

**New York State
Industrial Board of Appeals**

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Chairman

Susan Sullivan-Bisceglia
J. Christopher Meagher
Mark G. Pearce
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**STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS**

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In the Matter of the Petition of:                  :
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HYE RAN PARK AND CHAN HYUK PARK AND              :
TAE-OK PARK AND SHIN PO USA CORP.,                :
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                                                    :
                                                    :
                                                    :
                        Petitioners,                :
                                                    :
To Review Under Section 101 of the Labor Law:      :
An Order to Comply with Article 19 of the Labor Law :
and an Order to Comply with Article 6 of the Labor  :
Law, each dated July 31, 2008,                    :
                                                    :
                        - against -                 :
                                                    :
THE COMMISSIONER OF LABOR,                         :
                                                    :
                                                    :
                        Respondent.                 :
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DOCKET NO. PR 08-161

RESOLUTION OF DECISION

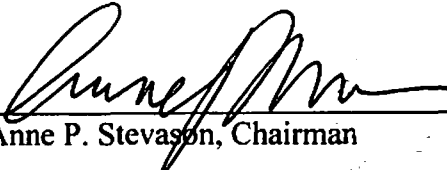
WHEREAS:

1. On November 7, 2008, the Board received a letter in the above-captioned matter enclosed in an envelope post-marked November 4, 2008.
2. The letter of November 4, 2008 was insufficient to constitute a Petition because copies of the Orders to review were not attached.
3. By letter dated November 14, 2008, the Board requested that the Petitioner(s) file an Amended Petition no later than December 1, 2008 with the Order(s) attached.
4. The Petitioners, by their attorney, filed an Amended Petition on November 24, 2008 with the Orders to review attached. The Orders were each issued on July 31, 2008, 95 days prior to the Petitioners' original attempt to file a Petition on November 4, 2008.
5. Labor Law § 101 provides that a petition for review must be filed with the Board no later than sixty days after the issuance of the Order to be reviewed.

6. By letter dated December 5, 2008, the Board requested that the Petitioners provide a written explanation supported by proof as to why the Petitioners contend that the Petition in this matter is not untimely.
7. By letter dated December 7, 2008, the Petitioners, by their attorney, offered no explanation for the late filing, instead arguing that the Board's letter of November 14, 2008 "specifically noted that the [Petitioners] had previously sent an 'appeal' to the Board but that the appeal letter was not in the proper form. The board then allowed the [Petitioners] to send a petition in the proper form by December 1, which [the Petitioners] did." However, the Petitioners misinterpret our November 14 correspondence which did not and could not extend the statute of limitations under Labor Law § 101 until December 1, but merely directed the Petitioners to file an Amended Petition by that date with the Orders to review attached. It was not until the Board received the Amended Petition with the Orders attached that it could be determined that the original November 4 filing was untimely. Additionally, the filing of an Amended Petition within the time frame requested by the Board does not save the original filing from being untimely where Labor Law § 101 is a jurisdictional requirement that cannot be waived by the Board.
8. The Petition in this matter is dismissed as untimely.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

This proceeding be, and the same hereby is, dismissed in accordance with the Rules.


Anne P. Stevason, Chairman

Absent
Susan Sullivan-Bisceglia, Member


J. Christopher Meagher, Member


Mark G. Pearce, Member


Jean Grumet, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
January 28, 2009.