

**LABOR CERTIFICATION CASE DENIED DUE TO EMPLOYER'S  
FAILURE TO FOLLOW TAX LAWS**



by

*Kristen A. Chang and David J. Long  
Long, Chang & Associates, L.L.P.  
4915 Piedmont Parkway, Suite 103  
Jamestown, NC 27282  
Phone: (336) 855-5700  
www.longchangonline.com*

The Board of Alien Labor Certification Appeals (BALCA) recently upheld the denial of an employer's labor certification application on behalf of an employee because the employer did not comply with applicable tax laws in paying the employee.

The case (*Matter of Borja*, BALCA Case No. 2006-INA-00054) involved a labor certification filed on behalf of a housekeeper. The Department of Labor determined that the employer had paid the employee (who was already working for the employer) in cash and, as a result, was not reporting taxes properly. Due to the Employer's failure to comply with tax laws with respect to the job being offered in the labor certification, the Department of Labor's Certifying Officer (CO) denied the case and, on appeal, BALCA affirmed the denial.

BALCA focused on the labor certification regulations at 20 CFR §656.20(c)(7) which state that the "employer's job opportunity's terms, conditions and occupational environment are not contrary to Federal, State, or local law." BALCA determined that, "According to California and federal tax law, the Employer is required to report the wages it pays to the Alien. The Employer has not reported the cash wages paid to the Alien to federal or state authorities despite repeated warnings from the CO [the Department of Labor's Certifying Officer] that this is illegal." The employer in this case acknowledged its failure to do so and claimed that it was unable to do so because the employee did not have a valid Social Security Number. The Certifying Officer and BALCA found that the Employer's failure to comply with tax laws throughout the labor certification process meant that the Employer was not offering a job with lawful terms and conditions of employment.

BALCA stated the following in its decision:

*The Employer has not complied with applicable tax laws because it has failed to report the wages it has paid to the Alien. The regulations allowing the Alien to adjust her immigration status do not provide a free pass for an Employer who continuously violates federal and state tax laws throughout the labor certification process. The CO correctly determined that the Employer was not offering a position with lawful terms and conditions of employment because the Employer has yet to come into*

*compliance with federal and state tax laws. The CO properly denied certification under 20 C.F.R. § 656.20(c)(7).*

What can be learned from this case?

The Department of Labor has the authority to inquire into whether the employer is complying with tax laws with respect to the job position being offered in the labor certification case.

If the employer is paying the employee in cash and is not complying with tax laws, then the Department of Labor, on the basis of this BALCA case, may seek to deny the labor certification on the basis that the employer is not offering a job position with lawful terms and conditions of employment.

\*\*\*\*\*

*Kristen A. Chang and David J. Long are attorneys in the immigration law firm of Long, Chang & Associates, L.L.P. Ms. Chang and Mr. Long are members of the North Carolina State Bar and the American Immigration Lawyers Association (AILA). Ms. Chang is fluent in both the Korean and English languages. Mr. Long has been certified by the North Carolina State Bar as a Specialist in Immigration Law. They may be reached via telephone at (336) 855-5700 or via e-mail at [info@longchangonline.com](mailto:info@longchangonline.com).*

*This article should not be taken as legal advice for any individual case or situation. This information is intended to be general and should not be relied upon for any specific situation. For legal advice, consult an attorney experienced in immigration law.*