

**U.S. Department of Labor**

Board of Alien Labor Certification Appeals  
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**Issue Date: 25 August 2009**

**BALCA Case No.: 2009-PER-00288**  
ETA Case No.: A-07274-80644

*In the Matter of:*

**KFI, INC.,**

*Employer,*

*on behalf of*

**MICHAEL MOORHOUSE,**

*Alien.*

Certifying Officer: William Carlson  
Atlanta Processing Center

Appearances: Seymour Magier, Esquire  
New York, New York  
*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, Part 656 of the Code of Federal Regulations. The Employer has filed an application for permanent alien labor certification for the position of Automotive Body and Related Repairer. (AF at 57).<sup>1</sup> The Certifying Officer ("CO") denied the application on two grounds, one of which was that the Employer's Notice of Filing failed to include the CO's address.

When an employer files an application for permanent alien labor certification, one of the regulatory requirements is that – if there is no bargaining representative to notify – the Employer must have posted a clearly visible and conspicuous notice of the filing an alien labor certification application to its employees at the facility or location of employment, and in the employer's in-house media normally used for recruitment of employees. 20 C.F.R. § 656.10(d)(1). The regulation at 20 C.F.R. § 656.10(d)(3) specifies the elements that must be included on the Notice of Filing:

(3) The notice of the filing of an Application for Permanent Employment Certification must:

- (i) State the notice is being provided as a result of the filing of an application for permanent alien labor certification for the relevant job opportunity;
- (ii) State any person may provide documentary evidence bearing on the application to the Certifying Officer of the Department of Labor;
- (iii) Provide the address of the appropriate Certifying Officer; and
- (iv) Be provided between 30 and 180 days before filing the application.

In *Voodoo Contracting Corp.*, 2007-PER-1 (May 21, 2007), this panel held that the CO properly denied labor certification under section 656.10(d)(3)(iii), where the Notice of Filing only made a generic reference to the opportunity to provide documentary evidence to a regional CO, and failed to list an actual address to which persons could

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<sup>1</sup> In this decision, "AF" denotes a citation to the Appeal File.

provide information.<sup>2</sup> Specifically, in *Voodoo Contracting Corp.*, the Employer's Notice of Filing did not contain an address for the Certifying Officer but only stated "ANY PERSON MAY PROVIDE DOCUMENTARY EVIDENCE BEARING ON THE APPLICATION TO THE LOCAL OFFICE OR THE STATE EMPLOYMENT COMMISSION AND/OR THE REGIONAL CERTIFYING OFFICER OF THE DEPARTMENT OF LABOR."

In the instant case, the Employer's Notice of Filing likewise did not provide the CO's address, but only stated that "[a]ny person may provide documentary evidence bearing on the application to the New York Department of Labor and/or the Regional Certifying Officer of the U.S. Dep't. of Labor." (AF 44).

When the Employer filed its request for reconsideration and review, it presented an argument of confusion about the filing of the Form 9089 application. (AF 5-6). As the CO pointed out in his ruling on reconsideration, however, the issue raised by the CO was not that the Form 9089 application had not been properly addressed, but that the Notice of Filing failed to contain the address of the appropriate CO. (AF 1). On appeal, the Employer notified the Board that it would like to proceed with the appeal, but did not file a brief. Accordingly, the Employer has presented no relevant argument in response to the CO's finding that the Notice of Filing failed to contain the address of the appropriate CO as required by section 656.10(d)(3)(iii).

Based on the foregoing, we find that the CO properly denied certification based on the Employer's violation of section 656.10(d)(3)(iii). Because we affirm on this ground, we do not reach the second ground for denial raised by the CO.

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<sup>2</sup> In *Voodoo Contracting Corp.*, the panel noted that the purpose of section 656.10(d)(3) is to implement the statutory requirement provided by Section 122(b) of Immigration Act of 1990 ("IMMACT 90"), Pub. L. No. 101-649, 104 Stat. 4978, effective October 1, 1991, that provided that "any person may submit documentary evidence bearing on the application for certification (such as information on available workers, information on wages and working conditions, and information on the employer's failure to meet the terms and conditions with respect to the employment of alien workers and co-workers)." ETA, *Final Rule, Labor Certification Process for the Permanent Employment of Aliens in the United States* ["PERM"], 20 CFR Part 656, 69 Fed. Reg. 77326, 77337-77338 (Dec. 27, 2004).

## **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.