

**U.S. Department of Labor**

Board of Alien Labor Certification Appeals  
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Washington, DC 20001-8002

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Issue Date: 18 December 2007

BALCA Case No.: 2008-PER-00005  
ETA Case No.: C-06271-64936

*In the Matter of:*

**BECK AG OPERATIONS INC.,**  
*Employer,*

*on behalf of*

**LUIS MANUEL RODRIGUEZ CALDERON,**  
*Alien.*

Certifying Officer: Dominic Pavese  
Chicago Processing Center

Appearances: Steven N. Beck  
*Pro se for the Employer*

Gary M. Buff, Associate Solicitor  
Vincent C. Costantino, Senior Trial Attorney  
Office of the Solicitor  
Division of Employment and Training Legal Services  
Washington, DC  
*For the Certifying Officer*

Before: Chapman, Wood and Vittone  
Administrative Law Judges

**DECISION AND ORDER**

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.<sup>1</sup> In this case, the Employer filed an application for permanent alien labor certification for the position of Vineyard Manager. (AF 41-50). The ETA Form 9089 indicated at Items I.c.6. and I.c.7. that a State Workforce Agency (SWA) job order was started on April 5, 2006 and ended on April 7, 2006. (AF 44, 54). The Employer indicated at Section I.a.1. that the job was non-professional. (AF 44, 54).

On October 5, 2006, the CO issued a letter denying the application on several grounds, one of which was that the application indicated that the job order was not placed with the SWA serving the area of intended employment for a period of 30 days in violation of 20 C.F.R. § 656.17(e). (AF 38-40).

By letter dated October 24, 2006, the Employer requested review. (AF 5). The Employer's owner stated that he "was not aware that a job order was needed from SWA in order to have this application be approved. I ask that you surpass these errors and grant my employee certification for his case." (AF 5). Attached to the request for review was a revised ETA 9089 in which the Employer inserted "N/A" for items I.c.6. and I.c.7. (AF 9).

The CO denied reconsideration in a letter dated October 5, 2007, and forwarded the matter to BALCA as an appeal. (AF 1-2). BALCA docketed the appeal on October 9, 2007, and issued a notice of docketing on October 19, 2007. The Employer submitted a Statement of Intent to Proceed, indicating therein that a statement or brief would be following from his agent or attorney. The Board, however, has no record of receipt of a brief from the Employer in this matter. The CO submitted a letter brief, which was received by the Board on November 21, 2007. The CO argued that the facts supporting the denial were readily apparent in the Appeal File.

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<sup>1</sup> The PERM regulations appear in the 2006 edition of the Code of Federal Regulations published by the Government Printing Office on behalf of the Office of the Federal Register, National Archives and Record Administration, 20 C.F.R. Part 656 (Revised as of Apr. 1, 2006).

## DISCUSSION

The regulation at 20 C.F.R. § 656.17(e) provides, in pertinent part:

(e) *Required pre-filing recruitment.* [With certain exceptions, a]n employer must attest to having conducted the following recruitment prior to filing the application:

\* \* \*

(2) *Nonprofessional occupations.* If the application is for a nonprofessional occupation, the employer must at a minimum, place a job order and two newspaper advertisements within 6 months of filing the application. The steps must be conducted at least 30 days but no more than 180 days before the filing of the application.

(i) *Job order.* Placing a job order with the SWA serving the area of intended employment for a period of 30 days. The start and end dates of the job order entered on the application serve as documentation of this step.

Thus, the placement of a job order with a SWA is mandatory; it must have been completed at least 30 days, but no more than 180 days before the filing of the application; and it must have been at least 30 days in duration. The start and end dates of the job order must be entered on the ETA Form 9089 to document the timing of the SWA job order.

The Employer clearly violated 20 C.F.R. § 656.17(e)(2)(i) by failing to place a job order of 30 days duration. The Employer's lack of awareness that a job order was required is an insufficient justification to overcome the deficiency in the application. Thus, we affirm the CO's denial of labor certification.

## ORDER

Based on the foregoing, IT IS ORDERED that the Certifying Officer's denial of labor certification in the above-captioned matter is AFFIRMED.

Entered at the direction of the panel by:

**A**

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.