

**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: 03 March 2010**

**BALCA Case No.: 2009-PER-00319**  
ETA Case No.: A-07164-46068

*In the Matter of:*

**DIRECT MEDS, INC.,**  
*Employer,*

*on behalf of*

**RANIA ALKHOURY,**  
*Alien.*

Certifying Officer: William L. Carlson  
Atlanta Processing Center

Appearances: Martin F. Breznick, Esquire  
Breznick & Cavallo  
New York, New York  
*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: **Colwell, Johnson and Wood**  
Administrative Law Judges

**WILLIAM S. COLWELL**  
Associate Chief Administrative Law Judge

**DECISION AND ORDER**  
**REVERSING 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.

**STATEMENT OF THE CASE**

On June 25, 2007, the Certifying Officer ("CO") accepted for filing the Employer's Application for Permanent Employment Certification on behalf of the Alien for a "Pharmacist" position. (AF 50-61).<sup>1</sup>

On September 13, 2007, the CO issued an Audit Notification directing the Employer to provide documentation showing that the foreign worker has a New Jersey license in Pharmacy, or the equivalent, in addition to evidence of recruitment. (AF 46-49). In response to the audit, on October 16, 2007, the Employer submitted: a copy of the ETA Form 9089; a copy of the Notice of Filing; a recruitment report; a copy of the prevailing wage determination; a copy of the job order; copies of newspaper advertisements; a copy of the website advertisement; a copy of the posting notice for its employee referral program; a copy of the position announcement submitted to a campus placements office; a copy of the Alien's New Jersey Pharmacy license; and a copy of the Alien's U.S. educational equivalency evaluation. (AF 8-45).

On February 29, 2008, the CO denied certification because the Notice of Filing ("NOF") did not contain the name of the Employer, as required by 20 C.F.R. § 656.10(d)(4) and 20 C.F.R. § 656.17(f)(1). (AF 5-7).

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

The Employer submitted a request for review on March 28, 2009. (AF 2-4). In this request, the Employer stated, “It is conceded by the employer that this technical error was made. But it is respectfully submitted that the error was of one that may be considered excusable as only being slight in nature.” (AF 3). The Employer asserted that, “the notice was posted in the area reserved for legal notices (i.e. unemployment and worker’s compensation notices) and was adjacent to the notice advising employees of the position as part of the employee referral program (a notice which was on company stationary.)” (AF 4).

On April 28, 2009, the CO issued a letter of reconsideration, finding that the Employer’s failure to include its name on the NOF was a valid reason for denial. (AF 1). The CO did not address the Employer’s arguments. *Id.*

BALCA issued a Notice of Docketing on May 19, 2009. The Employer filed a Statement of Intent to Proceed on June 2, 2009, and an appellate brief on July 2, 2009. In its brief, the Employer contended that it fell into the exception for omitting its name on the NOF created by *Stone Tech Fabrication*, 2008-PER-187. The Employer explained, “when we posted the notice in question, we did so on a segregated bulletin board that only contains legal and other notices that are applicable to Direct Meds, Inc.” Additionally, the Employer asserted that, “the notice in question was posted adjacent to another notice used in the labor certification that was printed on Direct Meds stationary. Both notices contained the exact same job description and directed interested applicants to Dr. Munr Kazmir.” The Employer contended that Dr. Munr Kazmir is “a well-known figure in the field, and everyone on [sic] our office knows him since we are in an office of only 25 people.” The Employer further asserted that since the position is for a Pharmacist and it is a Pharmacy, it would not be confusing as to who the employer was.

The CO filed an appellate brief on July 8, 2009, asserting that the Employer’s failure to include its name on the Notice of Filing was a valid reason for denial. The CO stated that, “under the criteria set forth in Stone Tech Fabrication, the lack of any facts surrounding the posting are insufficient to demonstrate compliance with the requirement of section 656.17(f) that the name of the employer be on the notice of filing.”

## DISCUSSION

The regulation at 20 C.F.R. § 656.10(d)(1) provides that for the basic labor certification process, an employer is required to give notice of the filing of its labor certification application and be able to document that the notice was provided. When the application is processed under the certification process described in 20 C.F.R. § 656.17, the notice “must contain the information required for advertisements by § 656.17(f)...” The very first item of information listed in section 656.17(f) is the name of the employer. 20 C.F.R. § 656.17(f)(1). Thus, in the instant case, the Notice of Filing should have included the Employer’s name. The Employer does not argue that the name was listed on its Notice of Filing. Rather, it argues that it was a technical and excusable error.

In *Stone Tech Fabrication*, 2008-PER-187 (Jan. 5, 2008), the Board found that, in certain circumstances, the purpose of the Notice of Filing would be fully served without the name of the company on the Notice if it was nonetheless clear that the Notice applied to the petitioning employer, as for example where a the petitioner is a small company where everyone knows the owner on a first name basis. Slip op. at 4. The Board stated that “in order to establish a compelling case for relief from the regulatory requirement that an employer’s name must appear on a Notice of Filing, the Employer should have, for example, provided information about the size of the company, how well-known the listed contact name would be among the work force, and whether the place it posts notices is used exclusively for company bulletins.” *Id.*

In the instant case, the Employer was a small company with only 25 employees, and the Employer asserted that the President’s name was well-known by the employees. The Employer also contended, both in its request for review and appellate brief, that the notice was posted on a segregated bulletin board reserved for legal notices and notices for the employees, and it was posted adjacent to the notice advising employees of the position as part of the employee referral program, which included the same job description and contact name and was printed on company stationary. Thus, we find that in these circumstances it was clear that the Notice applied to the petitioning Employer,

even though the Employer's name was omitted from the Notice. Accordingly, the Employer has demonstrated a compelling case for relief.<sup>2</sup>

Based on the foregoing, we vacate the denial of certification, order that certification be granted, and return this matter to the CO to complete the administrative details required to complete the certification process. *See* 20 C.F.R. § 656.27(c).

## **ORDER**

**IT IS ORDERED** that labor certification in this matter is hereby **GRANTED**

For the panel:

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**WILLIAM S. COLWELL**

Associate Chief 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

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<sup>2</sup> We note that in the CO's appellate brief, he stated that, "under the criteria set forth in Stone Tech Fabrication, the lack of any facts surrounding the posting are insufficient to demonstrate compliance with the requirement of section 656.17(f) that the name of the employer be on the notice of filing." However, the CO did not explain how the facts in this case are dissimilar from those set out in Stone Tech Fabrication.

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.