

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA



FRAGOMEN, DEL REY, BERNSEN &)
LOEWY, LLP,)

Plaintiff,)

v.)

ELAINE CHAO, Secretary of Labor,)
and the United States Department)
of Labor,)

Defendants.)

Civil Action No. 08-1387 (RMU)

**NOTICE TO THE COURT OF ERRATA IN DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

Defendants, Elaine Chao, Secretary of Labor and the United States Department of Labor, through counsel, respectfully file this Notice to the Court of errata in Defendants' Opposition to Plaintiff's Motion for Preliminary Injunction.

First, in the last sentence on page 11 (continuing on to page 12) Defendants state: "The injunctive relief Plaintiff seeks goes beyond maintaining the status quo, as it would require the Department to abandon its long-standing view that 20 C.F.R. § 656.10 proscribes certain levels of involvement by an employer's immigration attorneys in the labor certification process." The phrase "long-standing" should be deleted from the sentence.

Second, the last sentence on page 26 (continuing on to page 27) Defendants state: "Rather, these words merely served to clarify the long-standing requirements of the regulation, and expressed the Department's view regarding who can appropriately participate in the

determination of whether there are qualified U.S. applicants. The phrase "long-standing" should be deleted from the sentence.

Third, in the first sentence of the first full paragraph on page 30, Defendants state: "Not only has Plaintiff failed to address these decisions, it has failed to challenge BALCA's long-standing and consistent interpretation of section 656.10(b)(2)(ii) to prohibit employers' attorneys from interviewing and considering U.S. workers for jobs offered to aliens unless the attorneys normally perform the same functions for the employer in cases not involving labor certifications." The words "long-standing and consistent" should be deleted from the sentence.

Fourth, in the first sentence of the first full paragraph on page 33, Defendants state: "It is readily apparent that in construing 20 C.F.R. § 656.10(b)(2)(ii) and its predecessor regulation, 20 C.F.R. § 656.20 (b)(3)(i), the Department and BALCA have consistently limited an attorney's involvement in the interview and recruitment of U.S. applicants, regardless of whether the attorney represents the employer or the alien in the labor certification process." The word "consistently" should be deleted from the sentence.

Fifth, in the first sentence of the second full paragraph on page 33, Defendants state: "Because Plaintiff fails to address section 656.10(b)(2)(ii)'s provisions and the long line of BALCA precedential decisions upholding them" This sentence should be deleted and replaced with the following sentence: "Because Plaintiff fails to address section 656.10(b)(2)(ii) and BALCA decisions addressing it, and its challenge to the Department's construction of section 656.10(b)(2) "fairly conceptualized, really centers on the wisdom of the agency's policy, rather than whether it is a reasonable choice within a gap left open by Congress," Chevron, 487 U.S. at 866, its request to enjoin the Department from enforcing those provisions must be

rejected."

Finally, footnote 7 on page 33 should be deleted.

These changes are necessary because, after filing its opposition to Plaintiff's motion for preliminary injunction, attorneys for Defendants learned of the existence of further information which warrants making the changes.

For the Court's convenience Defendants attach a corrected copy of the opposition brief.

Respectfully submitted,

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