



Issue Date: 03 March 2004

BALCA Case No.: 2003-INA-42
ETA Case No.: P2000-CA-09508423/JS

In the Matter of:

JOHN COLLINS & CO.,
Employer,

on behalf of

OSCAR DE LIRA,
Alien.

Appearance: Moza Marquez, Esquire
Sherman Oaks, 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 arises from an application for labor certification¹ filed by a property management company for the position of Maintenance Repairer. (AF 18-19).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”).

¹ Alien labor certification is governed by § 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”.

STATEMENT OF THE CASE

On November 5, 1999, Employer, John Collins & Co., filed an application for alien labor certification on behalf of the Alien, Oscar de Lira, to fill the position of Maintenance Repairer. (AF 18). The duties of the position were described as maintenance and repair of rental properties, including plumbing, electrical work and painting. Minimum requirements for the position were listed as six years of grade school and two years experience in the job offered.

In response to recruitment efforts, Employer received seven applicant referrals, all of whom were rejected as either unqualified, disinterested and/or unavailable for the position. (AF 29, 32).

The CO issued a Notice of Findings (“NOF”) on July 8, 2002, proposing to deny labor certification based upon a finding that Employer had rejected several qualified U.S. workers for other than lawful, job-related reasons. (AF 14-16). Employer was instructed to further document lawful rejection of three identified U.S. workers: applicants Shabazz and Ramirez because they appeared qualified for the position and applicant Kauffman because his resume was not submitted for review. (AF 15).

In Rebuttal dated July 29, 2002, Employer stated that applicant Shabazz was rejected because all of his experience in the maintenance field had been as a Building Maintenance Supervisor and Employer was “not looking for someone with supervisory experience.” (AF 9). Employer saw no indication that the applicant was “used to doing minor repair work.” (AF 10). Employer documented rejection of applicant Ramirez on the basis of poor references. Employer also submitted the resume for applicant Kauffman. (AF 10-12).

On August 9, 2002, the CO issued a Final Determination (“FD”) denying labor certification based upon a finding that Employer had failed to adequately document lawful rejection of U.S. workers Shabazz and Kauffman. (AF 6-7). The CO found

Employer's basis for rejection of applicant Shabazz unsubstantiated because the applicant's resume reflected more than the required number of years in building maintenance. There was no evidence that he did not perform the work of building maintenance as described or that he would not accept or perform the duties of a non-supervisory position. The CO similarly concluded that Mr. Kauffman's resume indicated that he was qualified with more than five years experience as a facilities manager and maintenance team leader. (AF 7).

Employer filed a Request for Review by letter dated August 30, 2002 and the matter was docketed in this Office on December 24, 2002. (AF 1-2).

DISCUSSION

Twenty C.F.R. § 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. An employer unlawfully rejects a U.S. worker who satisfies the minimum requirements specified on the ETA 750A and in the advertisement for the position. *American Café*, 1990-INA-26 (Jan. 24, 1991); *Cal-Tex Management Services*, 1988-INA-492 (Sept. 19, 1990). *Richo Management*, 1988-INA-509 (Nov. 21, 1989).

In general, an applicant is considered qualified for a job if he or she meets the minimum requirements specified for the job in the labor certification application. *United Parcel Service*, 1990-INA-90 (Mar. 28, 1991); *Mancil-las International Ltd.*, 1988-INA-321 (Feb. 7, 1990); *Microbilt Corp.*, 1987-INA-635 (Jan. 12, 1988). Twenty C.F.R. § 656.24(b)(2)(ii) states that the CO 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.

In the instant case, Employer is a property management company that seeks to hire a maintenance repairer with two years experience in the job. Employer rejected

applicants Shabazz and Kauffman based upon Employer's determination that neither was qualified for the job. As was noted by the CO, both applicants appeared qualified based upon their resumes. Applicant Shabazz had over five years of experience in building maintenance, performing the very duties listed for Employer's job. (AF 30-31). Applicant Kauffman's resume similarly reflected a total of five years experience as a facilities manager and maintenance team leader, performing duties the same as or similar to those listed for Employer's job opportunity. (AF 11-12). Employer's assertion that applicants Shabazz and Kauffman are unqualified is not supported by any objective evidence. Labor certification is properly denied where an employer has rejected a U.S. worker who meets the stated minimum requirements for the job. *Sterik Co.*, 1993-INA-252 (Apr. 19, 1994); *Lynhurst Trading Corp.*, 1993-INA-37 (Mar. 25, 1994); *Santa Barbara Immigration Ctr.*, 1993-INA-559 (Nov. 30, 1994). On this basis, it is determined that labor certification was properly denied.

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 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.