

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

In the Matter of:)	D.C. No. 17-005
Misa Enterprises, Inc.,)	
Appellant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
Department of Labor – Citizen Job Availability)	
and Citizen Job Placement Section,)	
Appellee.)	
)	

This denial appeal came on for hearing on April 19, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. Appellant Misa Enterprises, Inc. was represented by its President, Misako Kamata, and its Assistant Manager, Sonia G. Siwa. The Department’s Citizen Job Availability and Citizen Job Placement Section (“Job Placement”) was represented by James Ulloa. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on appellant’s timely appeal of a Notice of Denial (“Denial”) issued by the Job Placement Section on February 13, 2017. [A copy of the Denial was entered into evidence as Hearing Exhibit 1; a copy of the Employer’s letter of appeal, dated February 20, 2017, was entered into evidence as Hearing Exhibit 3.]

Appellant Misa Enterprises, Inc. (“Employer”) operates a building rental business. Employer’s workforce consists of two full-time employees: one U.S. citizen and one holder of E-2 status. [Testimony of Ms. Kamata.] The Job Placement Section denied Employer’s request for a Certification of Compliance, citing three grounds:

- (1) Employer failed to post a job vacancy announcement (“JVA”) on the Department’s website (www.marianaslabor.net) in 2016, for a job filled by a CW-1 status employee, in violation of the Regulations codified in the Northern Mariana Islands Administrative Code (“NMIAC”) at § 80-20.1-225(a);

(2) Employer failed to submit a Workforce Plan for 2015 and 2016 in accordance with Regulations at § 80-20.1-510;

(3) Employer failed to submit quarterly Total Workforce Listing documents for four quarters in 2015 and two quarters in 2016, in accordance with the Department of Labor Rules and Regulations (“Regulations”) at section 80-20.1-505.

1. Failure to Post Job Vacancy on DOL’s Website.

Departmental Regulations require employers who are hiring or renewing CW-1 status workers to post job announcements on the Department’s website. [Regs. at NMIAC § 80-20.1-225(a).] In this case, the Job Placement Section alleged that Employer had not posted a JVA on the Department of Labor (“DOL”) website for a general maintenance position in 2016. At Hearing, Employer explained that it had employed one general maintenance employee whose CW1 status expired in July 2016; Employer had not renewed that worker’s employment and it did not replace him with another employee. [Testimony of Ms. Siwa.]

The evidence established that the Department was incorrect in charging this employer with failing to post a JVA for the general maintenance position in 2016. Therefore, this charge should not be used to deny a request for a Certificate of Good Standing.

2. Failure to Submit Workforce Plans for 2015 and 2016.

Department Regulations require employers to file an updated Workforce Plan every 12 months. Regs. at NMIAC § 80-20.1-510. In this case, DOL alleged that Employer had failed to submit Workforce Plans for 2015 and 2016. Employer admitted that it did not submit a Workforce Plan in 2015; however, Employer noted that it filed a Workforce Plan in April 2016. [A copy of the Plan submitted in April 2016, was entered into evidence at Hearing Exhibit 2.]

Mr. Ulloa noted that the Plan submitted in April 2016, was incomplete as it left blank the last two columns of information (specific vocational preparation and timemetable) on the form. [Testimony of Mr. Ulloa.] In any case, the Hearing Officer finds that no useful purpose would be served by requiring Employer to correct its previously submitted 2016 Workforce Plan.

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3. Failure to Submit Quarterly Total Workforce Listings in 2015 and 2016.

Department Regulations require employers to submit information *on a quarterly basis* regarding “the number and classification of employees for whom wages were paid during the quarter.” [Regs. at NMIAC § 80-20.1-505 *et seq.*] The Department requires employers to submit this information in a document called the Total Workforce Listing in order to qualify for a Certificate of Good Standing. [*Id.*; testimony of Mr. Ulloa.]

Employer failed to submit Total Workforce Listings for all quarters in 2015 and for the 2nd and 3rd quarters of 2016.¹ In support of its request for a Certification of Good Standing, Employer filed a Total Workforce Listing, signed on April 13, 2016. [The Total Workforce Listing, dated 4/13/2016, was entered into evidence as Hearing Exhibit 3.]

DISCUSSION

Employer was cleared of the first charge regarding alleged failure to post a JVA. Employer admitted that the company failed to submit a Workforce Plan in 2015 and submitted an incomplete Workforce Plan in 2016. Employer failed to submit any quarterly Total Workforce Listing documents in 2015, but submitted a quarterly Total Workforce Listing for the first quarter of 2016; it then missed filing the Listing for the second and third quarters of 2016.

President Kamata promised to be more diligent in the future in submitting census-related reports to DOL in a timely manner. [Testimony of Ms. Kamata.]

Employer asked that it not be denied a Certification of Good Standing, as the Certificate is needed for the company’s business to remain viable. *Id.*

Employer’s testimony reveals that Employer’s workforce is comprised of one U.S. citizen and one foreign citizen holding an E-2 visa workers. Thus, Employer’s workforce exceeds the minimum 30% ratio of U.S.-status qualified workers that is required in the Regulations [NMIAC § 80-30.2-120(c)].

¹ Employer did produce one Total Workforce Listing for the 1st quarter of 2016, in response to a written document request served on the company by a DOL investigator. [Testimony of President Kamata.]

Employer's failure to submit Workforce Plans and Total Workforce Listing documents for two years, justifies the imposition of sanctions. Nevertheless, Employer gave credible testimony that is now understands its obligations to file these documents in a timely manner and President Kamata promised to ensure that this will be done correctly in the future. [Testimony of Ms. Kamata.]

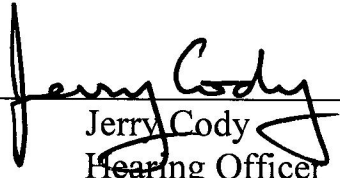
At Hearing, Job Placement recommended reversing its Denial and issuing a warning to Employer to submit census-related documents in a timely manner, when required in order to comply with DOL regulations in the future. [Testimony of Mr. Ulloa.] Job Placement left the decision to the discretion of the Hearing Officer.

Given the facts presented, the Hearing Officer finds that Employer should be given the opportunity to demonstrate that it can comply with Departmental regulations in the future. For this reason, the Hearing Officer shall issue a warning to Employer that future failures to file census-related documents may result in monetary sanctions or the denial of a Certificate of Good Standing.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Denial is reversed:** For the reasons stated above, the Department's Denial of a Certification of Good Standing for Appellant Misa Corporation, is hereby REVERSED. The Department is instructed to issue the Certification of Good Standing to Appellant as soon as practicable.
2. **Warning:** Appellant Misa Corporation is hereby WARNED that if it employs foreign national workers, it has a continuing obligation to provide census-related documents such as the annual Workforce Plan and quarterly Total Workforce Listings. Any failure by Appellant to submit such documents, when required, may be grounds for denial of a Certificate of Good Standing, and may subject Appellant to possible monetary sanctions after a due process hearing on the issue. 3 CMC §§ 4528(f)(2) and 4947(11).
3. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: April 28, 2017


Jerry Cody
Hearing Officer