



Issue Date: 28 October 2016

BALCA Case No.: 2012-PER-02387
ETA Case No.: A-11129-76775

In the Matter of:

HTC GLOBAL SERVICES, INC.,
Employer,

on behalf of

HEGDE, RAGHAVENDRA,
Alien.

Certifying Officer: Atlanta National Processing Center

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

Before: Stephen R. Henley, *Chief Administrative Law Judge*; William T. Barto
and Morris D. Davis, *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 in Form 9089, Section F-3 was “Software Engineer,” Standard Occupational Classification Code 15-1031.00. (AF 427).² The Certifying Officer (“CO”) audited the application and requested, among other documents, a copy of the recruitment report signed by the Employer or the Employer’s representative describing the recruitment steps undertaken and the results achieved. (AF 422). Upon review of the audit, the CO stated that the Employer failed to provide a recruitment report signed by the Employer or the Employer’s representative in violation of §§ 656.10(b)(2)(ii) and 656.17(g)(1). (AF 16). The CO went on to state that the documentation submitted only listed the results of the recruitment. *Id.*

The Employer filed a request for reconsideration stating that it had submitted the recruitment reports signed by its representative and once again attached the documents. (AF 2). The CO rejected the Employer’s argument on reconsideration and affirmed the denial of certification for the reasons above. (AF 1). The denial on reconsideration focused primarily on the fact that the name signed on the recruitment report was not the same as the signature of Suresh Subramanian on the ETA Form 9089 in Section N.1 and the Request for Reconsideration. (AF 3).

On appeal, the Employer filed a statement confirming its intention to proceed with the appeal. An appellate brief was received from the Employer on March 1, 2013, which stated that the person signing the recruitment report was Venu Vaishya, the Employer’s Executive Vice President – Operations, someone who routinely conducted interviews. It argued that the lack of name and title for the signatory was immaterial and that the CO’s denial violated fundamental fairness. The CO did not file an appellate brief.

DISCUSSION

The regulation at § 656.17(g)(1) provides that “[t]he 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.” Pursuant to § 656.10(b)(2)(ii), an employer’s representative is defined as a person “who interviews or considers U.S. workers for the job offered to the alien [and] 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.” Failure to prepare a signed recruitment report is grounds for denial of certification. *Mississippi College*, 2011-PER-00576 (Dec. 13, 2011).

The CO found the recruitment report deficient for two reasons. First, the CO stated that the Employer’s audit response did not describe the recruitment steps undertaken, but only listed the results achieved. (AF 16). The Employer argued that the documentation submitted complied with the regulations, as stated in 20 C.F.R. § 656.17(g)(1). (Br. p. 3). We agree. While the report was unconventional, the documentation did meet the technical requirements of the regulation. The Employer submitted a separate document for each recruitment step it took. (AF 52-57). In addition to the step taken, each document listed the number of applicants and the lawful job related reason for rejection, as well as the type of advertisement and the dates it ran.

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

Id. For the foregoing reasons, we find that the multi-page report the Employer submitted with its audit response did describe the recruitment steps undertaken as required by 20 C.F.R. § 656.17(g)(1).

Second, the CO denied the application because the name signed in the recruitment report was not the same as the signature of Suresh Subramanian on the ETA Form 9089. (AF 3). The Employer states that the report was signed by Venu Vaishya, the Employer's Executive Vice President – Operations. (Br. p. 5). Venu Vaishya is the Employer's representative who is in charge of interviewing or considering U.S. workers for various positions, including a software engineer position. (Br. p. 4). The Employer argues the fact that the printed name and title of Venu Vaishya did not appear on each page of the recruitment report under his signature, has no material effect. (Br. p. 6). While providing the CO with the name and title of the signatory would certainly be helpful, the regulations do not require it. Furthermore, the regulations do not require the signatory to be the same on the recruitment report and the ETA Form 9089. Therefore, we find that the recruitment report was signed by the Employer or Employer's representative in compliance with § 656.17(g)(1).

Based on the foregoing, we reverse the CO's denial of the labor certification application.

ORDER

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

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 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.