



**Issue Date: 23 June 2009**

**BALCA Case No.: 2009-PER-00019**  
ETA Case No.: A-07079-21063

*In the Matter of:*

**TUCS CLEANING SERVICE, INC.,**  
*Employer,*

*on behalf of*

**BEATRIZ AIDA DE LA TORRE,**  
*Alien.*

Certifying Officer: William Carlson  
Atlanta Processing Center

Appearances: Judith E. Goldenberg, Esquire<sup>1</sup>  
Union City, New Jersey  
*For the Employer*

Gary M. Buff, Associate Solicitor  
Jonathan R. Hammer, 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**

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<sup>1</sup> Mayra Cruz, Paralegal, filed the Employer's request for review and was listed as the Employer's representative in the ETA Form 9089. Richard A. Vrhovc filed a G-28 while the case was on appeal. Later however, the Board received a G-28 from Ms. Goldenberg. Neither Mr. Vrhovc nor Ms. Goldenberg filed any legal argument before the Board.

**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.

### **STATEMENT OF THE CASE**

On March 2, 2007, Tucs Cleaning Service, Inc. ("Employer") filed an Application for Permanent Employment Certification on behalf of the Alien for an "Accounting/Bookkeeping Assistant" position. (AF 39-48). The Employer indicated that the position was a professional occupation. (AF 42). On August 27, 2007, the Certifying Officer ("CO") denied certification on several grounds, finding that the application was incomplete. (AF 35-38). The Employer resubmitted the labor certification application on September 7, 2007, correcting most of the deficiencies on the original application, and submitting evidence of recruitment. (AF 3-34).

On November 18, 2008, the CO issued a letter of reconsideration, stating that one of the reasons the application was denied was that the job order had not been conducted. (AF 1). The CO asserted that although the Employer provided information that it had posted a job order from August 23, 2007 through September 23, 2007, this was not within the time period required under the regulations at 20 C.F.R. § 656.17(e)(1)(i)(A). The CO also noted that one of the three additional recruitment steps, that of the job search website, was conducted outside of the allotted time period. In addition, the CO contended that the Employer did not affirm that it posted notice that the Permanent Employment Certification was filed, as is required under section 656.24(b)(1).

The matter was forwarded to BALCA on November 18, 2008 and a Notice of Docketing was issued on November 20, 2008. The Employer notified BALCA on December 5, 2008, that it would like to proceed with the appeal but did not file an appellate brief. The CO filed a brief urging that the denial be affirmed because the Employer did not conduct the job order thirty days before the application was filed, as required under section 656.17(e)(1)(i)(A), and the Employer did not complete the third

additional recruitment step until five months after the application was filed, which was not permitted under section 656.17(e)(1)(ii).<sup>2</sup>

## 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:

\* \* \*

(1) *Professional occupations.* If the application is for a professional occupation, the employer must conduct the recruitment steps within 6 months of filing the application for alien employment certification.

(i)(A) *Job order.* Placement of 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 shall serve as documentation of this step.

Thus, the placement of a job order with a State Workforce Agency (“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.

Under the regulations, the SWA job order must have ended at least 30 days prior to the filing of the ETA Form 9089. *Luyon Corp.*, 2007-PER-27 (June 12, 2007); *Construction Pros Corp.*, 2007-PER-77 (Dec. 18, 2007). In the instant case, the Employer placed the job order on September 5, 2007, which was six months after it filed

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<sup>2</sup> In the appeal brief, the CO does not bring up the issue concerning the Employer’s obligation to affirm that it posted notice that the Permanent Employment Certification was filed, as is required under section 656.24(b)(1). As a result, we are not addressing this issue here.

the application for labor certification on March 2, 2007. This clearly violates the regulation requiring that the job order be completed at least 30 days prior to filing the application.

Regarding the second deficiency, the regulation at 20 C.F.R. § 656.17(e)(1)(ii), which refers to the additional recruitment steps required for recruitment involving professional occupations, states that “only one of the additional steps may consist solely of activity that took place within 30 days of the filing of the application. None of the steps may have taken place more than 180 days prior to filing the application.” In this case, the Employer did not complete the third additional recruiting step within 30 days of submitting the application, but instead completed the third recruiting step on August 23, 2007, which was over five months after it had filed the application. Five months is clearly outside of the 30 days allowed to complete the third additional recruitment step, and thus violates the regulation at 20 C.F.R. § 656.17(e)(1)(ii). Accordingly, we find that the CO properly denied 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.