



Issue Date: 29 March 2012

BALCA Case No.: 2011-PER-00342
ETA Case No.: A-08016-13874

In the Matter of:

DELOITTE FINANCIAL ADVISORY SERVICES LLP,
Employer

on behalf of

ROBERT LESLIE WALKER WOOD,
Alien.

Certifying Officer: William L. Carlson
Atlanta National Processing Center

Appearances: Jonathan C. Adams, Esquire
Philadelphia, Pennsylvania
For the Employer

Gary M. Buff, Associate Solicitor
Office of the Solicitor
Division of Employment and Training Legal Services
Washington, D.C.
For the Certifying Officer

Before: **Romero, Price, and Rosenow**
Administrative Law Judges

DECISION AND ORDER
AFFIRMING DENIAL OF CERTIFICATION

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 (C.F.R.).

BACKGROUND

On February 29, 2008, the Certifying Officer (CO) accepted for processing Employer's Application for Permanent Employment Certification (ETA Form 9089) for the position of "accountants and auditors." (AF 210-226).¹

On April 14, 2008, the CO notified Employer that its ETA Form 9089 was selected for audit. (AF 207-209). Employer responded on May 14, 2008. (AF 140-206). On March 24, 2010, the CO denied certification. (AF 136-139). The CO denied certification of Employer's application on four grounds, one being that the job described in the advertisement did not match the job described on the ETA Form 9089 Section H, in violation of 20 C.F.R. § 656.10 & 656.17(f)(3). The CO noted the recruitment conducted through the web site did not apprise U.S. workers of the job opportunity. Specifically, Employer's advertisement did not list travel requirements, but ETA Form 9089 stated, "various unanticipated Deloitte locations & client sites nationally." (AF 136-139, 211). Employer requested reconsideration on April 21, 2010, arguing the government erred in factual findings and legal conclusions. (AF 3-135).

The CO issued a second denial on January 6, 2011, and forwarded the case to BALCA. (AF 1-2). On March 8, 2011, BALCA issued a Notice of Docketing. Employer filed a Statement of Intent to Proceed on March 18, 2011.

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. Among other requirements, applications involving both professional and non-professional occupations normally require the sponsoring employer to attest to having placed two print advertisements in a newspaper of general circulation in the area of intended employment most appropriate to the occupation. 20 C.F.R. § 656.17(e)(1)(i)(B) and 656.17(e)(2)(ii). Furthermore, the regulations require that the advertisement "provide a description of the vacancy specific

¹ In this decision, AF is an abbreviation for Appeal File.

enough to apprise the U.S. worker of the job opportunity for which certification is sought.” 20 C.F.R. § 656.17(f)(3).

Employer has violated 20 C.F.R. § 656.17(f)(3) by not specifically apprising U.S. workers of the job opportunity. Employer’s ETA Form 9089 included “various unanticipated Deloitte locations and client sites nationally,” while the advertisement in *The Philadelphia Inquirer* did not contain what the CO termed “travel requirements.” (AF 6). Employer argues this language did not indicate travel requirements, but rather meant the position could be available in multiple geographic locations nationwide. (AF 18). Regardless of whether the language indicated travel requirements or geographic locations, Section 656.17(f)(3) was violated. U.S. workers viewed a different job description than that listed on the ETA Form 9089. Thus, the advertisement was not specific enough to apprise the U.S. worker of the job offered to the foreign worker. If Employer had informed U.S. workers of the same job description which was provided to the foreign worker, more U.S. workers may very well have applied. Some qualified potential U.S. applicants may have been interested in a company which could place them in different geographic locations, if that is what the language intended to convey. Therefore, it was appropriate for the CO to deny certification of the application.

Based on the foregoing, we affirm the CO’s denial of labor certification.²

² Because we affirm the denial based on the reason discussed herein, we have not considered the other grounds cited by the CO for denial of certification, or Employers arguments concerning the other grounds.

ORDER

IT IS ORDERED that the denial of labor certification in this matter is hereby **AFFIRMED**.

For the Panel:

A

Larry W. Price
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, 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.