

U.S. Department of Labor

Board of Alien Labor Certification Appeals
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)



Issue Date: 19 December 2007

BALCA Case No.: 2007-PER-00080
ETA Case No.: C-05325-55833

In the Matter of:

BEST MANUFACTURING, INC.,
Employer,

on behalf of

SERGIO DE LA ROSA,
Alien.

Certifying Officer: Dominic Pavese
Chicago Processing Center

Appearances: Tom Travis, Esquire
Little Rock, Arkansas
For the Employer

Gary M. Buff, Associate Solicitor
Frank P. Buckley, Attorney
Office of the Solicitor
Division of Employment and Training Legal Services
Washington, DC
For the Certifying Officer

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.¹ In this case, the Employer filed an application for permanent alien labor certification for the position of Combination Welder. (AF 9-28). On February 9, 2006, the Certifying Officer (CO) issued a letter denying the application because a selection had not been made on the ETA Form 9089 for Section H-6A, number of months of experience required, and Section I-7, end date for the State Workforce Agency (SWA) job order. (AF 6-8). On February 14, 2006, the Employer's attorney requested review of the denial, arguing that "[m]y records indicate that the listed selections were properly made on the submitted Form ETA 9089." (AF 5). In a letter dated July 16, 2007, the CO conceded that a selection had been made for Section I-7, but found that the number of months of required experience had not been specified in Section H-6A, and therefore certification was properly denied. (AF 1-2).

The Board docketed the appeal on July 18, 2007, and issued a notice of docketing on August 8, 2007.² The CO filed a letter brief, which was received by the Board on September 11, 2007. The CO stated that the facts supporting the denial of certification were readily apparent in the Appeal File. The Employer did not file a brief addressing the merits of the appeal.

DISCUSSION

The ETA Form 9089, Section H-6 asks if experience in the job offered is required. An employer must select "Yes" or "No" to answer the question. If the employer selects "Yes," then it must complete Section H-6A,

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).

² The notice of docketing required the submission of a Statement of Intent to Proceed. Having no record of timely submission of such a Statement, the Board dismissed the appeal on September 19, 2007. Thereafter, the Employer's counsel provided a fax transmittal sheet indicating that he had timely attempted to fax such a Statement to the Board on August 15, 2007. The Board thereupon vacated the Order of Dismissal and reopened the appeal in an order dated October 9, 2007.

which asks for the number of months of required experience. The purpose of requiring the employer to specify the months of required experience is to permit the CO to determine whether the application states the employer's actual minimum requirements as required by 20 C.F.R. § 656.17(i)(1), to determine whether the alien possessed such experience prior to hire as required by 20 C.F.R. § 656.17(i)(4), and to determine if the experience requirement is within "those normally required for the occupation" and does "not exceed the Specific Vocational Preparation level assigned to the occupation as shown in the O*NET Job Zones," as required by 20 C.F.R. § 656.17(h)(1)). *See Best Park, LLC, 2007-PER-55* (Sept. 18, 2007).

Despite the Employer's attorney's argument that his records showed that all selections on the application were properly made, the application contained in the Appeal File supports the CO's finding that the Employer in the instant case marked "Yes" for H-6, but did not make a subsequent entry for H-6A. (*See AF 11, 21*). Failing to specify the months of experience caused the application to be incomplete, and subject to denial pursuant to 20 C.F.R. § 656.17(a)(1). Thus, we affirm the CO's denial of labor certification.

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.