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BLOGS

Archives;Department of Labor;Immigration

Higher Ed PERM Advertising Requirements Have Finally Entered the Modern Age

Foreign nationals are often among the most highly-qualified applicants for permanent positions at colleges and universities in the United States. In order to hire and retain foreign national candidates for permanent positions, colleges and universities need to follow a series of steps to assist the qualified foreign national candidate in obtaining work permission and, if desired, permanent residence status in the U.S. Permanent residence status confers on foreign nationals the right to live and work in the U.S. without time limitations. One of the more common ways to obtain permanent residence is by the petition of a U.S. employer through a process called Permanent Labor Certification (PERM). For most PERM applications, an employer must undergo a fairly extensive recruitment campaign and may file the application only if they do not find qualified U.S. workers. Fortunately, the process is streamlined for colleges and universities, in what is known as Special Handling Labor Certification, which allows them to file the application for classroom teaching positions when the recruitment has already taken place. However, the application must be filed no later than eighteen (18) months after the date the job was officially offered to the foreign national, specific recruitment steps must be followed, and certain documentation must be retained in order to be able to take advantage of the Special Handling process.

A couple of months ago, the Department of Labor's (DOL) Employment and Training Administration (ETA) issued a PERM program [Frequently Asked Question](#) stating that an employer may now use an electronic or web-based national professional journal instead of a print journal when conducting recruitment for college and university teachers pursuant to 20 C.F.R. 656.18. Lest you think the DOL independently came to the conclusion to modernize its requirements, its worth noting that this new FAQ came on the heels of an adverse decision by the Board of Alien Labor Certification Appeals (BALCA) within DOL that overruled the DOL's rejection of a PERM application where the employer had used an online national journal advertisement in its recruitment.

Before the issuance of this new FAQ, higher education employers were required to run job advertisements in printed journals as a part of the process of showing that the foreign worker hired for the college or university teaching position was selected for the job after conducting a competitive recruitment process which found that the foreign worker was more qualified than any U.S. worker who applied for the position. This new option will allow colleges and universities to save time and money and will ease the record-keeping burden for Special Handling PERM cases. It should be noted, however, that the new FAQ does not change the requirement that the electronic or web-based journals job listings must be posted for at least 30 calendar days and viewable to the public without payment of a subscription or membership and the documentation showing the placement of the advertisement in the electronic or web-based national professional journal must include the start and end dates and the text of the advertisement.