



Form 9089, A Box-by-Box Analysis by Julie Pearl, Michele Kim, Sam Udani

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Introduction

The table (see attachment 1) examines Form 9089 and provides the following information on a box-by-box basis: maximum number of spaces permitted and type of permitted characters. Based on the information presented in the table, Form 9089 raises a number of concerns that attorneys should be aware of when completing this form.

1. Box J.8. Class Of Admission

This is one of the most challenging and difficult fields on Form 9089 to complete because a large number of people will find that none of the drop-down list selections may be applicable to them.

Example: Parolee, asylee, and EWI class of admissions are notably absent from the drop-down box.

Example: What should an individual select if he/she is living overseas and has a foreign permanent address?

The J.8. List (see attachment 2) continues to grow as new classes of admission are added by the Department of Labor. However, this action appears to violate both congressional fiat and DHS authority. Many are left with no choice but to file a manual Form 9089 because no applicable class of admission for the alien applicant is available online. By default, then, manual processing is not identical to computer processing of Form 9089.

Solution

This question can be left blank (this is possible to do electronically). However, a blank response runs the risk of the selective application of 656.17(a)(1), "incomplete applications will be denied." Alternatively, the DOL can resolve this issue by allowing completion of the question using a fill-in-the-text format instead of a drop-down box, amending the dropdown box to eliminate the blank field selection, or deleting the incomplete language from 656.17(a)(1) altogether.

2. Box J.5., J.6. Country of Citizenship, Country of Birth

Both fields also require completion via a drop-down box, which may create a problem for aliens from stateless nations, those born in disputed areas, or those born in countries that no longer exist.

Example: An individual was born in Bantuland, which is now part of Central Africa. Bantuland is not available as a drop-down selection.

Example: An individual was born in Hong Kong, which was ceded to China July 1997. Hong Kong is not available as a drop-down selection.

Solution

Indicate N/A (not applicable) if none of the selections within the drop-down box are applicable on the mailed version of Form 9089 (this is possible only in the mailed version). Here, the mailed and electronic versions of Form 9089 are not identical, in possible contravention of the Administrative Procedures Act.

3. Box D.1-D.5 Employer Contact Information

The attorney should NOT complete these fields. These are pre-filled fields based on the information in the employer profile and provided by the employer during registration under PERM.

Example: Employer XYZ moves its business location. Even if Employer's attorney has received written communication about the address change from the Employer, the Employer needs to make the change in the employer profile - the attorney may not make changes according to the PERM software.

Does DOL have the authority to require only employers to make changes to their profile? This may be a violation of various applicable federal statutes, including the Administrative Procedures Act.

Solution

If the employer profile needs to be modified, the employer, and NOT the attorney must make these changes.

4. Box. A.1-b. Indicate the previous SWA or local office case number OR if not available, specify state where case was originally filed.

Many other examples of insufficient number of fields exist throughout Form 9089. In Box A.1-b, the maximum number of spaces allowed for this field is 15 spaces, which is insufficient to respond to the query.

Example: US Virgin Islands is 16 characters and longer than 15 characters.

Example: Overseas current addresses may be difficult to complete given the 100-character limitation for this question.

Many other examples of insufficient character length fields exist throughout Form 9089, including:

- E.1. Agent or attorney's last name/First name/Middle initial (max. 50 characters)
- E.5. Address 1/Address 2 (max. 100 characters)
- E.6. City/State/Province/Country/Postal Code (max. 50 characters)
- F1. Prevailing wage tracking number (if applicable) (max.15 characters)
- F.6-a. If other is indicated in question 6 (Prevailing wage source), specify. (max. 50 characters)
- H.4-b. Major field of study. (max.100 characters)

