



Issue Date: 18 December 2007

BALCA Case No.: 2007-PER-00069
ETA Case No.: A-06200-40747

In the Matter of:

AMEYОВI J. OYASSAN,¹
Employer,

on behalf of

KODJOVI GAKPE,
Alien.

Certifying Officer: Melanie Shay
Atlanta Processing Center

Appearances: Messan Oyassan, Legal Assistant
For the Employer

Gary M. Buff, Associate Solicitor
Vincent C. Costantino, Senior Trial 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,

¹ The Employer does business as "The Oyassan Family Hair Braids." (AF 4; Employer's Brief at 1).

Part 656 of the Code of Federal Regulations.² In this case, the Employer filed an application for permanent alien labor certification for the position of Barber. (AF 12-21). The Certifying Officer (CO) accepted the application for processing on July 19, 2006. (AF 1). On July 20, 2006, the CO issued a letter denying the application because 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). (AF 9-11). The ETA Form 9089 shows at Item I.c.6. and I.c.7. that the start date for the SWA job order was June 12, 2006, and the end date was August 12, 2006. (AF 15).

By letter dated July 25, 2006, the Employer requested review, arguing that its application was not prematurely filed because the job order had been placed on June 12, 2006. (AF 3). The CO issued a letter denying reconsideration on July 13, 2007. (AF 1-2). BALCA docketed the case on July 16, 2007, and issued a notice of docketing on August 7, 2007. The Employer filed a letter which again argued that, because the job order “went out” on June 12, 2006, and the application was filed on July 19, 2006, the recruitment had in fact been completed thirty days prior to the filing of the application. The CO filed a letter brief received by the Board on September 11, 2007, pointing out that the Employer misconstrued the regulations by counting the 30 day period from the start of the recruitment period with the SWA, and that without a gap of at least 30 days from the end of the SWA job order the recruitment of domestic workers could not be properly conducted.

DISCUSSION

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

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

² 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).

(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).

In the instant case, the Employer believed that it could file the application 30 days after the SWA job order started. However, the applicable time is 30 days after the SWA job order ended. The Employer's application showed an end date for the SWA job order that was actually several weeks after the date the application was filed.³ The Employer clearly violated 20 C.F.R. § 656.17(e)(1)(i) by submitting the application too early. Thus, we affirm the CO's denial of labor certification.

³ The SWA set the job order to run for 60 days. (AF 6). Even if the SWA had only set the job order to run for 30 days, however, the application would still have been filed too soon under section 656.17(e)(1)(i).

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.