

THE DOL SPECIFIES NEW GUIDELINES ABOUT DISCLOSING FAMILIAL RELATIONSHIPS WHEN PREPARING THE PERM LABOR CERTIFICATION FORM.

Using the Program Electronic Review Management (PERM) Labor Certification Process is the most common way for a prospective employer and prospective employee to obtain the employment-based Green Card in the U.S. Since the case is not pre-certified, the employer and the employee have to submit a Labor Certification Application on Form 9089 to the U.S. Department of Labor (DOL). Once it is established that there are no “able willing and qualified U.S. workers” who can take the position then PERM application can be approved.

When a prospective PERM employer and employee are doing the PERM Labor Certification Process to get the Green Card, there are a multitude of queries that are made about the employer and the employee relationship on the Form 9089. One of the questions that is asked has to do with the “familial relationship” between the prospective PERM employer and the employee. There is a specific question on Form 9089 that asks this question. It is question C.9. Recently, the DOL released some more specific guidance to prospective PERM employers and employees about how to respond to this query.

If there is a familial relationship between the owners, stockholders, partners, corporate officers, or incorporators, and the alien, the employer must be able to demonstrate the existence of a bona fide job opportunity, i.e., the job is available to U.S. workers. 20 C.F.R. 656.17(l). In order to provide the Certifying Officer (CO) the opportunity to evaluate whether the job opportunity has been and is clearly open to qualified U.S. workers, an employer must disclose any familial relationship(s) between the foreign worker and the owners, stockholders, partners, corporate officers, and incorporators by marking “yes” to Question C.9 on the ETA Form 9089. *See also Matter of Modular Container, 1989-INA-228 (Jul. 16, 1991) (en banc).*

A familial relationship includes any relationship established by blood, marriage, or adoption, even if distant. For example, cousins of all degrees, aunts, uncles, grandparents and grandchildren are included. It also includes relationships established through marriage, such as in-laws and step-families. The term “marriage” will be interpreted to include same-sex marriages that are valid in the jurisdiction where the marriage was celebrated.

A familial relationship between the alien and the employer does not establish the lack of a bona fide job opportunity *per se*. Ultimately, the question of whether a bona fide job opportunity exists in situations where the alien has a familial relationship with the employer depends on “whether a genuine determination of need for alien labor can be made by the employer corporation and whether a genuine opportunity exists for American workers to compete for the opening.” *Modular Container at *8.*

Therefore, the employer must disclose such relationships, and the CO must be able to determine that there has been no undue influence and control and that these job opportunities are available to U.S. workers. When the employer discloses a family relationship, and the application raises no additional denial issues, the employer will be given an opportunity to establish, to the CO’s satisfaction, that the job opportunity is legitimate and, in the context of the application, does not

pose a bar to certification. The CO will consider the employer's information and the totality of the circumstances supporting the application in making this determination.

Please note that failure to disclose familial relationships or ownership interests when responding to Question C.9 is a material misrepresentation and may therefore be grounds for denial, revocation or invalidation in accordance with the Department's regulations.