U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 26 May 2015

BALCA Case No.: 2012-PER-00775
ETA Case No.: A-10015-82036

In the Matter of:

PRESTO ABSORBENT PRODUCTS, INC.
Employer

on behalf of

JOSE LUIS ARELLANO
Alien.

Certifying Officer: William Carlson
Atlanta National Processing Center

Appearances: Kelly M. Fortier, Esquire
Milwaukee, WI
For the Employer

Before: Krantz, Rosen, & Johnson
Administrative Law Judges

DECISION AND ORDER
REVERSING 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 March 2, 2010, the Certifying Officer ("CO") accepted for filing the Employer's Application for Permanent Employment Certification for the position of "Engineering

Managers". (AF 121).[1] On June 25, 2010, the CO sent the Employer an Audit Notification Letter requesting, among other things, U.S. workers' resumes sorted by the reasons for their rejection. (AF 118). On March 29, 2011, the CO denied certification per 20 CFR 656.17(g)(1) because the "employer's recruitment report made only a generalized statement that U.S. workers did not meet the employer's minimum requirements. . . Furthermore, the recruitment report did not contain the specific lawful job related reasons for rejection." (AF 36). On April 27, 2011, the Employer requested reconsideration. (AF 3). The CO maintained his denial and forwarded the case to BALCA on December 14, 2011. BALCA issued a Notice of Docketing on April 26, 2012. The Employer filed a Statement of Intent to Proceed and a Brief in Support on May 9, 2012.

DISCUSSION

The CO maintains denial of certification is appropriate because the Employer "did not provide the lawful reasons for rejection" of U.S. applicants, and because the recruitment report was not signed by the employer or employer's representative. (AF 1). The Employer argues it complied with both § 656.17(g)(1): providing lawful reasons for rejecting U.S. applicants; and § 656.10(b)(2)(ii): the appropriate Employer's representative must sign the recruitment report.

The first issue is whether or not the Employer provided sufficient explanation for rejecting U.S. applicants. The regulation states:

> The employer must prepare a recruitment report signed by the employer or the employer's representative noted in §656.10(b)(2)(ii) describing the recruitment steps undertaken and the results achieved, the number of hires, and, if applicable, the number of U.S. workers rejected, categorized by the lawful job related reasons for such rejections. . . § 656.17(g)(1)

The Employer's recruitment report stated it received eight resumes in response to its recruitment, and the eight applicants lacked the experience requirement. (AF 64). Additionally, the Employer stated, "All applicants were reviewed to determine if they would be able and qualified to perform the duties of the position with a reasonable amount of on-the-job training. All applicants were determined not to have been able and qualified for the position even with a reasonable amount of

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

on-the-job training." (AF 64). The CO did not find this explanation sufficient to comply with the recruitment report requirements in § 656.17(g)(1). The CO did not specify what "lawful reasons for rejection" details were missing from the report. (AF 1).

The regulation does not indicate a level of specificity beyond what the Employer provided. The Employer's report indicated that eight U.S. workers applied and were rejected due to a lack of experience. Lack of experience is a lawful reason for rejecting applicants. Accordingly, the CO's denial on this basis is reversed.

The CO also denied certification on the basis of § 656.10(b)(2)(ii) which states the following:

> The employer's representative who interviews or considers U.S. workers for the job offered to the alien must be the person who normally interviews or considers, on behalf of the employer, applicants for job opportunities such as that offered the alien, but which do not involve labor certifications.

Colleen Leahy was listed for "Employer Contact Information" in Section D of ETA Form 9089. (AF 120). Ms. Leahy signed the "Recruitment Report" (AF 63), received U.S. workers' applications (*See* AF 76, 106), and signed the Employer's "Response to Audit Notification." (AF 114). Additionally, the Employer's brief in support stated the Employer has 126 employees, and "Ms. Leahy plays a central role in PAPI's hiring process . . . the company relies on [her] to serve both in human resources and legal assistant roles." The Employer is represented by outside counsel who made clear Ms. Leahy is not an employee or associated with the attorney of record in this case.

There is nothing in the record to indicate Ms. Leahy's role as employer representative does not comply with the requirements of § 656.10(b)(2)(ii). The CO does not present any support for his implication. Accordingly, this reason for denial is also overturned.

ORDER

IT IS ORDERED that the denial of labor certification in this matter is hereby **REVERSED,** and that labor certification is hereby **GRANTED**.

For the Panel:

Digitally signed by Kenneth Krantz
DN: CN=Kenneth Krantz,
OU=Administrative Law Judge, O=Office
of Administrative Law Judges,
L=Newport News, S=VA, C=US
Location: Newport News VA

KENNETH A. KRANTZ
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.