U.S. Department of Labor

Board of Alien Labor Certification Appeals
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Issue Date: 19 August 2010

BALCA Case No.: 2010-PER-00688
ETA Case No.: A-07268-78937

In the Matter of:

TLH CONSTRUCTION CORP.,
Employer,

on behalf of

GERALDO LAUDE CASTILLO,
Alien.

Certifying Officer: William Carlson
Atlanta Processing Center

Appearances: Steven Elias, Esquire
New York, New York
For the Employer

Gary M. Buff, Associate Solicitor
Julia R. Fuma, Attorney
Office of the Solicitor
Division of Employment and Training Legal Services
Washington, DC
For the Certifying Officer

Before: **Colwell, Johnson and Rae**
Administrative Law Judges

DECISION AND ORDER
AFFIRMING DENIAL OF 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" regulations found at Title 20, Part 656 of the Code of Federal Regulations ("C.F.R.").

The Employer filed an Application for Permanent Employment Certification for the position of Roofer (AF 63-74).[1] The Certifying Officer ("CO") issued an Audit Notification. (AF 59-62). The notification required that the Employer submit "[a] copy of the submitted ETA Form 9089, **with original signatures** in Section L (Alien Declaration), Section M (Declaration of Preparer (if applicable)), and Section N (Employer Declaration). (AF 59) (emphasis as in original). The Form 9089 submitted with the audit response was signed and dated by the Alien and the Employer, but not the Employer's attorney, who was listed in Section M as the preparer of the application. (AF 29).

The CO denied certification on several grounds, one of which that Section M of the Form 9089 was not signed and dated. (AF 13). The Employer filed a request for review arguing that a signature in Section M was a technicality. The Employer argued: "It must be pointed out that if the employer prepared the application by himself without a preparer and submitted it to [the CO] directly the application would be considered valid." (AF 13).

The Employer's argument is not persuasive. The reason for requiring the preparer to sign the application is to verify the preparer's certification in Section M of the Form 9089 application. That certification is:

> ***I hereby certify that I have prepared this application at the direct request of the employer listed in Section C and that to the best of my knowledge the information contained herein is true and correct.*** *I understand that to knowingly furnish false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a federal offense punishable by a fine, imprisonment up to five years or both under 18 U.S.C. §§ 2 and 1001. Other penalties apply as well to fraud or misuse of ETA immigration documents and to perjury with respect to such documents under 18 U.S.C. §§ 1546 and 1621.*

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

Thus, the Section M signature is not a mere validation of the Employer's attestations. It is an affirmation by the preparer that he or she is not knowingly assisting a party in providing false information, and that the preparer acknowledges that doing so is a federal offense.

Moreover, the regulation at 20 C.F.R. § 656.17(a) provides that, with certain exceptions not relevant to this matter:

> [A]n employer who desires to apply for a labor certification on behalf of an alien must file a completed Department of Labor Application for Permanent Employment Certification form (ETA Form 9089). The application must be filed with an ETA application processing center. Incomplete applications will be denied. Applications filed and certified electronically must, upon receipt of the labor certification, be signed immediately by the employer in order to be valid. Applications submitted by mail must contain the original signature of the employer, alien, attorney, and/or agent when they are received by the application processing center. DHS will not process petitions unless they are supported by an original certified ETA Form 9089 that has been signed by the employer, alien, attorney and/or agent.

Thus, the regulations expressly require the signature of the employer's attorney or agent when the application is mailed to the ETA processing center. In the instant case, the CO's audit notification directed the Employer to submit a signed copy of the Form 9089, and expressly directed that Section M be signed if applicable. A signature in Section M was applicable, the Employer was on unambiguous notice that it was required, and its absence was valid grounds for the CO to deny certification.

The CO's denial of certification is hereby **AFFIRMED**.[2]

SO ORDERED. Entered at the direction of the panel by:

A

Todd R. Smyth

[2] Because we affirm the denial on this ground, we do not reach other grounds for denial cited by the CO.

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.