

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: 16 May 2007

BALCA Case No.: 2007-PER-00026
ETA Case No.: A-05213-18868

In the Matter of:

BIG APPLE EDUCATIONAL CENTER,
Employer,

on behalf of

LIOUDMILA KAROLIS,
Alien.

Certifying Officer: Melanie Shay
Atlanta Processing Center

Appearances: Gary M. Buff, Associate Solicitor
Harry L. Sheinfeld, Counsel for Litigation
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, Part 656 of the Code of Federal Regulations.¹

BACKGROUND

On August 1, 2005, the Employer – a private educational facility – filed an Application for Permanent Employment Certification on behalf of the Alien for the position of Teacher. (AF 9-29).² On September 23, 2005, the Certifying Officer (CO) denied certification because, *inter alia*, a teaching position is considered a professional occupation for which three "additional" recruitment steps must be taken to comply with the regulation at 20 C.F.R. § 656.17(e)(1)(ii), and because the ETA Form 9089 did not evidence that any such additional steps had been taken. (AF 6-7). Counsel for the Employer filed a response by letter dated October 17, 2005, arguing that it had in fact conducted the necessary three additional recruitment steps for a professional position. Specifically, the Employer alleged that it advertised in the New York Times on two Sundays, placed a Job Order with the State Workforce Agency (SWA), and completed an on-campus recruitment using a poster. (AF 7).

On February 22, 2007, the CO found that the Employer had failed to document three additional recruitment sources as required for a professional occupation, and therefore denied reconsideration. (AF 1). The CO then forwarded the matter to BALCA for review. The Board issued a Notice of Docketing on March 1, 2007. On March 19, 2007, the Board granted an additional 30 days for the filing of briefs. The Employer did not file a brief. On April 20, 2007, the Board received a brief from counsel for the CO urging that the CO's denial determination be affirmed.

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 AF is an abbreviation for "Appeal File."

DISCUSSION

Under 20 C.F.R. § 656.17(e), most sponsoring employers are required to attest to having conducted recruitment prior to filing the application. Where the application involves a professional occupation, the sponsoring employer is required to attest to having placed a job order with the SWA, and having run print advertisements under the regulatory criteria found at 20 C.F.R. § 656.17(e)(1)(i). The regulations also require that the Employer conduct three additional recruitment steps from a list of ten options (job fairs, an employer web site, a job search web site other than the employer's, on-campus recruitment, a trade or professional organization, a private employment firm, an employee referral program with incentives, a campus placement office, local or ethnic newspapers, or radio and television advertisements). 20 C.F.R. § 656.17(e)(1)(ii).

In the instant case, the Employer's assertion that had in fact conducted the necessary three additional recruitment steps for a professional position does not bear scrutiny. Rather, two of steps listed by the Employer – advertising in the New York Times and placement of a job order with the SWA – are the recruitment steps mandated under section 656.17(e)(1)(i), and are not among the options for additional recruitment required to comply with section 656.17(e)(1)(ii). Accordingly, the CO properly denied 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.