

U.S. Department of Labor

Board of Alien Labor Certification Appeals
1111 20th Street, N.W.
Washington, D.C. 20036



DATE: JAN 31 1989
CASE NO. 87-INA-703

IN THE MATTER OF

Quality Products of America, Inc.,

Employer,

on behalf of

Marc Decoene,

Alien

BEFORE: Litt, Chief Judge; Vittone, Deputy Chief Judge; and Brenner, DeGregorio, Guill,
Schoenfeld and Tureck,
Administrative Law Judges

JOHN M. VITTONI
Deputy Chief Judge

DECISION AND ORDER

The above-named Employer requests review pursuant to 20 C.F.R § 656.26 of the United States Department of Labor Certifying Officer's denial of labor certification application. This application was submitted by the Employer on behalf of the above-named Alien pursuant to Section 212(a)(14) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(14) (the Act).

Under Section 212(a)(14) of the Act, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is ineligible to receive labor certification unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that, at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work: (1) there are not sufficient workers in the United States who are able, willing, qualified and available and (2) the employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

The procedures governing labor certification are set forth at 20 C.F.R. Part 656. An employer who desires to employ an alien on a permanent basis must demonstrate that the requirements of 20 C.F.R. § 656.21 have been met. These requirements include the responsibility of the employer to recruit U.S. workers at the prevailing wage and under prevailing working

conditions through the public employment service and other reasonable means in order to make a good faith test of U.S. worker responsibility.

This review of the denial of labor certification is based on the record upon which the denial was made, together with the request for review, as contained in an Appeal File [hereinafter AF], and any written arguments of the parties. 20 C.F.R. § 656.27(c).

Statement of the Case

Quality Products of America, Inc. ("Quality Products"), filed an application for alien labor certification on August 24, 1986, (AF 40-176), on behalf of the Alien, Marc Decoene, a citizen of Belgium. (AF 177). The position for which certification is sought is President of its Import/Export business in wholesale and retail goods. (AF 40). Quality Products described the job duties as follows:

Manage and direct operations of company engaged in purchasing, wholesaling and distributing of electrical, electromechanical and mechanical devices and parts to customers within the United States and Germany. Contract for the manufacture of products according to specifications provided from foreign manufacturers. Import products for sale. Export products for sale in Germany. Estimate inventory. [A]uthorize purchase of goods based upon orders, volume of sales and markets. Maintain financial controls, report to Board of Directors. Supervise lower level employees.

(AF 40). Job requirements include either a B.A. or B.S. degree in Economics or Finance, or two years of post secondary education and two years of work experience; two years of experience as the manager of an import/export company; and the ability to speak, read and write fluently in German. (AF 40).

The Notice of Findings (NOF) was issued on April 20, 1987. (AF 18-22). Quality Products submitted its rebuttal on May 20, 1987 (AF 8-17). The Final Determination was issued on August 7, 1987 (AF 5-7). Quality Products requested review on September 7, 1987, and filed a brief in support thereof on October 31, 1987.

Discussion

To obtain labor certification, an employer must clearly document, inter alia, that all U.S. workers who applied for the position were rejected for lawful, job-related reasons. 20 C.F.R. § 656.21(b)(7). Failure to satisfy this or other requirements constitutes a proper reason for denial of labor certification. 20 C.F.R. § 656.24(b)(1).

Here, the Certifying Officer determined that John W. Bowers met Employer's minimum requirements, and was thus qualified for the position. Consequently, if the C.O. is correct,

Employer's rejection of Mr. Bowers resulted in a violation of 20 C.F.R. §656.21(b)(7), and required denial of the application in the NOF. Employer's response to this determination was to assert that, although Mr. Bowers has served as an executive in large corporations, his expertise has been in the financial administration of the corporations he has served, and he has never been directly involved with and has no experience in the day-to-day operations of an import/export company (AF 10). The Certifying Officer found this insufficient to rebut his determination that Mr. Bowers was qualified, and denied certification in the Final Determination on this basis.

We agree with the Certifying Officer. Mr. Bowers' resume (AF 123) shows 14 years' experience in all aspects of export operations, including extensive experience in marketing, sales, engineering, production, accounting and forecasting. We agree that this established that Mr. Bowers met the requirements. Accordingly, denial of labor certification was proper.

ORDER

The Final Determination denying labor certification is hereby **AFFIRMED**.

JOHN M. VITTON
Deputy Chief Judge

Dated:
Washington, D.C.

JMV/AB/kat