- H.7-a. If Yes (alternate field of study), specify the major field of study: (max.100 characters)
- H.10-b. Identify the job title of the acceptable alternate occupation: (max.100 characters)
- I.4. Name and place of national professional journal in which advertisement was placed: (max. 50 characters)
- I.11. Name of newspaper or professional journal (if applicable) in which second advertisement was placed. Newspaper or journal. (max. 50 characters)
- I.23-a. If Yes, describe the details of the payment including the amount, date, and purpose of the payment. (max. 160 characters)
- J.1. Alien's Name: Last/First/Middle (max. 50 characters)
- J.2. Current Address (street) (max.100 characters)
- K.4. Type of business. (max. 30 characters)
- K.5. Job title. (max. 30 characters)

Solution

The fields can be completed within the character length limits by abbreviating words, e.g. Street, St. If abbreviations are used, an abbreviations dictionary should be purchased and kept as a handy resource – and to defend all abbreviations (include BALCA citation on abbreviations). Alternatively, the DOL can eliminate these inconsistencies by increasing the number of character fields for each of the fields above.

Conclusion

The DOL's claim that the procedures are identical for processing forms, whether electronic or mailed is false, because over time, mailed versions of Form 9089 will necessarily deviate from the electronic versions. Mailed versions offer a higher degree of procedural rights and due process than electronic forms because it allows applicants to respond completely to a question rather than be limited by character lengths in fields and drop-down box selections. Fortunately, 90% of the current flaws in the PERM system can be easily resolved by making a few slight adjustments to the online version of Form 9089 so that it closely resembles the written form. We hope this article helps DOL make the necessary changes.

Note: the information presented in this table was current as of June 2005, and may change as DOL makes adjustments and corrections to its PERM decision software platform matrix.

About the Author

Julie Pearl is Managing Attorney of Pearl Law Group, an immigration firm listed as the top woman-owned law firm in the San Francisco Area (*S.F. Business Times*, 9/03 –present) and ranked #210 on the Inc. 500 List of Fastest Growing Companies in America (*Inc. Magazine*, 10/02). In 2001, Julie and her husband co-founded the company that licenses the award-winning case management software, ImmigrationTracker. She is listed in The International Who's Who of Business Immigration Lawyers and was featured in the book *The Moral Advantage: How to Succeed in Business by Doing the Right Thing* (Stanford University Project on Good Work, 2004). She received a B.A. degree from Stanford University, an M.P.A. from Harvard University, and a J.D. from the University of California's Hastings College of the Law.

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Sam Udani has spoken before many bar associations throughout the country on labor certification and law practice management. In 1992, he co-founded Adnet Advertising Agency Inc, a company specializing in labor certification advertising and was involved with that company through 2000. In 1999, he acquired ILW.COM (which was founded in 1995), and propelled it into the leading immigration law publisher online. He is the publisher of ILW.COM's Immigration Daily which now reaches 16,000 subscribers every weekday. He has authored articles on labor certification in AILA Monthly Mailing, Bender's Immigration Bulletin, and Immigration Daily. Some material in this article was presented at the PERM workshop in Salt Lake City, UT. More information about the upcoming PERM workshop in San Antonio on June 21, 2006 can be found at: <http://www.ilw.com/workshops/june2006perm.shtm>.

