



## MEMORANDUM

**TO: Sponsoring Employers & Sponsored Employees for PERM -based Permanent Residency**  
**FROM: Seyfarth Shaw Business Immigration Group**  
**RE: PERM Guidelines - How to Define Minimum Job Requirements**

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### PURPOSE

This memorandum explains how to define the education, work experience, and special skills required for the job that will serve as the basis for the sponsored employee's green card. The green card job position may be the job the sponsored employee currently holds or it may be a future job that the sponsored employee is projected to move into.

For more detailed information on the PERM process itself, please read our [PERM Overview Memo](#). We recommend reading the *PERM Overview Memo* prior to reading this memo.

### GROUND RULES/GUIDELINES - ESTABLISHING THE MINIMUM REQUIREMENTS

To file a successful PERM application, we need to develop the basic elements of the green card job description. The goal is to formulate a job description that represents the minimum skills required to perform the green card job position. In formulating these "job basics," keep in mind the following important ground rules:

1. We must articulate the minimum job requirements. If the job truly only requires a Bachelor's degree, then we cannot require a higher level degree, even if the sponsored employee has a higher level degree. The job requirements are based on the requirements for the position and not on the qualifications of the person filling the position. For example, we cannot state that a Software Engineer position requires a Ph.D. when the same job position in the same business unit would require only a Bachelor's degree.
2. We must avoid the use of "preferred" language (such as "knowledge of Java preferred"). By U.S. Department of Labor ("DOL") standards, either an element of the job is required or it is not.
  - The job requirements must be consistent for the same job positions at the same employer (i.e., if there are three other employees in this same position, please consider what their qualifications were either at the time they began their employment in that position or at the time they were promoted to that position).
  - "Soft skills" (such as "must work well with others," and "communicates effectively"), while important, are generally not sufficiently measureable/concrete to be useful in this process. Please refrain from using them.
  - Please do not set out job requirements that could be learned within a reasonable period of on-the-job training.

- For a PERM application to be successful, the sponsored employee must prove that he or she satisfies all of the minimum job requirements; generally, the sponsored employee is NOT allowed to use work experience gained with the green card employer in proving this very important element of a successful PERM case.

## **MEETING THE MINIMUM REQUIREMENTS - THE SPONSORED EMPLOYEE**

The PERM application will fail if the sponsored employee cannot prove that he/she meets the minimum requirements set forth in the green card job description. Therefore, it is crucially important that the sponsored employee provide evidence of how and where he/she gained the minimum education and experience requirements.

### ➤ Education

To prove that the sponsored employee meets the minimum education requirement as set forth in the green card job description, he/she should provide a copy of his/her original degree certificate. The degree should clearly state: (1) the date the degree was issued; and (2) the major or area of study. If the degree is not in English, we will request a translation. We will request U.S. degree equivalency evaluations for any degrees earned outside the United States.

### ➤ Work Experience/Special Skills

To prove that the sponsored employee meets the minimum work experience and special skills requirements, he or she will need to obtain employment verification letters from prior employers. Seyfarth Shaw will provide templates for these letters, as they must match the requirements exactly - do not request letters apart from these templates.

These employment verification letters must demonstrate:

1. The sponsored employee gained the number of years of experience and type of experience as set out in the green card job requirements; generally, the experience must have been gained within a specific time-frame: AFTER he/she earned his/her qualifying education degree and BEFORE he/she started working at the sponsoring employer (with limited exceptions). The years of prior experience must be down to the day: four years, 11 months, and 29 days of experience does not equal 5 years of experience. Be EXACT.
2. The sponsored employee gained the exact skills as set forth in the green card job description.

For more detailed guidelines around employment verification letter requirements, please read our memo [Requirements for PERM Employment Verification Letters](#).

### ➤ Experience Gained with the Sponsoring Employer

Generally, the sponsored employee must have gained every minimum job requirement prior to his employment with the sponsoring employer. [Basically, the DOL takes the position that, if the sponsoring employer is willing to provide training to the sponsored employee to qualify him/her for the green card job position, then it should provide

training to any otherwise qualified U.S. worker.] Only in limited exceptions does the DOL allow the sponsored employee to use experience gained at the sponsoring employer: the experience must have been gained in a job position that is not “substantially comparable” to the green card job description. The DOL defines two positions as “substantially comparable” if the employee performs the same job duties more than 50% of the time.

If we must rely on experience gained at the sponsoring employer, we will provide a chart that analyzes the two job positions in order to demonstrate that they are not substantially comparable.

## **QUESTIONS**

If after you have read this memo, the *PERM Overview Memo*, and completed Seyfarth Shaw’s PERM e-Learning course (information on how to access the course, if required, was provided in the PERM case initiation email), and you still have questions, please do not hesitate to reach out to your Seyfarth Shaw PERM contacts.