

**U.S. Department of Labor**

Board of Alien Labor Certification Appeals  
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**Issue Date: 15 January 2016**

**BALCA Case No.: 2014-PER-01741**  
ETA Case No.: A-14027-36123

*In the Matter of:*

**THE CADMUS GROUP,**  
*Employer,*

*on behalf of*

**SAVKAR, RASIKA VISHWAS,**  
*Alien.*

Certifying Officer: William L. Carlson, Ph.D  
National Certifying Officer  
Atlanta National Processing Center

Appearances: Gregory Wald, Esquire  
Squire, Patton, Boggs (US) LLP  
San Francisco, California  
*For the Employer*

Vincent C. Costantino, Esquire  
Senior Trial Attorney  
United States Department of Labor  
Office of the Solicitor  
Employment and Training Legal Services  
*For the Certifying Officer*

**ORDER OF REMAND**  
**FOR CERTIFICATION**

**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” labor certification regulations at 20 C.F.R. Part 656.<sup>1</sup>

On October 14, 2015, the Board received a motion to remand from the Employer. The Employer contended that this case falls within criteria announced by the Office of Foreign Labor Certification (“OFLC”) for determining when OFLC will agree to a remand of a “Section K” PERM denial. The Employer cited as grounds for its motion “AILA Minutes of the OFLC Quarterly Stakeholder Meeting” dated September 12, 2014, AILA InfoNet Doc. No. 14102141 (posted 10/21/14), in which Office of Foreign Labor Certification representatives are reported to have stated an intention to reverse denials that were based solely on the ground of non-experience based qualifications not being listed in Section K of the Form 9089, provided that the Employer filed its application prior to July 28, 2014. The motion did not state whether the Employer had consulted with the Office of the Solicitor or whether the CO agreed to such a remand. *See* 29 C.F.R. § 18.33(c)(3) (motions must include statement whether parties conferred on subject of motion and whether the motion is opposed or unopposed). Although the motion was served on the CO, the Administrator of the OFLC, and the Office of the Solicitor, Division of Employment and Training Legal Services (“SOL/ETLS”), by December 17, 2015, the Board had no record of a response from the CO regarding the Employer’s motion to remand. *See* 29 C.F.R. § 18.33(d) (14 days for a party to file an opposition or other response to a motion).

Because the Employer was seeking to take advantage of ad hoc criteria announced by OFLC at liaison meetings sponsored by the American Immigration Lawyers’ Association rather than on regulatory or caselaw authority, the Board contacted the Senior Trial Attorney at SOL/ETLS and requested the CO’s position on this case (and three other similar cases).<sup>2</sup>

On December 22, 2015, the Senior Trial Attorney emailed the Board, stating: “Please be advised that my client has reviewed [this case] and has agreed to accept a remand.... We do not object to the granting of the motion[] for remand.”

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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.

<sup>2</sup> Where the CO’s position on the applicability of OFLC’s ad hoc “Section K” criteria is not in the record before the Board, the Board has decided similar appeals on the merits under the regulations and caselaw precedent rather than OFLC’s non-regulatory criteria. *See, e.g., Daimler Trucks North America*, 2013-PER-2676 (July 24, 2015) (where CO did not respond to employer’s motion to remand based on AILA report of OFLC statements about Section K denials, the panel decided the appeal based on *Moreta & Associates, Inc.*, 2009-PER-8 (Aug. 6, 2009)). Parties filing “Section K” remand requests based on the ad hoc criteria and procedure announced by OFLC at AILA liaison meeting should take note that BALCA was not involved in the formulation of that criteria or procedure, has not endorsed that criteria or procedure, and that motions filed with BALCA must conform to the applicable procedural rules at 29 C.F.R. Part 18. *See Infosys Technologies Ltd.*, 2012-PER-417 (Nov. 16, 2012), slip op. at 3 n.2.

Based on the foregoing, **IT IS ORDERED** that this matter is **REMANDED** for certification. **IT IS FURTHER ORDERED** that the above-captioned appeal is **DISMISSED** without prejudice.

Entered at the direction of the Board by:

Todd R. Smyth  
Secretary to the Board of Alien Labor  
Certification Appeals