Attachment 1 - Form 9089 Table - Box by Box

Box #	Field	Max. Spaces	Permitted Characters
A. Refiling Instructions			
A.1	Are you seeking to utilize the filing date from a previously submitted Application for Alien Employment Certification (ETA 750)?	Y/N question	
A.1-a	If Yes, enter the previous filing date	10	Enter date as mm/dd/yyyy
A.1-b	Indicate the previous SWA or local office case number OR if not available, specify state where case was originally filed:	15	All
B. Schedule A or Shepherdder Information			
B.1	Is this application in support of a Schedule A or Shepherdder Occupation? If Yes, do NOT send this application to the Department of Labor. All applications in support of Schedule A or Shepherdder Occupations must be sent directly to the appropriate Department of Homeland Security office.	Y/N question	
C. Employer Information (Headquarters or Main Office)			
C.1	Employer's name	Pre-filled	
C.2	Address 1/Address 2	Pre-filled	
C.3	City/ State/Province/Country/Postal code	Pre-filled	
C.4	Phone Number/Extension	Pre-filled	
C.5	Number of employees	previously 5, now 10	Numbers only
C.6	Year commenced business	4	Enter year as 'yyyy'
C.7	FEIN (Federal Employer Identification Number)	Pre-filled	
C.8	NAICS code	Drop down menu	
C.9	Is the employer a closely held corporation, partnership, or sole proprietorship in which the alien has an ownership interest, or is there a familial relationship between the owners, stockholders, partners, corporate officers, incorporators, and the alien?	Y/N question	
D. Employer Contact Information (This section must be filled out. This information must be different from the agent or attorney information listed in Section E)			
D.1	Contact's Last name/First name/Middle initial	Pre-filled	
D.2	Address 1/Address 2	Pre-filled	
D.3	City/ State/Province/Country/Postal code	Pre-filled	
D.4	Phone Number/Extension	Pre-filled	
D.5	E-mail address	Pre-filled	
E. Agent or Attorney Information (If applicable)			
E.1	Agent or attorney's last name/First name/Middle initial	50	
E.2	Firm name	100	All
E.3	Firm EIN	9	Numbers only
E.4	Phone Number/Extension	20	Numbers only
E.5	Address 1/Address 2	100	All
E.6	City/ State/Province/Country/Postal code	50	Letters only
E.7	E-mail address	50	All
F. Prevailing Wage Information (as provided by the State Workforce Agency)			
F.1	Prevailing wage tracking number (if applicable)	15	All
F.2	SOC/O*NET(OES) code	Drop down menu	
F.3	Occupation Title	100	All
F.4	Skill Level	Drop down menu	
F.5	Prevailing wage Per: (Choose only one): Hour, Week, Bi-Weekly, Month, Year	10	Numbers only

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Box #	Field	Max. Spaces	Permitted Characters
F.6	Prevailing wage source (Choose only one): OES, CBA, Employer Conducted Survey, DBA, SCA, Other	Drop down menu	
F.6-a	If Other is indicated in question 6, specify:	50	
F.7	Determination date	10	Enter date as mm/dd/yyyy
F.8	Expiration date	10	Enter date as mm/dd/yyyy
G. Wage Offer Information			
G.1	Offered wage From: To: (Optional) Per: (Choose only one): Hour, Week, Bi-Weekly, Month, Year	10	Numbers only
H. Job Opportunity Information (Where work will be performed)			
H.1	Primary worksite: Address 1/Address 2	100	All
H.2	City/ State/Postal code	50	All
H.3	Job title	100	All
H.4	Education: minimum level required: None, High School, Associate's, Bachelor's, Master's, Doctorate, Other	Drop down menu	
H.4-a	If Other is indicated in question 4, specify the education required:		
H.4-b	Major field of study	100	All
H.5	Is training required in the job opportunity?	Y/N question	
H.5-a	If Yes, number of months of training required:	3	Numbers only
H.5-b	Indicate the field of training:	100	All
H.6	Is experience in the job offered required for the job?	Y/N question	
H.6-a	If Yes, number of months experience required:	3	Numbers only
H.7	Is there an alternate field of study that is acceptable?	Y/N question	
H.7-a	If Yes, specify the major field of study:	100	All
H.8	Is there an alternate combination of education and experience that is acceptable?	Y/N question	
H.8-a	If Yes, specify the alternate level of education required: None, High School, Associate's, Bachelor's, Master's, Doctorate, Other	Drop down menu	
H.8-b	If Other is indicated in question 8-A, indicate the alternate level of education required:	100	All
H.8-c	If applicable, indicate the number of years experience acceptable in question 8:	2	Numbers only
H.9	Is a foreign educational equivalent acceptable?	Y/N question	
H.10	Is experience in an alternate occupation acceptable?	Y/N question	
H.10-a	If Yes, number of months experience in alternate occupation required:	3	Numbers only
H.10-b	Identify the job title of the acceptable alternate occupation:	100	All
H.11	Job duties – If submitting by mail, add attachment if necessary. Job duties description must begin in this space.	No Max.	All
H.12	Are the job opportunity's requirements normal for the occupation? If the answer to this question is No, the employer must be prepared to provide documentation demonstrating that the job requirements are supported by business necessity.	Y/N question	
H.13	Is knowledge of a foreign language required to perform the job duties? If the answer to this question is Yes, the employer must be prepared to provide documentation demonstrating that the language requirements are supported by business necessity.	Y/N question	
H.14	Specific skills or other requirements – If submitting by mail, add attachment if necessary. Skills description must begin in this space.	No Max.	All
H.15	Does this application involve a job opportunity that includes a combination of occupations?	Y/N question	
H.16	Is the position identified in this application being offered to the alien identified in Section J?	Y/N question	
H.17	Does the job require the alien to live on the employer's premises?	Y/N question	

