



Issue Date: 06 October 2016

BALCA Case No.: 2012-PER-02084
ETA Case No.: A-11103-70623

In the Matter of:

HTC GLOBAL SERVICES, INC.,
Employer,

on behalf of

CHENNADI, DEERAJ,
Alien.

Certifying Officer: William Carlson, Ph.D.
National Certifying Officer

Appearance: Linda J. Armstrong, Esquire
Butzel Long, P.C.
Detroit, Michigan
For the Employer

Before: Stephen R. Henley, *Chief Administrative Law Judge*; William T. Barto
and Larry S. Merck, *Administrative Law Judges*

DECISION AND ORDER
DIRECTING GRANT OF CERTIFICATION

PER CURIAM. This matter arises under § 212(a)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(5)(A) and the “PERM” labor certification regulations at 20 C.F.R. Part 656.¹

BACKGROUND

The Employer filed an *Application for Permanent Employment Certification* (“Form 9089”) sponsoring the Alien for permanent employment in the United States in Troy, Michigan.

¹ “PERM” is an acronym for the “Program Electronic Review Management” system established by the regulations that went into effect on March 28, 2005.

The occupational title listed on the Form 9089, Section F.3, was “Computer Software Engineers, Applications,” Standard Occupational Classification Code 15-1031.00. (AF 515-524).² The Employer attested on the Form 9089, Section I.d.13, that it advertised during a job fair on November 10, 2010 as one of its additional recruitment steps. (AF 519).

On October 31, 2011, the Certifying Officer (“CO”) issued an audit notification to the Employer requesting, among other items, recruitment documentation as outlined in § 656.17(e). (AF 502-505). On November 28, 2011, the Employer submitted its audit response, including documentation of recruitment during a job fair. (AF 138-150). Specifically, the Employer included email correspondence from an account executive with the job fair sponsoring company including a receipt confirmation and a request for advertisement information, a credit card receipt for \$599 from The Employment Guide³ dated October 29, 2010, a flyer with the details of the job fair, a sign up form with pricing for participating employers,⁴ and an advertisement report reflecting 35 applicants sourced from the job fair. *Id.*

After reviewing the Employer’s audit response, the CO denied certification on two grounds. (AF 20-21). The CO accepted the Employer’s argument on reconsideration as to the second ground for denial, leaving only one ground for denial on appeal--the Employer failed to provide adequate documentation of its participation in a job fair, a violation of 20 C.F.R. § 656.17(e)(1)(ii)(A). (AF 1-2). On January 10, 2011, the Employer submitted a request for reconsideration, arguing that it had included documentation of its participation in a job fair. (AF 3-4). The Employer included its documentation from its audit response.

The CO reconsidered, but found that the ground for denial was valid because “none of the provided documentation establish[ed] the employer’s participation at the job fair,” a violation of 20 C.F.R. § 656.17(e)(1)(ii)(A). (AF 1-2). The CO elaborated on the sufficiency of the evidence, stating

(1) [T]he email listing a credit card payment to The Employment Guide doesn’t specify that it is for the career fair; (2) the brochure provided was an advertising brochure soliciting participation by companies at the Employment Guide Fair and does not name the employer; (3) the emails from Sean Carney of The Employment Guide are to remind the employer to send information for ads and postings, but neither the employer’s email response or subsequent ads or postings were provided as documentation and (4) the photos and press coverage do not name the employer.

² Citations to the Appeal File are abbreviated as “AF” followed by the page number.

³ The Employment Guide is the name of the company that sponsored the career fair. (AF 140).

⁴ Employers had the option to choose between a Corporate Package (\$1,499), a Gold Package (\$899), a Silver Package (\$699), or a Bronze Package (\$599). (AF 141).

On appeal, the Employer filed a statement confirming its intention to proceed with the appeal. The Employer also submitted an appellate brief through counsel,⁵ arguing that the CO “failed to consider the employer’s documentation and explanation of the job fair event and the employer’s participation in [the] event.” Emp. Br. at 6-7. The CO did not file a statement of position or an appellate brief.

DISCUSSION

When an employer files an application for permanent labor certification for a professional occupation under the basic process at § 656.17, an employer must conduct “mandatory steps,” including two print advertisements and a job order, as well as three of ten “additional recruitment steps” prior to filing an application. 20 C.F.R. § 656.17(e)(1)(i)-(ii). One type of an additional recruitment step is an employer’s recruitment at a job fair. 20 C.F.R. § 656.17(e)(1)(ii)(A). Recruitment at a job fair “can be documented by brochures advertising the fair and newspaper advertisements in which the employer is named as a participant in the job fair.” *Id.*

While the regulation at § 656.17(e)(1)(ii)(A) provides one method for documenting an employer’s participation in a job fair, the employer can document its participation by other means if the alternative documentation is reasonably equivalent to the primary proof required by the regulation, and it adequately indicates the employer actually participated in recruitment at the job fair. *See St. Landry Parish Sch. Bd.*, 2012-PER-01135 (Apr. 28, 2016) (finding that alternative documentation of an additional recruitment step must be reasonably equivalent to the primary proof specified in the regulation); *Micron Tech., Inc.*, 2011-PER-02193 (Jan. 30, 2014) (finding alternate means of documentation must indicate the recruitment method was used and the necessary information was provided to potential U.S. applicants).

