



Issue Date: 03 July 2003

BALCA Case No.: 2002-INA-96
ETA Case No.: P200-NY-02445219

In the Matter of:

YOUNG LITE CORPORATION,
Employer,

on behalf of

ZHIFENG LI,
Alien.

Appearances: Thomas A. Manning, Esquire

Before: Burke, Chapman and Vittone
Administrative Law Judges

DECISION AND ORDER

PER CURIAM. This case arises from an application for labor certification¹ filed by an Importer/Wholesaler for the position of Administrative Manager. (AF 7-8).² The following decision is based on the record upon which the Certifying Officer (CO) denied certification and Employer's request for review, as contained in the Appeal File. ("AF").

STATEMENT OF THE CASE

On December 12, 1997, Employer, Young Lite Corp., filed an application for alien employment certification on behalf of the Alien, Zhifeng Li, to fill the position of Administrative Manager. Minimum requirements for the position were listed as an

¹ Alien labor certification is governed by section 212(a)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(5)(A) and 20 C.F.R. Part 656.

²"AF" is an abbreviation for "Appeal File."

Associates degree in a management related field and three years experience in the job offered or in a management or administrative related field. The job to be performed was described as follows:

1. Coordinate and supervise sale and administrative activities.
2. Oversee all staffs and support service including secretarial and reception, administrate [sic], payroll, conference planning and travel; information and data processing; mail; facilities management; material scheduling and distribution; printing and reproduction; records and telecommunication managements; supply and disposal.
3. Participate in the recruitment and training of new employees.

Other special requirements were listed as Mandarin (Chinese). Employer also stated that the Associates degree requirement could be replaced by two years experience. (AF 7-8).

Employer received four applicant referrals in response to its recruitment efforts, all of whom were rejected as either unqualified or unavailable for the position. (AF 45-46).

A Notice of Findings (NOF) was issued by the Certifying Officer (CO) on October 22, 2001, proposing to deny labor certification based upon a finding that Employer had rejected two qualified U.S. workers for other than lawful, job-related reasons. (AF 52-54). Employer rejected applicant Brady because she was unwilling to travel outside of New York City and applicant Yan because he lacked wholesale experience. The CO observed that a travel requirement was not listed on the ETA-750A form or the advertisement and thus the basis for rejection of applicant Brady stemmed from other than lawful job-related reasons. The CO found the rejection of applicant Yan unlawful as he possesses a Bachelor's Degree in Economics and more than five years of experience "in management or administrative related field" as was called for in the advertisement and on the ETA-750A form. (AF 8, 35). Employer was instructed to further document specific lawful, job-related reasons for rejection of each applicant.

In Rebuttal, Employer stated that willingness to travel and wholesale experience are both required for the position, and hence his basis for rejection of the applicants, in fact, stems from lawful job-related reasons. (AF 55-59).

A Final Determination denying labor certification was issued by the CO on December 5, 2001, based upon a finding that Employer had failed to adequately document lawful rejection of U.S. workers Brady and Yan. (AF 60-61). The CO reiterated her finding in the NOF that neither the ETA-750A nor the ad reflect that travel is required for the position. Similarly, she noted that nowhere on the ETA-750A form or the ad is a requirement of wholesale experience reflected. Thus, the CO concluded applicants Brady and Yan were qualified on the basis of the minimum and special requirements advertised, and their rejection was for other than lawful job-related reasons.

Employer filed a Request for Review by letter dated January 2, 2002, and this matter was referred to this Office and docketed on March 6, 2002.

DISCUSSION

Federal regulations at 20 C.F.R. § 656.24(b)(2)(ii) state in part that the Certifying Officer shall consider a U.S. worker able and qualified for the job opportunity if the worker, by education, training, experience, or a combination thereof, is able to perform in the normally acceptable manner, the duties involved in the occupation as customarily performed by other workers similarly employed. Section 656.21(b)(6) provides that U.S. workers applying for a job opportunity offered to an alien may be rejected solely for lawful job related reasons. Section 656.20(c)(8) requires that the job opportunity be clearly open to any qualified U.S. worker.

In the instant case, Employer has rejected U.S. workers because they lacked unstated requirements. An employer must state all the requirements for the petitioned position on the Form ETA-750A application, and if an applicant meets the requirements as stated by the employer, he or she is deemed qualified for the job. *See Bell*

Communications Research, Inc., 1988-INA-26 (Dec. 22 1988)(*en banc*). In general, labor certification is properly denied where an employer unlawfully rejects workers who meet stated minimum education and experience requirements. *ABC Home Video Corp.*, 1993-INA-480 (Nov. 16, 1994); *Banque Francaise Du Commerce Exterieur*, 1993-INA-44 (Dec. 7, 1993); *American Café*, 1990-INA-26 (Jan 23, 1991).

Here, Employer's sole basis for rejection of applicant Brady was that she "was not qualified because she is not willing to travel outside of New York City." Nowhere on the ETA-750A form or the ad is there any indication that travel is required for this position. The duties require the individual to "Oversee" conference planning and travel. This does not imply actual travel; thus, this basis for rejection is not a lawful, job-related reason.

We conclude that applicant Yan was similarly unlawfully rejected on the basis of unstated requirements. Employer has indicated that applicant Yan was rejected because he lacks wholesale experience. Although he may lack wholesale experience, he possesses a Bachelor's Degree in Economics and more than five years of experience "in management or administrative related field." Thus, applicant Yan's credentials exceed Employer's stated minimum requirements. Nowhere on the ETA-750A form or the ad is wholesale experience reflected as a minimum requirement.

Employer having failed to adequately document lawful, job-related reasons for the rejection of these two qualified U.S. workers, it is determined that labor certification was properly denied.

ORDER

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

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 of Labor 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, 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, typewritten pages. Responses, if any, shall be filed within 10 days of service of the petition and shall not exceed five, double-spaced, typewritten pages. Upon the granting of the petition the Board may order briefs.