



**Issue Date: 10 May 2012**

**BALCA Case No.:** 2011-PER-01303  
**ETA Case No.:** A-08228-78905

*In the Matter of:*

**PRICEWATERHOUSE COOPERS**  
*Employer*

*on behalf of*

**NANCY LEPARTO**  
*Alien.*

**Certifying Officer:** William L. Carlson  
Atlanta National Processing Center

**Appearances:** Michael Boshnaick, Esquire  
Los Angeles, California  
*For the Employer*

Gary M. Buff, Associate Solicitor  
Office of the Solicitor  
Division of Employment and Training Legal Services  
Washington, D.C.  
*For the Certifying Officer*

**Before:** **Romero, Price, and Rosenow**  
Administrative Law Judges

**DECISION AND ORDER**  
**AFFIRMING DENIAL OF CERTIFICATION**

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.).

## **BACKGROUND**

On August 29, 2008, the Certifying Officer (CO) accepted for processing Employer's Application for Permanent Employment Certification (ETA Form 9089) for the position of "manager, assurance/consumer & industrial products & services-energy & production." (AF 110-127).<sup>1</sup>

On April 1, 2009, the CO notified Employer that its ETA Form 9089 was selected for audit. (AF 107-109). Employer responded on April 30, 2009. (AF 17-106). On September 24, 2010, the CO denied certification. (AF 15-16). The CO denied certification of Employer's application because the advertisement placed on the job search Web site other than the employer's failed to identify the geographic area of intended employment as outlined in Section H of the ETA Form 9089, in violation of 20 C.F.R. § 656.17(f)(4). Specifically, the advertisement did not identify that the position requires travel up to 40% of the time. Employer requested reconsideration on October 21, 2010. (AF 2-14).

The CO issued a second denial on May 10, 2011 and forwarded the case to BALCA. (AF 1). On July 27, 2011, BALCA issued a Notice of Docketing. Employer filed a Statement of Intent to Proceed on August 10, 2011.

## **DISCUSSION**

Under 20 C.F.R. § 656.17(e), most sponsoring employers are required to attest to having conducted recruitment prior to filing the application. Among other requirements, applications involving both professional and non-professional occupations normally require the sponsoring employer to attest to having placed two print advertisements in a newspaper of general circulation in the area of intended employment most appropriate to the occupation. 20 C.F.R. § 656.17(e)(1)(i)(B) and 656.17(e)(2)(ii). Furthermore, the regulations require that the advertisements placed in newspapers of general circulation or in professional journals must "indicate the geographic area of employment with enough

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

specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the job opportunity.” 20 C.F.R. § 656.17(f)(4).

Employer has violated 20 C.F.R. § 656.17(f)(4) by failing to include travel requirements in their website advertisement. (AF 89-90). Employer’s ETA Form 9089 included a travel requirement up to 40% of the time. (AF 112). Employer argues that pursuant to the text of § 656.17(f), the inclusion of a travel requirement is only required for advertisements placed in newspapers of general circulation or in professional journals, and not for additional recruitment steps such as the website. (AF 3-4). However, this argument has been previously made and rejected. *See Credit Suisse Securities (USA) LLC*, 2010-PER-00103 (Oct. 19, 2010). “We hold that all advertisements placed by employers in fulfillment of the additional recruitment steps must comply with the advertisement content requirements listed in § 656.17(f).” *Id.* at 8.

While the content requirements listed in § 656.17(f) only explicitly apply to advertisements in journals and newspapers of general circulation, the additional recruitment steps must be interpreted in light of the other PERM regulations and the policy considerations embedded in the permanent labor certification program. The CO cannot grant certification unless there are no U.S. workers who are able, willing, qualified, and available. 20 C.F.R. § 656.1(a)(1). Therefore, an employer must make a good-faith effort to recruit U.S. workers for the position and the position involved in the labor application must be clearly open to U.S. workers. 20 C.F.R. § 656.10(c)(8); 69 Fed. Reg. at 77348.

2010-PER-00103 at 7.

The plain language of § 656.17(f)(4) requires an advertisement “to apprise applicants of any travel requirements and where applicants will likely have to reside.” Here, Employer left this information out. Thus, the advertisement did not clearly apprise U.S. workers of the travel requirements, and constitutes less than the “good-faith” effort required by the PERM regulations. If Employer had informed U.S. workers of the travel requirement, their recruiting efforts could have been successful. Therefore, it was appropriate for the CO to deny certification of the application.

Based on the foregoing, we affirm the CO’s denial of labor certification.

**ORDER**

**IT IS ORDERED** that the denial of labor certification in this matter is hereby **AFFIRMED**.

For the Panel:

**A**

**Larry W. Price**  
Administrative Law Judge

**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.