

**U.S. Department of Labor**

Board of Alien Labor Certification Appeals  
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**Issue Date: 03 July 2013**

**BALCA Case No.: 2011-PER-02719**  
ETA Case No.: A-09042-27228

*In the Matter of:*

**ARCHITECTURAL STONE ACCENTS, INC.,**  
*Employer*

*on behalf of*

**DE SOUZA, ROBERTO WAGNER,**  
*Alien.*

Certifying Officer: Atlanta National Processing Center

Appearances: Adebimpe Jafojo, Esquire  
Lilburn, Georgia  
*For the Employer*

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

**DECISION AND ORDER**  
**GRANTING 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 at 20 C.F.R. Part 656.

## **BACKGROUND**

The Employer is sponsoring the Alien for permanent employment in the United States for the professional position of “Production Supervisor” (AF 54-63).<sup>1</sup> On the ETA Form 9089 application, the Employer indicated that the position requires the ability to speak Spanish. (AF 56). The Certifying Officer (CO) denied certification because the Notice of Filing posted by the Employer did not mention the ability to speak Spanish as a job requirement. The CO cited 20 C.F.R. § 656.17(f)(3), as made applicable by 20 C.F.R. § 656.10(d)(4) as the regulatory basis for the denial. (AF 11-12). The Employer requested reconsideration/review of the denial. (AF 2-10). The Employer noted that the regulation at Section 656.17(f)(3) requires that an advertisement “[p]rovide a description of the vacancy specific enough to apprise the U.S. workers of the job opportunity for which certification is sought” and argued that its NOF met that criterion in that it had enough information to appraise U.S. workers of job opportunity as required by law, and that omission of a Spanish language requirement would have only allowed more candidates to apply. (AF 3). The CO reconsidered, but noting that the primary purpose of a NOF is to permit interested persons to contact the CO directly about the application, found that the denial under Section 656.17(f)(3) was valid. (AF 1). We reverse and grant certification.

## **DISCUSSION**

The Notice of Filing regulation is an implementation of a statutory requirement imposed by The Immigration Act of 1990, Public Law 101-649, 104 Stat. 4978 (Nov. 29, 1990, eff. Oct. 1, 1991). In *Hawai’i Pacific University*, 2009-PER-127 (Mar. 2, 2010)(en banc), the Board found that NOF serves a dual purpose to both recruit U.S. workers and, primarily, to provide a method for employees and interested persons to provide information to the CO about an employer’s application. Consequently, the regulations at 20 C.F.R. §§ 656.10(d) and 656.17(f)(1) (as incorporated by reference), provide in detail what a NOF must include. Unlike a newspaper advertisement, for example, the NOF is required to state the rate of pay. Section 656.10(d)(4).<sup>2</sup>

Nonetheless, the regulation cited by the CO as grounds for the denial, 20 C.F.R. § 656.17(f)(3) as incorporated by Section 656.10(d)(4), does not affirmatively mandate that all job requirements be listed on an advertisement. The regulation only requires that an advertisement “[p]rovide a description of the vacancy specific enough to apprise the U.S. workers of the job opportunity for which certification is sought.” In FAQ answer on its website, the Employment and Training Administration states:

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<sup>1</sup> In this Decision, “AF” is an abbreviation for “Appeal File.”

<sup>2</sup> A newspaper advertisement may not “contain a wage rate lower than the prevailing wage rate” and may not “contain wages or terms and conditions of employment that are less favorable than those offered to the alien.” But these are conditions on what an advertisement may not contain. They are not requirements that the newspapers actually state a rate of pay.

**1. What level of detail regarding the job offer must be included in the advertisement?**

Employers need to apprise applicants of the job opportunity. The regulation does not require employers to run advertisements enumerating every job duty, job requirement, and condition of employment. As long as the employer can demonstrate a logical nexus between the advertisement and the position listed on the employer's application, the employer will meet the requirement of apprising applicants of the job opportunity. An advertisement that includes a description of the vacancy, the name of the employer, the geographic area of employment, and the means to contact the employer to apply may be sufficient to apprise potentially qualified applicants of the job opportunity.

[www.foreignlaborcert.doleta.gov/faqsanswers.cfm#adcont1](http://www.foreignlaborcert.doleta.gov/faqsanswers.cfm#adcont1).

Thus, the advertisement only must be "specific enough" to apprise the U.S. workers of the job opportunity. There is nothing in Section 656.10 or 656.17(f) that requires that the NOF list every job requirement. In the instant case, we have reviewed the Employer's NOF. We do not find that the omission of the Spanish language requirement violated Section 656.17(f)(3), as overall the text of the NOF was sufficient to apprise U.S. workers of the job opportunity.

**ORDER**

Based on the foregoing, **IT IS ORDERED** that labor certification is **GRANTED**. This matter will be returned to the CO to issue the certification.

Entered at the direction of the panel by:

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 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.