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Box #	Field	Max. Spaces	Permitted Characters
H.18	Is the application for a live-in household domestic service worker?	Y/N question	
H.18-a	If Yes, have the employer and the alien executed the required employment contract and has the employer provided a copy of the contract to the alien?	Y/N question	
I. Requirement Information - a. Occupation Type – All must complete this section.			
I.1	Is this application for a professional occupation , other than a college or university teacher? Professional occupations are those for which a bachelor's degree (or equivalent) is normally required.	Y/N question	
I.2	Is this application for a college or university teacher? If Yes, complete questions 2-A and 2-B below.	Y/N question	
I.2-a	Did you select the candidate using a competitive recruitment and selection process?	Y/N question	
I.2-b	Did you use the basic recruitment process for professional occupations?	Y/N question	
b. Special Recruitment and Documentation Procedures for College and University Teachers – Complete only if the answer to question I.a.2-A is Yes.			
I.3	Date alien selected:	10	Enter date as mm/dd/yyyy
I.4	Name and date of national professional journal in which advertisement was placed:	50	All
I.5	Specify additional recruitment information in this space. Add an attachment if necessary.	Unlimited	All
c. Professional/Non-Professional Information – Complete this section unless your answer to question B.1 or I.a.2-A is YES.			
I.6	Start date for the SWA job order	10	Enter date as mm/dd/yyyy
I.7	End date for the SWA job order	10	Enter date as mm/dd/yyyy
I.8	Is there a Sunday edition of the newspaper in the area of intended employment?	Y/N question	
I.9	Name of newspaper (of general circulation) in which the first advertisement was placed:	50	All
I.10	Date of first advertisement identified in question 9:	10	Enter date as mm/dd/yyyy
I.11	Name of newspaper or professional journal (if applicable) in which second advertisement was placed: Newspaper or Journal	50	All
I.12	Date of second newspaper advertisement or date of publication of journal identified in question 11:	10	Enter date as mm/dd/yyyy
d. Professional Recruitment Information – Complete if the answer to question I.a.1 is YES or if the answer to I.a.2-B is YES. Complete at least 3 of the items.			
I.13	Dates advertised at job fair -		
	From:/To:	10	Enter date as mm/dd/yyyy
I.14	Dates of on-campus recruiting -		
	From:/To:	10	Enter date as mm/dd/yyyy
I.15	Dates posted on employer web site -		
	From:/To:	10	Enter date as mm/dd/yyyy
	Dates advertised with trade or professional organization -		

