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Labor Certification Approved Following Two MTR/Appeals on Government Error

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Submitted by Chief Editor on Jan 30th 2013

We filed an ETA 9089 Labor Certification and included a requirement of a Master's degree. The job required no employment experience, but did require hands-on work in a university research laboratory with particular equipment. DOL denied the application, stating that training and experience requirements were in place that exceeded the employer's true minimum requirements. We responded with an MTR/Appeal asserting that this was not an appropriate ground for denial and that no formal training was required or available in these technologies. Hands-on work in a university research laboratory does not constitute formal training, but the deficient Form ETA 9089 does not accommodate any requirements other than training and/or employment experience. DOL reopened the application.

A year and a half later, DOL issued an Audit Notification, to which we responded in full with all the required documentation. Immediately following our response, DOL denied the application for the second time, stating that the advertisements did not mention that the "employer will accept a suitable combination of education, training or experience." (i.e., "Kellogg" language). Our response, in the form of another MTR/Appeal, included arguments of the law and the PERM FAQ's. Given that the denial reason was clearly an error on DOL's part, we requested the case be put into the government error queue so the case would quickly be reopened and approved. In approximately one week, DOL certified the labor application.

Green Card:

PERM - Labor Certification ^[2]

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Links:

[1] <https://immigration.com/sample-cases/perm-labor-certification/labor-certification-approved-following-two-mtrappeals-governme>

[2] <https://immigration.com/greencard/green-card/perm-labor-certification>