



Issue Date: 12 June 2008

BALCA Case No.: 2008-PER-00049
ETA Case No.: A-06102-06641

In the Matter of:

THE NUT CLUB LTD.,
Employer,

on behalf of

EFRAIN CARDOSO,
Alien.

Certifying Officer: Melanie Shay
Atlanta Processing Center

Appearances: Salvatore Perillo
President, The Nut Club Ltd.
Pro se for the Employer

Gary M. Buff, Associate Solicitor
Frank P. Buckley, 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.¹ In this case, the Employer filed an application for permanent alien labor certification for the position of Cook on March 22, 2006. (AF 10). The Employer had placed its 30-day job order with the State Workforce Agency ("SWA") between January 25, 2006 and February 24, 2006. (AF 13). The Certifying Officer denied the application because, under the regulations, an application cannot be filed until 30 days after the SWA job order had closed. 20 C.F.R. § 656.17(e)(1)(i). (AF 1-2; 7-9). The earliest the Employer should have filed the application was March 26, 2006. (AF 1).

On appeal, the Employer argues that it placed the SWA order with the SWA on January 25, 2006, which is more than 30 days prior to the date that the application was filed. (AF 3; Employer's Appellate Brief at 1).

However, the 30 day waiting period begins on the date that the SWA job order was closed – not the date that it was opened. The purpose of the 30 day waiting period for filing an application is to ensure that the petitioning employer has adequately considered all U.S. applicants prior to filing the application. As this panel stated in *Golden Bridge Restaurant LLC, 2007-PER-00099* (Dec. 18, 2007), "filing before the end of the 30 day period reflects an employer's indifference to whether U.S. applicants are given adequate consideration for the job opportunity. The requirement is not a mere formality, but reflects ETA's judgment that employers should take time and care in finalizing their recruitment."

The Employer clearly violated 20 C.F.R. § 656.17(e)(1)(i) by submitting the application too early. Thus, we find that the CO properly denied certification.

¹ The final PERM regulations were published on December 27, 2004, 69 Fed. Reg. 77326, and are applicable to permanent labor certification applications filed on or after March 28, 2005. The regulations were amended on June 21, 2006, 71 Fed. Reg. 35522, and May 17, 2007, 72 Fed. Reg. 28903.

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.