



Issue Date: 17 December 2007

BALCA Case No.: 2007-PER-00108
ETA Case No.: A-06068-94761

In the Matter of:

LORI DISCOLO,
Employer,

on behalf of

DORA LOZADO,
Alien.

Certifying Officer: Melanie Shay
Atlanta Processing Center

Appearances: Leonard H. Hecht, Esquire
New York, New York
For the Employer

Before: **Chapman, Vittone and Wood**
Administrative Law Judges

DECISION AND ORDER

PER CURIAM. This matter arises under Section 212(a)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. §1182(a)(5)(A), and the "PERM" regulations found at Title 20, Part 656 of the Code of Federal Regulations. In this case, the Employer filed an application for permanent alien labor certification for the position of Live in Household Cook. (AF 7-16). On August 18, 2006, the Certifying Officer (CO) issued a letter denying the application on the ground that the Employer had not supplied its Federal

Employer Identification Number (FEIN or EIN) on the ETA Form 9089 at Section C-7. (AF 4-6).¹ On August 28, 2006, the Employer requested review of the denial, arguing that she had used her Social Security Number because she did not have a valid “taxpayer identification number.” (AF 3). In a letter dated August 23, 2007, the CO denied reconsideration on the ground that the Employer must have a FEIN to apply for certification, citing the BALCA decision in *Maria Gonzalez*, 2007-PER-24 (Apr. 25, 2007). (AF 1-2).

The CO forwarded the matter to BALCA, which docketed the appeal on August 29, 2007. The Board issued a notice of docketing on September 12, 2007. The Employer filed a Statement of Intent to Proceed, but did not provide an argument on the merits of the appeal. The CO did not file a brief.

DISCUSSION

In *Maria Gonzalez*, 2007-PER-24 (Apr. 25, 2007), this panel held that an employer could not use a Social Security Number as a substitute for a FEIN when completing Section C-6 of Form 9089. The panel noted that, pursuant to 20 C.F.R. § 656.3, “an employer must possess a valid Federal Employer Identification Number (FEIN).” (emphasis added). The panel also noted that IRS Publication 926 provides that employers must possess a FEIN in order to file tax forms for domestic household employees. See www.irs.gov/publications/p926/ar02.html.

Thus, the CO correctly denied certification in this matter. The Employer’s remedy is to obtain a FEIN and reapply.²

¹ In this denial letter, the CO suggested to the Employer correcting the deficiency and reapplying as an alternative to pursuing an appeal. (AF 6).

² In *Maria Gonzalez*, we observed that “...IRS Publication 926 states ‘If you do not have an EIN, get Form SS-4, Application for Employer Identification Number. The instructions for Form SS-4 explain how you can get an EIN immediately by telephone or in about 4 weeks if you apply by mail. In addition, the IRS is now accepting applications through its website at www.irs.gov/businesses/small.’ Thus, obtaining a FEIN is not a difficult or onerous requirement.”

ORDER

Based on the foregoing, **IT IS ORDERED** that the Certifying Officer's denial of labor certification in the above-captioned matter is **AFFIRMED**.

Entered at the direction of the panel by:

A

Todd R. Smyth
Secretary to the Board of Alien Labor
Certification Appeals

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary unless within twenty days from the date of service a party petitions for review by the full Board. Such review is not favored and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, NW Suite 400
Washington, DC 20001-8002

Copies of the petition must also be served on other parties and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five double-spaced pages. Responses, if any, shall be filed within ten days of service of the petition, and shall not exceed five double-spaced pages. Upon the granting of a petition the Board may order briefs.