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: 25 February 2009

BALCA Case Nos.: 2009-PER-00075
ETA Case No.: A-06311-78051

In the Matter of:

KPIT INFOSYSTEMS, INC.,
Employer,

on behalf of

RAJKUMAR TRIPATHI,
Alien,

Certifying Officer: William Carlson
Atlanta Processing Center

Appearances: Ramesh Gurnani, Esquire
Gurnani & Gurnani Attorneys at Law
Edison, New Jersey
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: **Burke, Chapman 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. In the instant case, the Employer filed a Form 9089 application for permanent alien employment for the position of Computer Systems Analyst. (AF 24). The CO denied the application on December 6, 2006, solely on the ground that the Employer was in violation of Section 656.17(h)(4)(ii). (AF 19-22). Specifically, the CO found that the Alien currently worked for the Employer, that the Alien only qualified for the position by virtue of an alternative experience requirement, and that the application did not state that "any suitable combination of education, training or experience" would be acceptable. This section of the PERM regulations is based on the BALCA holding in the pre-PERM case of *Francis Kellogg*, 1994-INA-465 (Feb. 2, 1998) (en banc).

In *Federal Insurance Co.*, 2008-PER-37 (Feb. 20, 2009), this panel reversed the CO's denial of certification based on the employer's failure to write the *Kellogg* language on the ETA Form 9089 because a denial on that basis would offend fundamental fairness and procedural due process where the ETA Form 9089 and its instructions failed to provide a logical place to write the required language, and ETA had not provided readily available instructions to the public on how to handle this deficiency with the form.

We find that the *Federal Insurance Co.* decision governs the disposition of this matter,[1] and therefore, **IT IS ORDERED** that the Certifying Officer's denial of labor certification in the above-captioned matter is hereby **VACATED** and that the Certifying Officer is directed to **GRANT CERTIFICATION**.

Entered at the direction of the panel by:

A

Todd R. Smyth
Secretary to the Board
of Alien Labor Certification Appeals

[1] We base this decision solely on the *Federal Insurance Co.* ruling, and do not reach the Employer's argument on appeal that the *Kellogg* language was not required under the circumstances of its application.

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.