



Issue Date: 12 June 2008

BALCA Case No.: 2008-PER-00042
ETA Case No.: C-07031-05887

In the Matter of:

PACIFIC MOLDING, INC.,
Employer,

on behalf of

GRISelda GOMEZ,
Alien.

Certifying Officer: Dominic Pavese
Chicago Processing Center

Appearances: Moza Yontov, Paralegal
Legal Solution Group
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, 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 Employment and Training Administration accepted for processing the Employer's application for permanent alien labor certification for the position of Pattern Maker on January 24, 2007.² The Employer mailed its application to the CO. The application had no entry in Section C-7, which is a field for the entry of the Employer's Federal Employer Identification Number (FEIN). (AF 25). On January 31, 2007, the CO issued a letter denying the application on several grounds, one of which was the absence of the FEIN on the application in violation of 20 C.F.R. § 656.17(a).³

On February 7, 2007, the Employer filed a request for reconsideration in which a FEIN of 95-4441121 was supplied. The record contains an e-mail dated September 12, 2007 from the CO to the Employer's representative which states that the CO's office had called on August 16, 2007 to request documentation to assist in consideration of the request for reconsideration. (AF 7). One of the items requested was proof of the FEIN.

The Employer's representative faxed a response on September 18, 2007. (AF 3-6). As proof of the Employer's FEIN, the representative faxed a 2006 W-2 for the Alien, which listed her Employer as "California Employer Group No. 27. Inc., Agent for Pacific Molding, Inc." and the FEIN as 94-3383329. (AF 5).

The CO issued a decision on reconsideration by letter dated March 5, 2008. (AF 1-2). Although the CO accepted the Employer's reasoning on other aspects of the reconsideration, it upheld the decision to deny based on the missing FEIN. The CO

¹ The final PERM regulations were published on December 27, 2004, 69 Fed. Reg. 77326, and are applicable to permanent labor certification applications filed on or after March 28, 2005. The regulations were amended on June 21, 2006, 71 Fed. Reg. 35522, and May 17, 2007, 72 Fed. Reg. 28903.

² The original application contains two receipt date stamps by ETA, one dated December 15, 2006, and one dated January 24, 2007. (AF 25). The date of acceptance for processing, however, is not at issue on appeal.

³ Section 656.17(a) states that incomplete applications "will" be denied.

would not accept the FEIN of an agent in lieu of the FEIN of the petitioning Employer, citing the regulatory definition of “Employer” in 20 C.F.R. § 656.3, which defines an employer as possessing a valid FEIN.

The CO forwarded the matter to BALCA, which received the Appeal File on March 10, 2008. The Employer filed a statement of intent to proceed with the appeal, but has not filed an appellate brief. The CO filed an appellate brief on April 24, 2008, arguing that the absence of the FEIN resulted in an incomplete application and a failure to show that the petitioner was an “employer” as defined in the regulations and therefore qualified to file the application for permanent labor certification. The CO cited the BALCA decision in *Maria Gonzalez*, 2007-PER-24 (Apr. 25, 2007), in support.

DISCUSSION

In *Maria Gonzalez*, 2007-PER-24 (Apr. 25, 2007), this panel held that Section C-6 of the ETA Form 9089 requiring submission of a FEIN was fully supported by the regulation at 20 C.F.R. § 656.3, which states that "an employer **must** possess a valid Federal Employer Identification Number (FEIN)," (emphasis added), and by the policy stated in the regulatory history of the PERM regulations to use the FEIN as a means of verifying whether an employer is a "bona fide business entity." *See* 69 Fed. Reg. 77326, 77329 (Dec. 27, 2004).

Where the CO requests a document or information which has a direct bearing on the resolution of an issue, and that document or information is obtainable by reasonable effort, the employer must produce it. *See Gencorp*, 1987-INA-659 (Jan. 13, 1988) (en banc). In the instant case, when the CO requested documentation to support the FEIN supplied by the Employer, the Employer’s representative instead supplied documentation showing the FEIN of an agent of the Employer. The Employer provided no explanation of this anomaly on appeal. Thus, we find that the petitioning Employer failed to document that it possessed a valid FEIN. Moreover, we concur with the CO that the agent’s FEIN was not an adequate substitute for the petitioning Employer’s own FEIN. It

was the petitioning Employer and not its agent that was sponsoring the labor certification application.

Based on the foregoing, we find that the CO properly denied certification.

ORDER

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.