



**Issue Date: 19 March 2004**

**BALCA Case No.: 2002-INA-273**  
ETA Case No.: P2000-CA-09502183

*In the Matter of:*

**SPORT PINS INTERNATIONAL, INC.,**  
*Employer,*

*on behalf of*

**CHANG SHENG WU,**  
*Alien.*

Appearance: C. Stephanie Chen, Esquire  
City of Industry, California  
For Employer

Certifying Officer: Martin Rios  
San Francisco, California

Before: Burke, Chapman and Vittone  
Administrative Law Judges

### **DECISION AND ORDER**

**PER CURIAM.** This case arose from an application for labor certification on behalf of Chang Sheng Wu (“the Alien”) filed by Sport Pins International, Inc. (“Employer”) pursuant to § 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 C.F.R. Part 656. The Certifying Officer (“CO”) denied the application and Employer requested review pursuant to 20 C.F.R. § 656.26. The following decision is based on the record upon which the CO denied certification and Employer's request for review, as contained in the Appeal File (“AF”), and any written arguments of the parties. 20 C.F.R. § 656.27(c).

## **STATEMENT OF THE CASE**

On September 29, 1998, Employer, Sport Pins International, Inc., filed an application for labor certification on behalf of the Alien, Chang Sheng Wu, for the position of “Graphic Artist/Designer,” which was classified by the Job Service as “Graphic Designer.” The job duties for the position included generating designs for product lines for sale from Taiwanese vendors into the U.S. (AF 20).

Although Employer did not require any experience in the job offered or in a related occupation, a Bachelor of Arts degree in Graphic Design was required. (AF 20, Item 14). Furthermore, Employer listed the following Other Special Requirements: “Proficiency using Adope Illustrator, Quark Xpress and Photocopy applications. Knowledgeable operation of Macintosh computer operating system, printers, and scanners.” (AF 20, Item 15).

In a Notice of Findings (“NOF”) issued on April 10, 2002, the CO proposed to deny certification on the grounds that Employer had rejected qualified U.S. applicants for other than lawful job-related reasons. *See* 20 C.F.R. § 656.21(b)(6). (AF 16-18). Employer submitted its rebuttal on May 9, 2002. (AF 11-15). The CO found the rebuttal unpersuasive and issued a Final Determination (“FD”), dated May 15, 2002, denying certification on the same basis. (AF 9-10). On June 6, 2002, Employer requested review and the matter was docketed in this Office on August 30, 2002. (AF 1-8). Employer filed a Statement of Position on October 24, 2002.

## **DISCUSSION**

An employer must show that U.S. applicants were rejected solely for lawful job-related reasons. 20 C.F.R. § 656.21(b)(6). Furthermore, a U.S. applicant who meets the stated minimum requirements specified for the job offered in the labor certification application is generally considered qualified. *See, e.g., Sterik Co.*, 1993-INA-252 (Apr.

19, 1994); *United Parcel Service*, 1990-INA-90 (Mar. 28, 1991); *Microbilt Corp.*, 1987-INA-635 (Jan. 12, 1998).

In reports of recruitment results, dated May 3, 2000 and June 19, 2000, Employer stated that it had received numerous applications, and provided various reasons for not hiring any of the U.S. applicants. (AF 27-31). Although the CO found that Employer rejected two U.S. applicants for other than lawful, job-related reasons, our focus herein is on Employer's rejection of Applicant #1. (AF 9-10, 16-18).

In the report of recruitment results, Employer stated that a rejection letter had been sent to Applicant #1 based on her failure to establish her ability or knowledge of the MacIntosh computer system. This rejection was based solely on Applicant #1's resume. (AF 29).

In the NOF, the CO stated that Employer's basis for this determination was unclear, as Applicant #1's resume demonstrated that she had MAC/PC skills and a B.A. in Graphic Art Design. (AF 17-18). The CO noted that an employer is required to contact and to interview a U.S. applicant who appears qualified for the position.

Employer's rebuttal consisted of a letter by Employer's Vice President, Jon A. Bivens, together with copies of the resumes of the two U.S. applicants. (AF 11-15). Mr. Bivens stated that Applicant #1 was rejected based on her salary demands, as stated on her resume, which were in excess of Employer's specifications. In addition, Mr. Bivens noted that his company "had the intention to recruit in good faith," and rejected Applicant #1 for the above-stated reason. (AF 11).

In the FD, the CO found Employer's rebuttal unpersuasive. The CO determined that in rebuttal, Employer provided a new reason for rejection of Applicant #1, in contrast to the recruitment report, in which Employer stated that it was determined that Applicant #1 was not qualified for the position. (AF 10).

In the Statement of Position, Employer reiterated that Applicant #1 was rejected without an interview based on her excessive salary demands. Employer stated that it was company policy to reject an applicant without an interview when the applicant indicated “an expected salary which vastly exceeds the employer’s ability to support.” (Employer’s Statement of Position, p. 2).

Notwithstanding Employer’s assertions to the contrary, Employer’s stated bases for rejecting the foregoing U.S. applicant are *not* lawful, job-related reasons. As found by the CO, Applicant #1’s resume indicated experience with Macintosh computer systems, as well as a B.A. in graphic design. (AF 12). An employer, at a minimum, has the duty to interview seemingly qualified applicants to further investigate their credentials. *Gorchev and Gorchev Graphic Design*, 1989-INA-118 (Nov. 29, 1990) (*en banc*); *Call Business Systems, Inc.*, 1993-INA-519 (Aug. 29, 1995). Therefore, Employer’s initial basis for rejecting Applicant #1 without an interview was clearly erroneous.

In rebuttal, Employer identified a new rationale for summarily rejecting Applicant #1; namely, that her salary demand of \$40,000 per year, as noted on her resume, was too high. (AF 13). An employer may not reject an applicant as unwilling to accept the salary offered, until after the position has been offered to the applicant at the salary listed. *See, e.g., Impell Corp.*, 1988-INA-298 (May 31, 1989)(*en banc*); *Martinez and Wright Engineering*, 1988-INA-127 (Oct, 28, 1988); *Produce Management Serv.*, 1991-INA-96 (May 13, 1992); *Kaprielian Enter.*, 1993-INA-193 (June 13, 1994). In the present case, instead of offering Applicant #1 the position at the listed salary, Employer summarily rejected this seemingly qualified U.S. applicant and simply sent her a rejection letter. Employer’s contention that such action was based upon its “internal policy” does not cure the deficiency. In view of the foregoing, we find that labor certification was properly denied.<sup>1</sup>

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<sup>1</sup> Accordingly, we choose not to address Employer’s rejection of U.S. Applicant #2, whom the CO also found had been unlawfully rejected. (AF 10, 17-18).

## **ORDER**

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

Entered at the Direction of the Panel by:

**A**

Todd R. Smyth  
Secretary to the Board of  
Alien Labor Certification Appeals

**NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW:** This Decision and Order will become the final decision of the Secretary unless within 20 days from the date of service, a party petitions for review by the full Board of Alien Labor Certification Appeals. 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, N.W., 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 typewritten pages. Responses, if any, shall be filed within ten days of the service of the petition, and shall not exceed five double-spaced typewritten pages. Upon the granting of the petition the Board may order briefs.