



Issue Date: 03 February 2016

**BALCA Case No.:** 2012-PER-00811  
**ETA Case No.:** A-10061-88386

*In the Matter of:*

**XCELTECH, INC.,**  
*Employer,*

*on behalf of*

**SWETHA, TAMMAREDDY,**  
*Alien.*

Appearance: Rakesh Mehrotra, Esquire  
Law Offices of Rakesh Mehrotra  
Reston, Virginia  
*For the Employer*

Before: Stephen R. Henley, *Chief Administrative Law Judge*; Paul R. Almanza  
and Morris D. Davis, *Administrative Law Judges*

**DECISION AND ORDER**  
**DIRECTING GRANT OF CERTIFICATION**

**PER CURIAM.** This matter arises under the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(5)(A) and the implementing regulations at 20 C.F.R. Part 656.

**BACKGROUND**

The Employer filed a labor certification application sponsoring the Alien for a position as a Programmer Analyst. (AF 55-65).<sup>1</sup> Following an extended procedural history, the Certifying Officer (“CO”) denied certification because the State Workforce Agency (“SWA”) job order contained Drug Testing/Screening Background Checks and Reference Checks not listed on the ETA Form 9089. The CO cited 20 C.F.R. § 656.17(f)(6) as the sole ground for denial. (AF 8-9). The Employer requested reconsideration arguing that an advertisement need only have a logical nexus with the position listed on the application, and that any error in filling out the Form 9089

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<sup>1</sup> Citations to the appeal file are shown as “AF” followed by the page number.

was harmless error. (AF 2-7). The CO reconsidered, but found that the ground for denial was valid. (AF 102). Neither the Employer nor the CO filed appellate briefs.

### **DISCUSSION**

The regulation at § 656.17(f)(6) states that advertisements must “[n]ot contain any job requirements or duties which exceed the job requirements or duties listed on the ETA Form 9089.” However, § 656.17(f) does not regulate the content of SWA job orders. *See e.g., Fidelus Technologies*, 2011-PER-1635 (June 11, 2015); *Business Intelligence Systems, Inc.*, 2011-PER-2232 (Sept. 12, 2014) (finding the CO may not deny certification based on a failure of the SWA job order to comply with § 656.17(f)(4)); *Chabad Lubavitch Center*, 2011-PER-2614, (July 29, 2013) (holding § 656.17(f)(6) does not apply to job orders). Because the CO solely relied on § 656.17(f)(6) to deny the Employer’s application for certification, we vacate the denial and direct the CO to grant certification to the Employer.

### **ORDER**

**IT IS ORDERED** that the Certifying Officer’s denial of labor certification in the above-captioned matter is **VACATED** and that the CO is **DIRECTED** under 20 C.F.R. § 656.27(c)(2) to **GRANT CERTIFICATION**.

Entered at the direction of the panel by:

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 en banc review by the Board. Such review is not favored and ordinarily will not be granted except (1) when en banc 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 en banc review with supporting authority, if any, and shall not exceed ten double-spaced pages. Responses, if any, shall be filed within ten days of service of the petition, and shall not exceed ten double-spaced pages. Upon the granting of a petition the Board may order briefs.