In this case, the CO denied certification because the Employer’s documentation of its participation in a job fair was insufficient. The Employer submitted several documents with its audit response as evidence of its participation in a job fair: (1) an email dated October 12, 2010 from an account executive at the job fair sponsoring company recapping a phone conversation and inviting the Employer to participate in upcoming career fairs; (2) an email dated October 29, 2010 from the account executive providing a receipt confirmation; (3) a credit card receipt dated October 29, 2010 for \$599.00 paid by the Employer to The Employment Guide; (4) a flyer advertising the date, time, and location of the job fair and indicating The Employment Guide as the event sponsor; (5) an order form listing the packages available to prospective employers; (6) an email dated November 1, 2010 from the account executive requesting information for the Employer’s advertisements and postings for the “November 10th Career Fair;” (7) photos from the 2009 job fair; and (8) a recruitment report and spreadsheet reflecting 35 applicants sourced solely from participation in the job fair.

In *THQ, Inc.*, 2011-PER-00568 (Feb. 16, 2012), the panel found that the regulation at § 656.17(e)(1)(ii)(A) places employers on notice that documentation of a job fair must name the employer as a participant in the job fair. There, the panel considered whether the submission of a

⁵ The Employer did not indicate it was represented by counsel on the Form 9089, nor was counsel mentioned in documentation in the Appeal File.

brochure with information about the employer's company, business cards, and a spreadsheet listing several employers was sufficient evidence of the employer's job fair participation. *Id.* In finding that the documentation was insufficient, the panel noted that the brochure and business cards were generic recruiting materials, and the spreadsheet did not indicate it was from the job fair, so none of the evidence verified the employer's participation in the job fair. *Id.*; *see also Spring Branch Indep. Sch. Dist.*, 2012-PER-01171 (Jan. 15, 2015) (finding that the documentation required at least "some materials from the host of the job fair advertising or noting an employer's participation," and a mere assertion by the employer is not sufficient) (emphasis added).

Here, the employer's evidence of its participation in a job fair provided with its audit response goes far beyond the type of evidence in *THQ, Inc.* The pieces of evidence are not merely generic recruitment tools, but rather, they document ongoing correspondences with the job fair sponsor company and demonstrate the Employer took the required steps to register for and participate in the job fair. Furthermore, the receipt confirmation received from the sponsor company clearly notes the Employer's name and states, "For your records."

A timeline can be constructed from the evidence that demonstrates that the Employer participated in a job fair on November 10, 2010. Beginning on October 12, 2010, the Employer began discussing participation in the job fair with the sponsoring company, as noted in the email correspondences with the sponsoring company. On October 29, 2010, the Employer's receipt documentation indicates it paid \$599 to the sponsoring company. While the receipt itself does not specify the content of the purchase, it was received from the job fair sponsor, and the Employer also submitted a blank order form listing prices for packages for the job fair. The "Bronze Package" was an option for a cost of \$599. Further, on November 1, 2010, after the payment but nine days prior to the date of the event, the Employer received an email from the job fair sponsoring company requesting information for the Employer's advertisements and postings for the November 10, 2010 job fair.

Moreover, the Employer's recruitment report was compiled by recruitment step. In the section designated for the job fair, the Employer included all of the aforementioned documentation in addition to a table depicting that a total of 35 applicants submitted resumes for the job opportunity during the job fair, two of which were under further consideration.⁶ In *AQR Capital Mgmt.*, 2010-PER-00323 (Jan. 26, 2011), the panel found there was substantial evidence of the Employer's employee referral program because, even though the documentation did not include a date, an element contained in the regulation at § 656.17(e)(1)(ii)(G), the employer received 45 applications under the program. The panel found that the purpose of including the date was to establish that the program was in existence at the time of recruitment, but where a significant number of applicants applied through the program, there was no doubt the program existed. *See also Marlabs, Inc.*, 2010-PER-01581 (Mar. 22, 2012) (finding that the body of evidence contained in the employer's audit response may be used to determine whether the employee referral program was in existence at the time of recruitment).

We recognize that the CO may be correct in finding that no single piece of the

⁶ The Employer's total applicants for the job opportunity from all recruitment sources appear to be 88 applicants. The job fair resulted in 35 applicants, or approximately 40%.

documentation establishes the Employer's participation in the job fair. However, all of the evidence in the Employer's audit response of communications with the job fair sponsor company leading up to the job fair taken together with the recruitment report, which provided that approximately 40% of the applicants for the job opportunity were sourced from the job fair, leads to a conclusion that the Employer did, in fact, recruit at the job fair. Under the precise facts of this case, we find that the Employer provided sufficient documentation to demonstrate it actually participated in the job fair, and the bulk of the evidence considered together was reasonably equivalent to the primary proof required by the regulation at 20 C.F.R. § 656.17(e)(1)(ii)(A).

ORDER

IT IS ORDERED that the denial of labor certification in this matter is **REVERSED** and that this matter is **REMANDED** for certification pursuant to 20 C.F.R. § 656.27(c)(2).

For the panel:

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 ten double-spaced pages. Responses, if any, shall be filed within ten days of service of the petition, and shall not exceed ten double-spaced pages. Upon the granting of a petition the Board may order briefs.