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Familiar Relationship Between Foreign National and Employer for PERM Permanent Labor/Employment Certification (BALCA)

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On May 7, 2012, BALCA discusses *In the Matter of MMB STUCCO, LLC*, a PERM case, where there is a “closely held corporation or partnership in which the alien has an ownership interest, or familial relationship”, the totality of the circumstances (as opposed to single factor) must be considered in determining whether or not a bona fide job opportunity exists. BALCA stands for Board of Alien Labor Certification Appeals and is part of the U.S. Department of Labor (DOL). PERM is DOL labor certification program and stands for *Program Electronic Review Management*.

The totality of the circumstances for consideration, among other factors, include whether the alien:

1. Is in the position to control or influence hiring decisions regarding the job for which labor certification is sought;
2. Is related to the corporate directors, officers, or employees;
3. Was an incorporator or founder of the company;
4. Has an ownership interest in the company;
5. Is involved in the management of the company;
6. Is on the board of directors,
7. Is one of a small number of employees;
8. Has qualifications for the job that are identical to specialized or unusual job duties and requirements stated in the application; and

9. Is so inseparable from the sponsoring employer because of his or her pervasive presence and personal attributes that the employer would be unlikely to continue in operation without the alien.

In The Matter of Stucco, the alien was the brother of the owner of the sponsoring employer, but had no ownership interest in the company. For reasons stated in the decision, BALCA ordered that the denial of labor certification be reversed and directed the DOL Certifying Officer to grant this PERM permanent labor/employment certification.

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