

U.S. Department of Labor

Board of Alien Labor Certification Appeals
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Issue Date: 18 December 2007

BALCA Case No.: 2007-PER-00089
ETA Case No.: C-06137-18717

In the Matter of:

TEXAS STORM OF HOUSTON,
Employer,

on behalf of

MAHMOUD RANJBARI,
Alien.

Certifying Officer: Dominic Pavese
Chicago Processing Center

Appearances: Peter M. Viles, Esquire
Houston, Texas
For the Employer

Gary M. Buff, Associate Solicitor
Stephen R. Jones, Attorney
Office of the Solicitor
Division of Employment and Training Legal Services
Washington, DC
For the Certifying Officer

Before: **Chapman, Wood and Vittone**
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.¹ In this case, the Employer filed an application for permanent alien labor certification for the position of Hydraulics Engineer. (AF 25-50). The Certifying Officer (CO) accepted the application for processing on March 24, 2006. (AF 1). On May 19, 2006, the CO issued a letter denying the application because, *inter alia*, it was filed less than 30 days after the end of the job order placed with the State Workforce Agency (SWA) in violation of 20 C.F.R. § 656.17(e)(A). (AF 22-24). The ETA Form 9089 shows at Item I.c.6. and I.c.7. that the start date for the SWA job order was January 27, 2006, and the end date was February 27, 2006. (AF 28).

By letter dated May 20, 2006, the Employer requested review, pointing out that the number of days between the date of the start of the SWA job order advertisement and the closing advertisement was 31 days. (AF 4-5). The CO issued a letter denying reconsideration on July 20, 2007. (AF 1-2). The CO indicated that the fact that the advertisement ran for more than 30 days was not what was important. Rather, the violation related to filing the application less than 30 days after the end date of the SWA job order.

BALCA docketed the case on July 23, 2007, and issued a notice of docketing on August 9, 2007. The Employer filed a letter stating that its position was the same as stated in the May 20, 2006 request for review. The CO filed a brief received by the Board on September 7, 2007, noting that the Employer's argument focused on the length of the SWA job order, and seemed to have misunderstood the basis for the denial, which was filing the application less than 30 days after conclusion of the job order.

DISCUSSION

The regulation at 20 C.F.R. § 656.17(e) provides, in pertinent part:

¹ The PERM regulations appear in the 2006 edition of the Code of Federal Regulations published by the Government Printing Office on behalf of the Office of the Federal Register, National Archives and Record Administration, 20 C.F.R. Part 656 (Revised as of Apr. 1, 2006).

(e) *Required pre-filing recruitment.* [With certain exceptions, a]n employer must attest to having conducted the following recruitment prior to filing the application:

(1) *Professional occupations.* If the application is for a professional occupation, the employer must conduct the recruitment steps within 6 months of filing the application for alien employment certification.

(i) *Mandatory steps.* Two of the steps, a job order and two print advertisements, are mandatory for all applications involving professional occupations, except applications for college or university teachers selected in a competitive selection and recruitment process as provided in Sec. 656.18. The mandatory recruitment steps must be conducted at least 30 days, but no more than 180 days, before the filing of the application.

(A) *Job order.* Placement of a job order with the SWA serving the area of intended employment for a period of 30 days. The start and end dates of the job order entered on the application shall serve as documentation of this step.

* * *

Thus, the placement of a job order with a SWA is mandatory; it must have been completed at least 30 days, but no more than 180 days before the filing of the application; and it must have been at least 30 days in duration. The start and end dates of the job order must be entered on the ETA Form 9089 to document the timing of the SWA job order. *See Luyon Corp., 2007-PER-27 (June 12, 2007).*

The Employer in the instant case misunderstood the nature of the deficiency with its application. The CO was not contesting whether the SWA job order had lasted at least 30 days as required by section 656.17(e)(1)(i)(A), but rather whether the Employer had filed the Form 9089 application less than 30 days after the conclusion of the mandatory recruitment step of a SWA job order days as required by section 656.17(e)(1)(i). The fact that the job order ran for 31 days was irrelevant to the issue raised by the CO. The deficiency with the application was that the Employer only waited 25 days before filing

its application. The Employer clearly violated 20 C.F.R. § 656.17(e)(1)(i) by submitting the application too early, and we affirm the CO's denial of labor certification.²

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.

² Because we affirm the CO on this ground, we do not reach a second issue preserved by the CO in his letter denying reconsideration concerning whether the Employer must make an entry in Section K-4, for the type of business of the Alien's prior employers even where the name of the employer clearly identified the nature of the business.