

**U.S. Department of Labor**

Board of Alien Labor Certification Appeals  
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**Issue Date: 26 October 2016**

**BALCA Case No.: 2012-PER-03441**  
ETA Case No.: A-11263-06779

*In the Matter of:*

**GIBSON APPLIED TECHNOLOGY,**  
*Employer,*

*on behalf of*

**BUKKARAJU, SAMPATH KUMAR,**  
*Alien.*

Certifying Officer: William Carlson, Ph.D.  
National Certifying Officer

Appearance: Serie L. Wolfe, Esquire  
Wolfe Law Firm, P.C.  
Houston, Texas  
*For the Employer*

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

**DECISION AND ORDER**  
**DIRECTING GRANT OF CERTIFICATION**

**PER CURIAM.** This matter arises under § 212(a)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(5)(A) and the “PERM” labor certification regulations at 20 C.F.R. Part 656.<sup>1</sup>

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<sup>1</sup> “PERM” is an acronym for the “Program Electronic Review Management” system established by the regulations that went into effect on March 28, 2005.

## **BACKGROUND**

The Employer filed an *Application for Permanent Employment Certification* (“Form 9089”) sponsoring the Alien for permanent employment in the United States in Houston, Texas. (AF 54-65).<sup>2</sup> The occupational title listed on the Form 9089, Section F-3, was “Mechanical Engineers,” Standard Occupational Classification Code 17-2141.00. The Employer attested that the application was for a professional position (AF 57), and that it used a “local or ethnic newspaper” advertisement as one of its additional recruitment steps. (AF 58).

The Certifying Officer (“CO”) issued an audit notification to the Employer requesting, among other items, recruitment documentation as outlined in § 656.17(e). (AF 51-53). On May 23, 2012, the Employer submitted its audit response, including two Sunday newspaper advertisements (AF 46-47) and a mid-week newspaper advertisement (AF 48), all placed in the *Houston Chronicle*.

Upon review of the Employer’s audit response, the CO denied certification pursuant to 20 C.F.R. § 656.17(e)(1)(ii). (AF 17-18). The CO wrote:

For professional occupations, the additional recruitment steps provision requires the employer provide three recruitment steps “in addition” to the mandatory steps, i.e., the job order and the two print advertisements. The Employer has used the same recruitment medium through the *Houston Chronicle* to publish both the required advertisements in a newspaper of general circulation and the additional recruitment advertisement placed in a local newspaper. The duplication of a previously used recruitment step cannot, by definition, be considered as an additional recruitment step. The use of additional recruitment steps are used as mandatory alternatives to the basic recruitment process for professional occupations. As with all the recruitment requirements, the purpose of requiring the employer to use three additional recruitment steps is to ensure that the greatest number of able, willing, qualified, and available U.S. workers are apprised of the job opportunity. It should be noted that each of the steps may target slightly different applicant populations. Using at least three of the additional steps normally used by businesses to recruit workers is a means of apprising a greater number of U.S. applicants of the job opportunity and more adequately substantiates an employer’s claim there are no available U.S. workers for the job offer.

(AF 18).

The Employer submitted a request for reconsideration, arguing that it placed its local newspaper advertisement in the largest local newspaper in the Houston area. (AF 7-9). The Employer further argued that the Sunday edition of the *Houston Chronicle* has a different circulation rate than the weekday edition and likely reaches a different audience. *Id.* Further, the Employer argued that “there is nothing in the regulation or preamble to the final rule which

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<sup>2</sup> Citations to the Appeal File are abbreviated as “AF” followed by the page number.

stipulates that the paper of general circulation cannot also be considered a local newspaper.” *Id.* The Employer attached documentation to support its assertions about the newspaper circulation. (AF 10-15).

The CO reconsidered, but found that the ground for denial was valid because “the employer used the same recruitment medium, *Houston Chronicle*, to publish both the required advertisement in a newspaper of general circulation and the additional recruitment advertisement placed in a local newspaper.” (AF 1-2). The CO then forwarded the case to the Board of Alien Labor Certification Appeals (“BALCA”) for administrative review.

On appeal, the Employer filed a statement confirming its intention to proceed with the appeal. Neither the Employer<sup>3</sup> nor the CO, however, filed appellate briefs.

## DISCUSSION

When an employer files an application for permanent labor certification for a professional occupation under the basic process at § 656.17, an employer must conduct “mandatory steps,” including a “job order and two print advertisements,” as well as three additional recruitment steps. 20 C.F.R. § 656.17(e)(1)(i)-(ii). One type of an additional recruitment step is “[l]ocal and ethnic newspapers.” 20 C.F.R. § 656.17(e)(1)(ii)(I). The regulation governing this step is not detailed. It says only that “[t]he use of local and ethnic newspapers can be documented by providing a copy of the page in the newspaper that contains the employer’s advertisement.” *Id.*

In *Bank of America*, 2012-PER-02227 (Sept. 13, 2016), we considered the issue of whether an employer may use the same newspaper for the mandatory Sunday newspaper advertisements as a “local or ethnic newspaper” for one of the additional recruitment steps. We held that “the regulations do not bar an employer from using the same newspaper to meet both the mandatory recruitment step of Sunday newspaper advertisements required by § 656.17(e)(1)(i), and the additional professional recruitment step option authorized by § 656.17(e)(1)(ii)(I).” *Id.*

Likewise, we find in this case that the Employer was not barred from using the same newspaper for its mandatory Sunday newspaper advertisements and its local newspaper advertisement. Therefore, the CO’s denial is not supported by the regulations.

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<sup>3</sup> The Employer submitted a letter on April 22, 2013 that stated its legal brief was filed with its “Request for Reconsideration and Review” in May 2012.

## **ORDER**

**IT IS ORDERED** that the denial of labor certification in this matter is **REVERSED** and that this matter is **REMANDED** for certification pursuant to 20 C.F.R. § 656.27(c)(2).

For the panel:

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 ten double-spaced pages. Responses, if any, shall be filed within ten days of service of the petition, and shall not exceed ten double-spaced pages. Upon the granting of a petition the Board may order briefs.