**U.S. Department of Labor**

Board of Alien Labor Certification Appeals
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**Issue Date: 09 July 2015**

**BALCA Case No.: 2012-PER-00642**
ETA Case No.: A-10005-80285

*In the Matter of:*

**COMPUTER SCIENCES CORPORATION,**
*Employer*

*on behalf of*

**HICKMAN, GEORGE MILLS,**
*Alien.*

Certifying Officer: Atlanta National Processing Center

Appearance: J. Anthony Smith, Esquire
Tafapolsky & Smith LLP
Los Angeles, California
*For the Employer*

Before: Paul R. Almanza, *Administrative Law Judge*; Stephen R. Henley, *Acting Chief Administrative Law Judge*; and Larry S. Merck, *Administrative Law Judge*

# DECISION AND ORDER
# DIRECTING GRANT OF CERTIFICATION

This appeal arises under Section 212(a)(5)(A) of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1182(a)(5)(A), and the "PERM" regulations found at 20 C.F.R. Part 656.[1]

## BACKGROUND

**PER CURIAM**. On February 4, 2010, the Employer filed an *Application for Permanent Employment Certification* (ETA Form 9089) for a Program Office Senior Manager position. (AF

[1] "PERM" is an acronym for the "Program Electronic Review Management" system established by the regulations that went into effect on March 28, 2005.

116-133).[2] The Certifying Officer ("CO") sent the Employer an Audit Notification requesting additional documentation and an explanation and documentation supporting the business necessity for the level of experience described in the application, as this level exceeded that which is usually required for the position according to O*NET. (AF 112-115). The Employer supplied the requested information. (AF 11-111). However, on March 6, 2011, the CO denied certification. (AF 9-10).

The letter of denial listed three reasons for denial, all of which were based on the Employer's inclusion of the language, "Willingness to travel; may require work from home office" in recruitment advertisements posted on the Employer's website and on a job search website. (AF 10). The CO cited 20 C.F.R § 656.17(f)(6) as the authority for denial, which states that advertisements must "not contain any job requirements or duties which exceed the job requirements or duties listed on the ETA Form 9089." (AF 10).

The Employer filed a request for reconsideration on June 1, 2011 arguing that the language "may require work from home office" is a benefit and should therefore not be considered a requirement that exceeds those contained in the application in violation of Section 656.17(f)(6). (AF 3-5). The Employer similarly argued that "willingness to travel" is not a "requirement" and, as a result, did not have to be included in the application. (AF 4). The CO affirmed denial, stating that "any terms and conditions of employment listed in these recruitment steps could be considered necessary requirements by interested individuals when reviewing the advertisements and could have a chilling effect on applicants . . . ." (AF 1). The CO concluded that because the recruitment on the employer's website and job search website contained requirements or duties which exceeded those listed in the application, the denial was appropriate under 20 C.F.R § 656.17(f)(6). (AF 1).

## DISCUSSION

Employers seeking permanent labor certification under the basic process at 20 C.F.R § 656.17 must test the market prior to filing an application by undergoing a series of recruitment steps. For applications involving a professional occupation, the employer must complete the mandatory recruitment steps required by Section 656.17(e)(1)(i), as well as three of the ten additional steps provided in Section 656.17(e)(1)(ii).

The mandatory recruitment steps include the placement of two Sunday edition newspaper advertisements or, alternatively, the placement of one newspaper advertisement and one advertisement in a professional journal, when appropriate. 20 C.F.R. §§ 656.17(e)(1)(i), 656.17(e)(2). These mandatory advertisements are bound by the content requirements contained in Section 656.17(f). Additional recruitment steps include advertisements placed on the employer's website and on job search websites and, unlike mandatory advertisements, are not bound by the restrictions of Section 656.17(f). *See Symantec Corp.*, 2011-PER-1856 (July 30, 2014) (en banc) (Board's en banc decision finding that advertisements placed to fulfill an additional recruitment step need not comply with Section 656.17(f)).

[2] In this decision, AF is an abbreviation for Appeal File.

In the instant case, the CO denied certification based on the Employer's inclusion of the language, "Willingness to travel; may require work from home office," which the CO considered to be "job requirements or duties which exceed the job requirements or duties listed on the ETA Form 9089" in violation of Section 656.17(f)(6). However, as noted above, Section 656.17(f) does not apply to additional recruitment measures. Because the CO denied the application solely on the grounds that two of the employer's additional recruitment advertisements did not meet a content requirement with which they need not comply, we reverse the denial of certification in accordance with *Symantec Corp*, and direct the CO to grant certification.

## ORDER

Based on the foregoing, we **REVERSE** the Certifying Officer's denial and **DIRECT** the Certifying Officer to **GRANT** certification.

Entered at the direction of the panel by:

Digitally signed by TODD R. SMYTH
DN: CN=TODD R. SMYTH, OU=LEGAL COUNSEL, O=US DOL Office of Administrative Law Judges, L=Washington, S=DC, C=US
Location: Washington DC

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 en banc review by the Board. Such review is not favored and ordinarily will not be granted except (1) when en banc 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 en banc 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.