



Issue Date: 01 December 2015

BALCA Case No.: 2012-PER-00825
ETA Case No.: A-10054-87468

In the Matter of:

SCREEN PRINTERS RESOURCE, INC.,

Employer,

on behalf of

BAKSHI, MANOJ KUMAR,

Alien.

Appearance: James Y. Pack, Esquire
Fragomen, Del Rey, Bernsen, and Loewy, LLP
Irvine, California
For the Employer

Before: Stephen R. Henley, *Chief Administrative Law Judge*; Paul R. Almanza,
and Morris D. Davis, *Administrative Law Judges*

DECISION AND ORDER
DIRECTING GRANT OF CERTIFICATION

PER CURIAM. This matter arises under the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(5)(A) and the implementing regulations at 20 C.F.R. Part 656.

BACKGROUND

The Employer filed a labor certification application sponsoring the Alien for permanent employment in the United States in the job title of “International Sales and Service Business Development.” (AF 205-215).¹ The Certifying Officer (“CO”) audited the application and denied certification on the ground that the recruitment conducted through the Employer’s website failed to identify the job location. The CO cited the regulations at 20 C.F.R. § 656.10(c)(8) and 20 C.F.R. § 656.17(f)(4) as the regulatory basis for the denial. (AF 59-61).

¹ Citations to the appeal file are shown as “AF” followed by the page number.

The Employer requested reconsideration arguing that 20 C.F.R. §656.17(f) is not relevant to advertisements placed on the Employer’s website and is specifically applicable to Sunday newspaper print advertisements. The Employer also argued that its website advertisement clearly apprised U.S. workers of the job opportunity. (AF 3-58).

The CO reconsidered (AF 1-3) but found that the website advertisement must contain the information required by 20 C.F.R. § 656.17(f). (AF 2). The CO also concluded that lack of information about “where an applicant would likely have to reside to perform the job opportunity and of any travel requirements ... could have a chilling effect on applicants and artificially exclude potentially qualified U.S. workers who may be unwilling to apply for a job opportunity for which a job location is not listed.” (AF 2). The CO also found that “[s]ince the employer’s website did not contain the geographic location for the job opportunity, a logical nexus between the employer’s website advertisement and the job offered on the ETA Form 9089 has not been established.” *Id.* Thus, the CO found that the grounds for denial were valid.

On appeal neither the Employer nor the CO filed an appellate brief.

DISCUSSION

Employers seeking permanent labor certification under the basic process at 20 C.F.R. § 656.17 must test the labor market before filing a labor certification application. If the application involves a professional occupation, the employer must complete the “mandatory” recruitment steps required by § 656.17(e)(1)(i) and three of the “additional” recruitment steps listed in § 656.17(e)(1)(ii). Newspaper and professional journal advertisements placed to fulfill the mandatory recruitment steps must comply with the advertising content requirements in § 656.17(f). Section 656.17(f)(4) requires that such advertisements “[i]ndicate the geographic area of employment with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the job opportunity.” In *Symantec Corp.*, 2011-PER-1856 (July 30, 2014) (en banc), however, the Board ruled that by its plain language, Section 656.17(f) applies to “[a]dvertisements placed in newspapers of general circulation or in professional journals” and that advertisements placed to fulfill the additional professional recruitment steps are not required to comply with the detailed content requirements of § 656.17(f). Accordingly, we find that the CO could not deny certification under 20 C.F.R. § 656.17(f)(4) based on the fact that one of the Employer’s additional professional recruitment steps, in this case the company website advertisement of the occupation, did not state the geographic area of employment.

The CO in this case also based his denial on 20 C.F.R. § 656.10(c)(8), which requires that an employer attest that “[t]he job opportunity has been and is clearly open to any U.S. worker....”

In *Symantec Corp.*, the Board noted that the additional professional recruitment step at “Section 656.17(e)(1)(ii)(C) ... only requires that a petitioning employer advertise *the occupation* involved in the application.” *Id.* at 8 (emphasis as in original). The Board found that a “broadly worded advertisement is permitted by § 656.17(e)(1)(ii)(C), which only requires that

the advertisement ‘advertise the occupation involved in the application.’” *Id.* Moreover, in *Symantec Corp.*, the Board found that the Employer’s inclusion of a travel requirement, preceded by the word “may,” did not lead it to the conclusion that the employer’s “job search website advertisement did not advertise the occupation involved in the application, or that Symantec included the possibility of travel in this advertisement to dissuade qualified workers from applying for the job opportunity.” *Id.*

In the instant case, the Employer’s website advertisement did not state where the job opportunity would be located. The advertisement, however, described the title of the job; the responsibilities of the job; the educational, work experience, and knowledge requirements of the job; and where an applicant could email or fax a resume to apply for the job. (AF 190-192). Although this company website posting of the job opportunity is not detailed, it is not misleading. The CO concluded in his decision on reconsideration that some U.S. workers may be unwilling to apply for a job opportunity for which a job location is not listed. But given that this additional professional recruitment step only needs to advertise the occupation involved in the application, we find that the omission of a reference to where the job is located does not, in itself, lead to the conclusion that the job was not clearly open to U.S. workers.

ORDER

Based on the foregoing, **IT IS ORDERED** that the Certifying Officer’s denial of labor certification in the above-captioned matter is **VACATED** and that the CO is **DIRECTED** under 20 C.F.R. § 656.27(c)(2) to **GRANT CERTIFICATION**.

Entered at the direction of the panel by:

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 en banc review by the Board. Such review is not favored and ordinarily will not be granted except (1) when en banc 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 en banc 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.