activities. Perform testing and quality assurance of web sites and web applications.  
O\*Net™ JobZone: 3  
Education & Training Code: No Level Set

**15-1199.08 Business Intelligence Analysts**

Produce financial and market intelligence by querying data repositories and generating periodic reports. Devise methods for identifying data patterns and trends in available information sources.  
O\*Net™ JobZone: 4  
Education & Training Code: No Level Set

**15-1199.09 Information Technology Project Managers**

Plan, initiate, and manage information technology (IT) projects. Lead and guide the work of technical staff. Serve as liaison between business and technical aspects of projects. Plan project stages and assess business implications for each stage. Monitor progress to assure deadlines, standards, and cost targets are met.  
O\*Net™ JobZone: 4  
Education & Training Code: No Level Set

**15-1199.10 Search Marketing Strategists**

Employ search marketing tactics to increase visibility and engagement with content, products, or services in Internet-enabled devices or interfaces. Examine search query behaviors on general or specialty search engines or other Internet-based content. Analyze research, data, or technology to understand user intent and measure outcomes for ongoing optimization.  
O\*Net™ JobZone: 4  
Education & Training Code: No Level Set

**15-1199.11 Video Game Designers**

Design core features of video games. Specify innovative game and role-play mechanics, story lines, and character biographies. Create and maintain design documentation. Guide and collaborate with production staff to produce games as designed.  
O\*Net™ JobZone: 4  
Education & Training Code: No Level Set

**15-1199.12 Document Management Specialists**

Implement and administer enterprise-wide document management systems and related procedures that allow organizations to capture, store, retrieve, share, and destroy electronic records and documents.  
O\*Net™ JobZone: 4  
Education & Training Code: No Level Set

For information on determining the proper occupation and wage level see the new Prevailing Wage Guidance on the [Skill Level page](#).

The prevailing wage must be at, or above the federal or state or local minimum wage, whichever is higher. The federal minimum wage is \$7.25/hr effective July 24, 2009.

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### FLC Wage Results [New Quick Search](#) [New Search Wizard](#)

You selected the All Industries database for 7/2015 - 6/2016.

Your search returned the following: [Print Format](#)

**Area Code:** 41940  
**Area Title:** San Jose-Sunnyvale-Santa Clara, CA MSA  
**OES/SOC Code:** 11-3021  
**OES/SOC Title:** Computer and Information Systems Managers  
**GeoLevel:** 1  
**Level 1 Wage:** \$59.98 hour - \$124,758 year  
**Level 2 Wage:** \$74.25 hour - \$154,440 year  
**Level 3 Wage:** \$88.52 hour - \$184,122 year  
**Level 4 Wage:** \$102.79 hour - \$213,803 year  
**Mean Wage (H-2B):** \$88.52 hour - \$184,122 year

This wage applies to the following O\*Net occupations:

#### **11-3021.00 Computer and Information Systems Managers**

Plan, direct, or coordinate activities in such fields as electronic data processing, information systems, systems analysis, and computer programming.

O\*Net™ JobZone: 4

Education & Training Code: 4-Work experience, plus a bachelor's or higher degree

For information on determining the proper occupation and wage level see the new Prevailing Wage Guidance on the [Skill Level](#) page.

The prevailing wage must be at, or above the federal or state or local minimum wage, whichever is higher. The federal minimum wage is \$7.25/hr effective July 24, 2009.

- PERM job description:
- Start with language from OES occupation description as first 1-2 sentences of the job description
- Add key duties
- If experience with specific tools, software, technology, etc. is required and will be part of the job, include in the job description
- For example, in Raj's case: the current role fits more into Software Design of e-commerce applications and platforms, and then some testing.
- Developer: Develop and execute software test plans in order to identify software problems and their causes in e-commerce platform and with eStores applications. Conduct testing of software applications and systems to identify design changes. Prepare reports to recommend design changes after significant rounds of testing. (using Software Quality Assurance Engineers and Testers)
- Major Developer: Develop, create and modify general computer applications software for e-commerce platform and e-business. Analyze user needs and develop software solutions. Design software or customize software for client use. [add in duties specific to testing and design] Supervises other developers after testing to oversee programming changes. Utilize experience with [specific tools/technology/etc.] to recommend design changes. (using Software Developers, Applications language – because that is more what the supervisor will be doing, plus this category specifically notes that the role “may supervise computer programmers”)

## PERM Requirements:

List the minimum education required, years of experience required and any special requirements:

**Developer:** [for current position]

Bachelor's degree in Computer Science, Computer Engineering, CIS or MIS, or their foreign equivalent + 2 years of experience in software application design. In the alternative to a degree, the employer will accept at least 15 years of software coding and design experience, with at least two years of e-Commerce application design.

**Major Developer:** [for job offer position that is being created for Raj...]

Bachelor's degree in Computer Science, Computer Engineering, CIS, MIS, or their foreign equivalent + 5 years of progressively-responsible experience as a developer or tester in e-Commerce software application, using [specific tools/technology/etc.]. Will supervise 2-3 developers to recommend design changes after testing.

