



Issue Date: 17 February 2009

BALCA Case No.: 2009-PER-00085
ETA Case No.: A-06350-92028

In the Matter of

ROMY BUERANO AGENCY,
Employer,

on behalf of

GODOFREDO ARGOSINO INGLES,
Alien.

Certifying Officer: William Carlson
Atlanta Processing Center

Appearances: Emil Deguzman, Esquire
New York, New York
For the Employer

Gary M. Buff, Associate Solicitor
Stephen R. Jones, 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 involves an appeal of the denial by an Employment and Training Administration, Office of Foreign Labor Certification, Certifying Officer

("CO") of permanent alien labor certification 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.

BACKGROUND

The Employer is sponsoring the Alien for a position as an "Insurance Sales Agent." (AF 16). On February 5, 2007, the Certifying Officer ("CO") issued an Audit Notification directing the Employer to submit, among other items, documentation of its Notice of Filing pursuant to 20 C.F.R. § 656.10(d). (AF 9-12, 54). The Employer provided its audit response by letter dated February 14, 2007, and received by the CO on March 12, 2007. (AF 55-56). On May 30, 2007, the CO issued a denial letter finding that the Employer had failed to provide several items of documentation required by the Audit Notification, one of which was documentation of the Notice of Filing. (AF 41-43). By letter dated June 28, 2007 and received by the CO on July 2, 2007, the Employer filed a motion for reconsideration. (AF 2-40). The Employer conceded that it had failed to provide some of the documents required by the Audit Notification, but stated that it was now enclosing those documents. The Employer's cover letter states that one of the items it was providing was the Notice of Filing. (AF 2). In a letter of reconsideration dated November 6, 2008, however, the CO found that the Notice of Filing had not been included with the motion for reconsideration. Thus, the CO found that the denial of certification had been valid. (AF 1). The CO then forwarded an Appeal File to the Board.

The Board issued a Notice of Docketing on November 20, 2008. The Employer filed a Statement of Intent to proceed, but did not file a legal brief. The CO filed a letter urging that the Board affirm the denial, arguing that the Notice of Filing was needed to verify whether it complied with 20 C.F.R. § 656.10(d)(4).

DISCUSSION

In the instant case, the Employer filed its alien labor certification application under the basic process described by the regulation at 20 C.F.R. § 656.17. The regulation at 20 C.F.R. § 656.10(d) requires that employers filing under the basic process give notice of the filing an application for permanent employment certification and be able to document that such notice had been provided. Under the basic process, the notice must contain the information required by the regulations for advertisements, must state the rate of pay to equal or exceed the prevailing wage as determined by the State Workforce Agency, and must provide certain information that would permit an interested person to provide documentary evidence bearing on the application to the CO. 20 C.F.R. § 656.10(d)(4).

When the CO ruled on the motion for reconsideration, he expressly found that the Notice of Filing had not been included with the motion for reconsideration. On appeal, the Employer has not responded to this finding. We have reviewed the Appeal File, and have not found any documentation of a Notice of Filing. Without such documentation the CO could not verify that a Notice of Filing complying with the requirements of section 656.10(d) had been given. Thus, certification was 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

Administrative Law Judge Pamela Lakes Wood, concurring.

I concur in the denial of labor certification because the CO provided the Employer with adequate notice. Specifically, in the course of the audit, the CO asked for a copy of the Notice of Filing. The Employer was apparently confused by the terminology “Notice of Filing” and the CO’s garbled denial notices provided little guidance. (E.g., AF 43). However, when initially asking for a copy of the Notice of Filing, the CO cited the appropriate regulation, [20 C.F.R.] section 656.10(d), and that citation provided adequate notice as to what was required. (AF 54). Accordingly, I concur in the decision.

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.