



**Issue Date: 17 December 2007**

**BALCA Case No.: 2008-PER-00009**  
ETA Case No.: C-06172-30934

*In the Matter of:*

**DR. AFSHIN ABDOLLAHI DMD, INC.,<sup>1</sup>**  
*Employer,*

*on behalf of*

**SAYEH EHSANI,**  
*Alien.*

Certifying Officer: Dominic Pavese  
Chicago Processing Center

Appearances: Ira J. Nasserian, Esquire  
Los Angeles, California  
*For the Employer*

Gary M. Buff, Associate Solicitor  
R. Peter Nessen, 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

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<sup>1</sup> In its request for review and appellate brief, the Employer's attorney referred to the Petitioner as "Silicon Dentistry." An ETA Form 9089 attached to the request for review showed the Employer as "Silicon Dentistry." However, "Dr. Afshin Abdollahi DMD, Inc." was identified as the Employer in the original Form 9089. The FEIN number was the same on both the original Form 9089 and the Form 9089 submitted with the request for review. Thus, Dr. Abdollahi appears to be doing business as Silicon Dentistry. However, the Form 9089 attached to the request for review appears to be a duplicate application. Thus, for purposes of this appeal the Board has retained "Dr. Afshin Abdollahi DMD, Inc." as the Employer.

## 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.<sup>2</sup> In this case, the Employer filed an ETA Form 9089 application for permanent alien labor certification for the position of Dental Office Administrator. (AF 32-51). The Certifying Officer (CO) accepted the application for processing on May 3, 2006. (AF 1). The CO denied the application because it failed to specify a start and end date for a State Workforce Agency (SWA) job order at paragraph I.c.6. and I.c.7. of the Form 9089.<sup>3</sup> (AF 8-10). Placement of a job order with the SWA serving the area of intended employment for a period of 30 days is one of the pre-filing recruitment steps mandated by the regulation at 20 C.F.R. § 656.17(e).

In a request for review of the denial, the Employer's attorney argued that the CO made a factual error in determining that paragraphs I.c.6. and I.c.7. had been left blank. Rather, the Employer contended that a job order had been placed from May 10, 2005 through November 10, 2005. In addition, the Employer argued that "a second case number, case No. C-06172-30955, has been assigned to the ETA Form 9089 submitted by this employer (Please see Exhibit D). The employer respectfully requests to prosecute the case number under the caption of this appeal." (AF 6).

The Employer listed four Exhibits as attachments to the request for review: (1) Exhibit A, the CO's rejection of Case No. C-06172-30934, (2) Exhibit B, ETA 9089, (3) Exhibit C, SWA prevailing wage determination, and (4) the CO's rejection of Case No. C-06172-30955. (AF 6).

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<sup>2</sup> 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).

<sup>3</sup> Two other grounds for denying the application were later conceded by the CO on reconsideration. (AF 2).

The Exhibits found in the Appeal File, however, are of a somewhat different nature and order. Exhibit A, is the CO's rejection of Case No. C-06172-30934 dated June 26, 2006. (AF 8-11). Exhibit B consists of an April 11, 2005 Prevailing Wage determination (AF 12), and an ETA Form 9089 stamped received by the CO on July 18, 2006. (EX 13-22). Exhibit C has no documents. (EX 23). Exhibit D consists of a fax cover sheet dated July 13, 2007, apparently sent to the CO's office. (AF 25). Also contained in Exhibit D are a May 10, 2005 CalJOBS job listing for a "Dental Secretary," showing a listing start date of June 10, 2005 (AF 26), a job site posting (AF 27), a prevailing wage determination dated December 7, 2005 (AF 28), and the CO's rejection of Case No. C-06172-30955 dated June 26, 2006. (AF 29-31).

In a letter denying reconsideration, the CO found that notwithstanding the Employer's assertions in the request for review, the Form 9089 that was originally mailed in did not contain the required entries for the dates of the SWA job order. Moreover, the CO observed that even if a SWA job order had been placed as argued by the Employer in the request for review, its argument that the job order ended on November 10, 2005 would have only provided a new ground for denial of the application under 20 C.F.R. § 656.17(e)(1)(i) because November 10, 2005 was more than 180 days prior to the filing date of "May 30, 2006."<sup>4</sup> (AF 1).

BALCA docketed the case on October 15, 2007, and issued a notice of docketing on October 19, 2007. The Employer filed a brief that was received by the Board on October 30, 2007. That brief relies on the arguments made in the July 13, 2006 request for review. The CO filed a letter brief received by the Board on November 26, 2007, arguing that the original mailed-in Form 9089 did not include the SWA job order dates, and that even if it did, the alleged end date for the SWA job order was more than 180 days before the application was filed.

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<sup>4</sup> The date of acceptance for processing, i.e., the filing date, was actually May 3, 2006.

## DISCUSSION

Upon close review of the Appeal File, we find that the CO correctly determined that the Employer's original application, which was mailed rather than submitted on-line, (see AF 42-51), was blank at paragraph I.c.6. and I.c.7. (AF 45).<sup>5</sup> 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:

(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.

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<sup>5</sup> The Employer submitted an application with its request for review that does contain entries showing SWA job order dates. (AF 16). However, this application is clearly not the original application. First, it shows Silicon Dentistry as the Employer in Paragraph C. (AF 13). The original application showed "Dr. Afshin Abdollahi DMD, Inc." as the Employer. (AF 42). Second, it shows a date stamp of July 18, 2006. (AF 13). The original application was date stamped May 3, 2006. (AF 42). Thus, the application attached to the request for review was filed after the CO had already denied the application. Third, it is not signed. (AF 21). The original application was signed by Dr. Abdollahi. (AF 50). Thus, we find that the application attached to the request for review does not provide documentation that an application timely filed with the CO contained the SWA job order dates.

Nor does the CalJOBS job order assist the Employer in proving that its original application contained the dates of a timely SWA job order. (AF 26). At best, the CalJOBS job order documents that the Employer did, in fact, place a job order to begin on June 10, 2005. It does not, however, document the end date for the job order.

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. Thus, the CO properly denied certification based on the Employer's failure to enter the dates of a SWA job order on its application, *see Luyon Corp.*, 2007-PER-27 (June 12, 2007), slip op. at 2-3, and we affirm the CO's denial of certification in ETA Case No. C-06172-30934.<sup>6</sup>

It appears that the Employer may have filed a duplicate application for the same job that was processed under Case No. C-06172-30955. However, the Appeal File presented does not contain a full set of documentation concerning that apparent second filing. Thus, we express no opinion on whether it was also properly denied.

### **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

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<sup>6</sup> We do not reach the question of whether, if the November 10, 2005 end date for the SWA job offer had actually been included in the original application, it evidenced a timely SWA posting. We observe, however, that the CO mistakenly stated that the filing date was May 30, 2006, when in fact it was May 3, 2006. A May 3, 2006 filing date would have been timely for the original application, as it was only 174 days after the end date of the SWA posting. The November 10, 2005 end date, however, would have been untimely by the time of the second application filed on July 18, 2006.

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.