If travel required , be sure to list as separate line item

- Salary:
- **Developer** – Based on the requirements, this is an EB-3 position, and it will most likely qualify as a Level 1 or Level 2 wage in the Computer Occupations, All Other Category (\$65,770 or \$92,290)
- **Major Developer** – Based on the requirements, this is an EB-2 position, Level 4 wage, and will likely be coded as a Software Developers, Applications occupation (\$164, 382) or a Computer and Information Systems Managers occupation at (\$213,803)
- Must be signed off by Employer/Manager – affirming that these are the minimum requirements for the position and that they will pay the listed salary at the time the permanent residence card is issued.
- Must be signed by employee – affirming that he/she has or can obtain (ideally, before the PERM filing) evidence that he/she meets the requirements for this position at this time or at the time of filing. Evidence = diplomas, transcripts, employment verification letters and any required special skills or certifications

- Once the Notice of Filing has been approved and affirmed by the Employer and the Employee, you can submit the Prevailing Wage Application to DOL
- Submit Form 9141 vi iCERT online: <http://icert.doleta.gov>
- Current wait time – 8-10 weeks
- Average wait time 2014-2016 – 4-6 weeks
- Submit the Form 9141 via iCERT online: <https://icert.doleta.gov/>
- Best Practice: Wait to do recruitment until after you receive the PWD

- Advanced degree/EB-2 positions are professional positions, so sometimes a professional journal is appropriate
- Mandatory: Job order with SWA, Notice of Filing, 2 Sunday Newspaper Ads
- And then 3 additional sources of recruitment:
  - Radio
  - Professional Journal
  - Online Job Sites
  - Employer Referral Program
  - Local/Ethnic Newspaper
- **Best Practice:** Time recruitment so that all ads are down for at least 30 days before filing

- Does the attorney do this for the employer?

***NO!!!***

- Does the employer have to consider all applicants?
  - Can be limited to only those who reference the job code used in the advertisements
- What if the recruiter really likes the candidate, but she doesn't quite fit the requirements?
  - Employer always has the discretion to interview all applicants; however, only those who meet the minimum requirements must actually be considered for the position
- **Best Practice:** Attorney can provide a sample evaluation sheet to the Employer based on the job description and minimum requirements for the position. This way, the employer can use the evaluation sheet to review each applicant and determine whether or not the applicant must be interviewed/can be disqualified.

- PWD; Notice of Filing, 9089 should have identical job description, education requirements
- Don't be afraid to use H.14 for special requirements
- Recruitment report should outline dates and forms of recruitment, number of resumes received, numbers of applicants contacted/interviewed, and should hopefully conclude that there were no willing, qualified and able U.S. applicants.

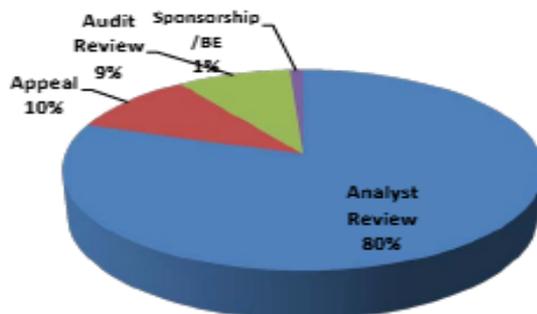
# Q&A

**OFFICE OF FOREIGN LABOR CERTIFICATION**

Permanent Labor Certification Program – Select Statistics, FY 2016

Applications Received					
FYTD	Q1	Q2	Q3	Q4	% QTR Change from FY15
46,519	23,083	23,436	-	-	23%

**Processing Status of Active PERM Applications**



44,538 Applications remaining as of 3/31/2016

Applications Processed					
Determination	FYTD	Q1	Q2	Q3	Q4
Certified	56,105	23,991	32,114	-	-
Denied	2,961	1,330	1,631	-	-
Withdrawn	2,490	1,123	1,367	-	-

Processing Times: <http://icert.doleta.gov/>

- Cumulative numbers for the fiscal year to date will not necessarily reflect the sum of the quarter numbers due to changes in case processing status. These numbers may not match the numbers on previous reports due to changes in case processing status.
- Advanced Degree is defined as Master's and/or Doctorate Degree

Review of Applications Certified FY 2016TD (% of total certified FY 2016)			
Top 5 Occupations (O*Net Job Family)	Computer and Mathematical	31,955	57%
	Architecture and Engineering	4,776	9%
	Management	4,475	8%
	Business and Financial Operations	3,348	6%
	Education, Training, and Library	2,038	4%
Top 5 Work Site States	California	13,130	23%
	Texas	7,022	13%
	New Jersey	4,943	9%
	New York	4,060	7%
	Washington	3,311	6%
Top 5 Industries (NAICS Code by Industry)	Professional, Scientific, and Technical Services	25,541	46%
	Manufacturing	8,724	16%
	Information	5,445	10%
	Finance and Insurance	2,776	5%
	Educational Services	2,672	5%
Top 5 Visa Classifications	H-1B	41,285	74%
	L-1	3,565	6%
	Blank	3,435	6%
	F-1	2,596	5%
	Not in USA	1,870	3%
Top 5 Countries of Citizenship	India	30,930	55%
	China	4,764	8%
	South Korea	4,484	8%
	Canada	1,997	4%
	Mexico	1,100	2%
Minimum Education Requirements	Advanced Degree	26,529	47%
	Bachelor's	21,459	38%
	Less than Bachelor's	6,393	11%
	Other	1,724	3%

# **A Word About Audits & Supervised Recruitment**

# Current Audit Triggers

- Current triggers are subject to change and DOL may practice a “moving target” approach.
- Current patterns/high-frequency industries and professions:
  - A high salaried professional position with a low threshold of educational or experience requirements;
  - Lesser skilled positions;
  - Financial industry positions;
  - Applications from high volume users of the PERM portal.
- Triggers are not consistent. Identical applications can have a different result with only some being designated for audit.



# Current Random Audits Frequent “Issues”

- Business necessity of requirements.
- Disqualified applicants, “could they be reasonably trained?”
- Employee referral programs.
- Payment of fees.



# Reminders Re: Post-Certification



- 180 day validity period.
- Audit file retention.
- H-1B extensions.
- Material changes.
- Portability.