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Box #	Field	Max. Spaces	Permitted Characters
I.16	From:/To:	10	Enter date as mm/dd/yyyy
	Dates listed with job search web site -		
I.17	From:/To:	10	Enter date as mm/dd/yyyy
	Dates listed with private employment firm -		
I.18	From:/To:	10	Enter date as mm/dd/yyyy
	Dates advertised with employee referral program -		
I.19	From:/To:	10	Enter date as mm/dd/yyyy
	Dates advertised with campus placement office -		
I.20	From:/To:	10	Enter date as mm/dd/yyyy
	Dates advertised with local or ethnic newspaper -		
I.21	From:/To:	10	Enter date as mm/dd/yyyy
	Dates advertised with radio or TV ads -		
I.22	From:/To:	10	Enter date as mm/dd/yyyy
e. General Information – All must complete this section.			
I.23	Has the employer received payment of any kind for the submission of this application?	Y/N question	
I.23-a	If Yes, describe details of the payment including the amount, date and purpose of the payment :	160	All
I.24	Has the bargaining representative for workers in the occupation in which the alien will be employed been provided with notice of this filing at least 30 days but not more than 180 days before the date the application is filed?	Y/N question	
I.25	If there is no bargaining representative, has a notice of this filing been posted for 10 business days in a conspicuous location at the place of employment, ending at least 30 days before but not more than 180 days before the date the application is filed?	Y/N question	
I.26	Has the employer had a layoff in the area of intended employment in the occupation involved in this application or in a related occupation within the six months immediately preceding the filing of this application?	Y/N question	
I.26-a	If Yes, were the laid off U.S. workers notified and considered for the job opportunity for which certification is sought?	Y/N question	
J. Alien Information (This section must be filled out. This information must be different from the agent or attorney information listed in Section E)			
J.1	Alien's Name: Last/First/Middle	50	All
J.2	Current Address (street)	100	All
J.3	City/State/Zip	50	All
J.4	Phone number of current address	20	All
J.5	Country of citizenship	Drop down menu	
J.6	Country of birth	Drop down menu	
J.7	Alien's date of birth	10	Enter date as mm/dd/yyyy
J.8	Class of admission	Drop down menu	
J.9	Alien registration number (A#)	9	All
J.10	Alien admission number (I-94)	10	All

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Box #	Field	Max. Spaces	Permitted Characters
J.11	Education: highest level achieved relevant to the requested occupation:	Drop down menu	
J.11-a	If Other indicated in question 11, specify	100	All
J.12	Specify major field(s) of study	100	All
J.13	Year relevant education completed	4	Numbers only
J.14	Institution where relevant education specified in question 11 was received	100	All
J.15	Address 1 of conferring institution	100	All
J.16	City/State/Province/Country/Postal code	50	
J.17	Did the alien complete the training required for the requested job opportunity, as indicated in question H.5?	Y/N question	
J.18	Does the alien have the experience as required for the requested job opportunity indicated in question H.6?	Y/N question	
J.19	Does the alien possess the alternate combination of education and experience as indicated in question H.8?	Y/N question	
J.20	Does the alien have the experience in an alternate occupation specified in question H.10?	Y/N question	
J.21	Did the alien gain any of the qualifying experience with the employer in a position substantially comparable to the job opportunity requested?	Y/N question	
J.22	Did the employer pay for any of the alien's education or training necessary to satisfy any of the employer's job requirements for this position?	Y/N question	
J.23	Is the alien currently employed by the petitioning employer?	Y/N question	

K. Alien Work Experience - List all jobs the alien has held during the past 3 years. Also list any other experience that qualifies the alien for the job opportunity for which the employer is seeking certification

K.1	Employer name	100	All
K.2	Address	100	All
K.3	City/State/Province/Country/Postal code	50	All
K.4	Type of business	30	All
K.5	Job title	30	All
K.6	Start date	10	Enter date as mm/dd/yyyy
K.7	End date	10	Enter date as mm/dd/yyyy
K.8	Number of hours worked per week	3	Numbers only
K.9	Job details (duties performed, use of tools, machines, equipment, skills, qualifications, certifications, licenses, etc. Include the phone number of the employer and the name of the alien's supervisor.)	Unlimited	All

Attachment 2 - J.8. Class of Admission List

A-3
A1/A2
B-1
B-2
C-1
D-1
D-2
E-1
E-2
F-1
F-2
G-1
G-2
G-3
G-4
G-5
H-1A
H-1B
H-2A
H-2B
H-3
H-4
I
J-1
J-2
L-1
L-2
M-1
M-2
O-1
O-2
O-3
P-1
P-2
P-3
P-4
Q
R-1
R-2
TD
TN
VWB
VWT