

GENERAL GUIDELINES REGARDING APPLICATIONS RECEIVED THROUGH LABOR CERTIFICATION/PERM RECRUITMENT:

- Review résumés promptly upon receipt to demonstrate good-faith recruitment efforts.
- If alternate education and experience requirements are also acceptable (as listed on the ETA 9089), make sure to consider applicants under all possible sets of requirements.
- Applicants may be rejected only for lawful, job-related reasons (pursuant to the minimum requirements listed on the ETA 9089). In other words, Applicants may not be rejected for subjective reasons such as personality is not compatible with Company culture or Applicant is not as good as alien.
- Be conservative; if it is possible based upon the face of the résumé that the applicant may qualify for the position (pursuant to the minimum requirements), conduct an interview to make a definitive determination.

BE AWARE OF THE FOLLOWING:

- Credibility counts! Document everything!
- The employee/beneficiary of the labor certification may *not* participate in the recruitment process whatsoever. Treat all applicants alike. Document thoroughly all conversations, correspondence, and reasons for rejection.

DO:

- Use an evaluation sheet for each applicant. (Generally you should use the same evaluation form when conducting interviews for any position within the company – please let me know if you don't use any evaluation form on normal basis and I will prepare one for you.) Do not feel limited by the spaces provided to explain why an applicant lacks each qualification. Do not imply put "No" if an applicant does not meet a specific qualification; explain in detail why the applicant does not meet the requirements.
- Document when phone calls were made to applicants. Note the number called, date and time of call, who called the applicant, whether message was left with voicemail or with a person etc.
- If you send letters to applicants, send letters by certified mail with return receipt. The letter should ask person to respond to you within two weeks if he or she is still interested in the position. Make sure you keep a copy of all letters, as well as receipts for mailing.

- Take notes of all conversations—who said what to whom.
- Ask whether the applicant has the unrestricted right to accept employment in the United States. Do *not* ask anything else. The applicant's answers may be “yes” or “no” (but write down anything else they say). *Note: It is advisable that employers ask this question only if they ask this question of all applicants. Employers should not simply ask this question of hand-picked applicants the employer believes may be a “foreign worker” as such action could give rise to employment discrimination liability. See the Do Not section below.*
- If you normally ask for references, ask for them from each applicant and check them out. Keep track of whom you called, the numbers dialed, and the conversations.
- On your Evaluation Sheet, specify who did the interviewing and provide his or her title.
- Speak with applicants directly—not their spouse, children, etc.
- If you normally test for knowledge of a subject, make sure you test all applicants the same, and as you would test applicants for similar positions, if you were not going through the labor certification process.
- Document as many job-related reasons why the applicant is not qualified for the position as possible.

DO NOT:

- Do not tell the applicant that the position is already filled by the alien.
- Do not reject "overqualified" applicants if the worker is willing to accept the job at the wage and conditions offered. A rejection on this basis could also constitute employment discrimination.
- Do not reject an applicant for specific skills which are not specifically listed on the the recruitment tool which has the most detailed listing of the specific requirements for the position; normally the In-House posting notice.
- Do not summarily reject an applicant for the sole basis that the salary requested by the applicant is higher than the salary offered for the position. *Note: the only way to reject an applicant based on the salary requirement is if the applicant turns down the offer of employment at the salary offered (to be listed in the PERM Application).*
- Do not reject U.S. workers who are *more* qualified than the alien.
- Do not reject U.S. workers who are *less* qualified than the alien if they possess the minimum requirements of the position as listed on the PERM application.

- Do not ask illegal questions regarding marital status, sex, sexual orientation, health or handicap, religion, age, ethnicity, race, or citizenship status. The usual employment discrimination rules apply.
- Do not demand proof of permission to work by asking to see specific documents.
- Do not ask for English ability or other language proficiency unless it is an approved requirement set forth by the advertisement and the application for alien employment certification.
- Do not reject applicants just because you think they would take the job only as a stepping stone to something else.
- Do not reject applicants who live out of the area. Even if your company does not pay for relocation, you should assess whether the applicant is qualified. Applicants who state that they will not relocate at their own expense may be rejected as unavailable, but do not assume that they will not relocate.
- Do not reject for failure to pay for interview travel expenses if you normally would do so for other applicants. You need not offer to pay either. Try to conduct a thorough telephone interview so that travel would not be required.
- Do not reject for subjective reasons. *i.e.*, not outgoing, personality conflict, etc.
- Do not delay contacting qualified applicants. A tardy contact could result in denial of certification for lack of good faith. Otherwise, advertising and recruitment may have to be done again. Attempts to contact candidates after close of recruitment are not acceptable arguments.