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## LEGAL NOTES

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## Domestic cook applications

To avoid the long waiting period for visa availability, it is not uncommon for an employer to classify his household employee as a domestic cook when filing for labor certification. A domestic cook is a skilled worker and visa numbers are currently available. On the other hand, a general houseworker is an unskilled worker and the waiting time for visa numbers could exceed ten years.

In recent years, the Certification Office of the Department of Labor has experienced a marked decline in applications for skilled workers. This has led the Certification Office to conclude that employees are inflating the job duties and requirements in labor certification applications to qualify aliens for visas as skilled workers.

Take the case of Carlos Uy III, a Filipino living in Los Angeles, who filed an application for labor certification in behalf of an alien for the job

of domestic cook.

In his application, Mr. Uy submitted proofs of his need for a full-time cook including several photographs of a birthday party. He said that in the past, he and his wife did the cooking for their household, consisting of husband, wife, one school age child, one preschool child, and Mr. Uy's brother. He described the duties of a cook and said that every Saturday night, he had between 5 to 10 additional guests (usually relatives) for dinner and on Sundays, he always served brunch after church for all his relatives.

In addition, he claimed that once a month, he hosted a dinner meeting of the Tanauan Association of Los Angeles at his house. He said that he needed a cook to prepare the meal before their meetings. He added that he and his wife and brother did the household cleaning chores and a relative took care of the children.

The Certification Office denied the application stating that the employer did not adequately document that the job duties to be performed by the cook constituted full time employment.

Mr. Uy appealed to the Labor Board. In its decision, the Labor Board noted that when an employer presented a Labor Certification application for domestic cook, attention imme-

diately focused on whether the application presented a bona fide job opportunity because common experience suggested that few households retained an employee whose only duties were to cook. It further said that it was a relevant question to ask whether the employer was really seeking a housekeeper, nanny, companion or other general household worker or was attempting to create a job for the purpose of assisting the alien to immigrate to the U.S.

The Labor Board made references to the "totality of the circumstance test" in discussing Mr. Uy's case. Factors pertinent in applying the test included the percentage of the employer's disposable income that would be devoted to paying the cook's salary; whether the employee would be engaged in cooking duties for a substantial portion of the day; whether the employer employed other domestic workers; and whether the employer had retained domestic cooks in the past and if not, what circumstances prompted the instant job offer.

The Labor Board made the following observations:

- 1) Generally, there was a strong motive for employers to describe a skilled position when applying for labor Certification in order to avoid the long wait for visa.
- 2) Obvious reasons existed for questioning the veracity and accuracy of the information supplied by Mr. Uy. He did not allege for instance that he used the services of a domestic worker whose only duties were cooking related.
- 3) Mr. Uy might have the ability to pay the cook's wages but it was questionable whether he was willing to use approximately one-third of his gross income to pay for a cook.

The Labor Board remanded the case to the Certification Office for a final determination based on the totality of the circumstance tested.