U.S. Department of Labor

Board of Alien Labor Certification Appeals
800 K Street, NW, Suite 400-N
Washington, D.C. 20001-8002

Date: May 26, 1999

Case No. 1999-INA-121

In the Matter of:

RUBEN'S IMPORTS,
Employer,

On behalf of:

HORACIO SALVADOR LEONE,
Alien.

Certifying Officer: Rebecca Marsh Day
San Francisco, CA

Appearance: Jean-Pierre Karnos, Esq.

Before: Holmes, Lawson and Wood
Administrative Law Judges

JAMES W. LAWSON
Administrative Law Judge

DECISION AND ORDER

This case arose from a labor certification application filed on behalf of the alien by the employer under §212(a)(5)(A) of the Immigration and Nationality Act, as amended, 8 U.S.C. §1182(a)(5)(A) (the Act) and the regulations promulgated thereunder, 20 CFR Part 656.[1] After the Certifying Officer (CO) of the U.S. Department of Labor (DOL) issued a Final Determination

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[1]The following decision is based on the record upon which the CO denied certification, including the Notice of Findings (NOF), rebuttal and the Employer's request for review, as contained in an Appeal File (AF), and any written argument of the parties. 20 CFR § 656.27(c).

(FD) denying the application, the Employer requested review pursuant to 20 CFR § 656.26.[2]

Under § 212(a)(5) of the Act, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor may receive a visa if the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (1) there are not sufficient workers who are able, willing, qualified, and available at the time of the application and at the place where the alien is to perform such labor; and (2) the employment of the alien will not adversely affect the wages and working conditions of the U. S. workers similarly employed at that time and place. Employers desiring to employ an alien on a permanent basis must demonstrate that the requirements of 20 CFR, Part 656 have been met. These requirements include the responsibility of the Employer to recruit U.S. workers at the prevailing wage and under prevailing working conditions through the public employment service and by other reasonable means in order to make a good faith test of U.S. worker availability.

THE PROCEEDINGS

Employer seeks to fill the position of Maintenance Person (Building) with DOT Title Maintenance Repairer, Bld, DOT # 899.381-010, a wage offer of $13.25 per hour and job duties of:

> THE OCCUPANT OF THIS POSITION WILL BE REQUIRED TO PERFORM GENERAL COMMON TASKS ON THE MAINTENANCE OF THE BUILDING. ACCOMPLISH SIMPLE CARPENTRY, ELECTRICAL SWITCHES AND OTHER FIXTURE. REPLACE AND REPAIR PLUMBING FIXTURES. SCRAPE PUTTY AND PAINT WALLS, REPAIR WOODWORK, REPLACE LIGHT BULBS, COVERS AND FILTERS. WILL USE HANDTOOLS AND POWER TOOLS. (AF 43)

The minimum job requirements were listed as two years of experience in the job offered. The other special requirement was that a resume was required for each applicant. (AF 43)

The application was denied by the CO on the following bases: (1) that there did not exist a full-time job that is truly open to U.S. workers; and (2) that U.S. workers were unlawfully rejected for the job. (AF 6-7) In the NOF, the CO questioned the legitimacy of both the job opening and the employer. (AF 38) The CO found that it was not the industry norm for an "auto shop" to hire a full-time building maintenance worker and thus, requested the employer to submit documentation showing that someone has performed the job in the past. (AF 39) Also, the CO found that three U.S. applicants who had applied for the job were told by the employer that the position had been filled. (AF 38) Therefore, employer was required to submit rebuttal evidence showing that there is an on-going business and that an unfilled job opening existed. In

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[2]Administrative notice is taken of the Dictionary of Occupational Titles, (DOT) published by the Employment and Training Administration of the U. S. Department of Labor.

addition, employer was requested to submit evidence showing the relationship between the alien and the employer. (AF 39) Finally, since U.S. workers had been unlawfully rejected for the position, employer was asked to document the job-related reasons for their rejections. (AF 39-41) After the submission of rebuttal evidence, the CO denied certification on the following bases: (1) employer did not prove that anyone else had performed the job; (2) the business license that was submitted listed a different employer at the same address; (3) the relationship between alien and employer was unclear; and (4) the reasons for rejecting the U.S. workers were found to be insufficient. (AF 6-7)

CONTENTIONS ON APPEAL

On appeal, employer contends, among other things, only that "there is a Bona Fide job, which is clearly full-time employment" and that "there is a full-time position available to U.S. workers". (AF 1) There was no argument supporting these contentions and no brief was filed.

DISCUSSION

The request for review only states the antithesis of the conclusions and fails to show, or even argue, any grounds for reversal of the FD. Under 20 C.F.R. § 656.26(b)(1), a request for review shall be in writing and shall clearly identify the particular labor certification determination from which review is sought and shall set forth the particular grounds for the request. It is well established that where the request for review does not set forth specific grounds for review and no brief is filed, the request for review will be dismissed. *North American Printing Ink Co.*, 88-INA-42 (Mar. 31, 1988)(en banc); *Bixby/Jalama Ranch*, 88-INA-449 (Mar. 14, 1990); *Rank Enterprises, Inc.*, 89-INA-124 (Nov. 13, 1989); *The Little Mermaid Restaurant*, 88-INA-489 (Sept. 1, 1989). A general statement of disagreement with the CO does not constitute an assignment of error and such a request for review will be dismissed. *GCG Corp.*, 90-INA-498. *See also Ajem Thread Rolling*, 90-INA-412 (May 20, 1991). A general incorporation by reference of a document issued prior to the Final Determination is not sufficient to set forth specific grounds for review pursuant to § 656.26(b)(1). *Miriam R. Witlin*, 94-INA-23 (Nov. 28, 1994)(en banc); *Richard P. Miller*, 94-INA-52 (Nov. 28, 1994). Mere contradiction of the conclusions by stating the antithesis, without specifying any reasons or argument why the FD erred, is insufficient to warrant review.

Accordingly, the following order will enter.

ORDER

The Certifying Officer's denial of labor certification is hereby **AFFIRMED.**

For the Panel:

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JAMES W. LAWSON
Administrative Law Judge

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary unless within twenty days from the date of service a party petitions for review by the full Board. Such review is not favored and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, NW
Suite 400
Washington, D.C. 20001-8002

Copies of the petition must also be served on other parties and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five double-spaced pages. Responses, if any, shall be filed within ten days of service of the petition, and shall not exceed five double-spaced pages. Upon the granting of a petition the Board may order briefs.

Judge Holmes concurring separately:

I concur in result.