

U.S. Department of Labor

Board of Alien Labor Certification Appeals
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Issue Date: 12 June 2007

BALCA Case No.: 2007-PER-00031
ETA Case No.: A-05187-11932

In the Matter of:

CONTROL CONTRACTORS INC.,
Employer,

on behalf of

WILLIAM LEE CRABTREE,
Alien.

Certifying Officer: Dominic Pavese
Chicago Processing Center

Appearances: Gary M. Buff, Associate Solicitor
Harry L. Sheinfeld, Counsel for Litigation
Stephen R. Jones, Attorney
Office of the Solicitor
Division of Employment and Training Legal Services
Washington, DC
For the Certifying Officer

Before: **Chapman, Wood and Vittone**
Administrative Law Judges

DECISION AND ORDER

PER CURIAM. This matter arises under Section 212(a)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. §1182(a)(5)(A), and the "PERM" regulations found at Title 20, Part 656 of the Code of Federal Regulations.¹

BACKGROUND

On July 9, 2005, the Employer filed an Application for Permanent Employment Certification on behalf of the Alien for the position of Automation Technician. (AF 8-17).² The position was for a work site in Las Vegas, Nevada. (AF 9). The listed job duties included, among other duties, ability to use Delta Controls in HVAC applications and Delta Controls Programming. (AF 10). On its ETA Form 9089 application, the Employer indicated that a newspaper of general circulation with a Sunday edition was available in the area of intended employment, and listed that newspaper as the "Delta Controls Web Site." (AF 11).

On September 19, 2005, the Certifying Officer (CO) denied certification on a variety of grounds relating to required posting and recruitment (AF 5-7). On October 6, 2005, the Employer's contact wrote to the CO asking that he reverse his decision. In pertinent part, she wrote:

We are disappointed to see that our application has been denied and especially due mostly to our methods of advertising.

The Controls products that we deal with are produced in Canada and are very specific in the way they operate. The way in which the Delta line of controls are programmed, networked and operate is very different to any other line of controls. It is easy for us to find people to do installation of the product but unless you have specific experience programming these controllers, any other experience will be of no use to us. It is for this reason that ourselves as well as all other Delta controls dealers use the

¹ The PERM regulations appear in the 2006 edition of the Code of Federal Regulations published by the Government Printing Office on behalf of the Office of the Federal Register, National Archives and Record Administration, 20 C.F.R. Part 656 (Revised as of Apr. 1, 2006).

² AF is an abbreviation for "Appeal File."

Delta website to do our advertising. This is the only way it is possible to find experienced people who can step in and help us immediately. There is no benefit to advertise in any other way. Experienced people are difficult to find even using the Delta website as seen by the fact that many of the ads including ours have been up for a long period of time. Years in some instances. (www.deltacontrols.com) under Careers.

(AF 4).

On March 23, 2006, the CO sent an e-mail to the Employer indicating that reconsideration would not be granted, and that its options were to withdraw the request for reconsideration and file a new application, or continue with an appeal to BALCA. (AF 3). The e-mail noted that if a reply was not received in five business days, the matter would be forwarded to BALCA. (AF 3). The Employer apparently never responded to this e-mail.

On March 28, 2007, the CO issued a letter formally denying reconsideration. (AF 1-2). The CO accepted the Employer's explanation for several of deficiencies specified in the September 19, 2005, denial, but found that the Employer had not cured four of the grounds. Specifically, the CO found the following deficiencies: (1) the Employer's first advertisement was placed more than 180 days prior to the application filing date, (2) the first advertisement was not placed in the Sunday edition of an available newspaper of general circulation, (3) the second advertisement was placed more than 180 days prior to the application filing date, and (4) the Employer had not posted the requisite Notice of Filing. The CO then forwarded the matter to BALCA.

BALCA issued a Notice of Docketing on April 3, 2007. The CO filed an Appellate Brief on May 2, 2007 arguing that the Employer's request for reconsideration only explained what method of recruitment it considered to be the best available to recruit qualified workers without acknowledging that its chosen recruitment methods did not comply with the regulatory requirements at 20 C.F.R. Part 656.

DISCUSSION

Under 20 C.F.R. § 656.17(e), most sponsoring employers are required to attest to having conducted recruitment prior to filing the application. Where the application involves a professional occupation, the sponsoring employer is required to attest to having placed a job order with the State Workforce Agency, and to having run print advertisements under the regulatory criteria found at 20 C.F.R. § 656.17(e)(1)(i). The regulations also require that the Employer conduct three additional recruitment steps from a list of ten options (job fairs, an employer web site, a job search web site other than the employer's, on-campus recruitment, a trade or professional organization, a private employment firm, an employee referral program with incentives, a campus placement office, local or ethnic newspapers, or radio and television advertisements). 20 C.F.R. § 656.17(e)(1)(ii).

In the instant case, the Employer did not place any print advertisements but only posted the job on the web site of the company for whose product the Employer was a dealer. The Employer may be correct about that web site being the most appropriate for the position, but the labor certification regulations mandate the placement of a print advertisement. A posting on a web site other than the Employer's would have qualified as one of the additional recruitment steps required by the regulations, but it is not a substitute for the print advertisement in a newspaper or professional journal mandated by the regulations. Accordingly, the CO properly denied certification on grounds related to the failure to use print advertisements for recruitment.

In addition, under 20 C.F.R. § 656.10(d), most sponsoring employers are required to give notice of the filing of an application for permanent employment certification by either notifying the bargaining representative for workers in the occupation or, if there was not such a bargaining representative, posting a Notice of Filing at the facility or location of employment. The regulations require that an employer be prepared to document that such a notice was given.

In the instant case, the Employer's Form 9089 application indicates that it did not notify a bargaining representative or post a Notice of Filing at the facility or location of employment. Rather, the Employer checked "n/a" in regard to these requirements. The Employer's motion for reconsideration does not explain why the notice requirement was not applicable. Accordingly, the CO properly denied certification on this ground.

ORDER

Based on the foregoing, **IT IS ORDERED** that the Certifying Officer's denial of labor certification in the above-captioned matter is **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 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, DC 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.