



DATE: MAY 31, 1989
CASE NO. 88-INA-78

IN THE MATTER OF

BUSINESS MEN'S INSURANCE
Employer

on behalf of

MARIA ISABEL GRUNAUER
Alien

Appearances: Elisa Sukkar, Esquire
For the Employer

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

LAWRENCE BRENNER
Administrative Law 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 a 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.

An employer who desires to employ an alien on a permanent basis must demonstrate that the requirements of 20 C.F.R. Part 656 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 by other reasonable means in order to make a good faith test of U.S. worker availability.

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 ("AF") and any written arguments of the parties. 20 C.F.R. §656.27(c).

Statement of the Case

Employer is an insurance company whose business consists of selling insurance coverage. On May 14, 1986, an application submitted by Employer on behalf of Alien was accepted for processing. Therein, Employer indicated that it was recruiting for the position of bilingual executive secretary. Employer listed the duties of that position as follows:

Translate business transactions for clients, agents, other companies. Handle correspondence from companies and agents abroad. Compose and type routine correspondence, as well as translations of same. Take dictation in shorthand or by machine in English and Spanish. Transcribe as well as translate documents, messages, forms, etc. Complete and type statistical reports. Read and route correspondence and translate them when necessary. Examine invoices, insurance policies, claim forms, health and life insurance. Handle clients and agents as well as settlement cases. Handle president's personal bookkeeping, mail and phone calls. Make decisions and represent him on business or personal trips. Supervise other employee's work, use typewriter, shorthand machine, shorthand, telex machine, work processing computer (A97).

Employer stated, at Item #14 on its application form, that the minimum "education, training, and experience qualifications" necessary for a worker to satisfactorily perform these job duties are: one year of secretarial college and one year of experience in the job offered. (Id.).

On July 29, 1987, the CO issued a Notice of Findings ("NOF"). Therein, he determined that Employer has not met the requirements of §656.21(b)(2) Specifically, the CO found, inter alia, that the requirement of one year of college is unduly restrictive and the Employer will have to prove business necessity (A53-57).

On May 8, 1987, Employer submitted evidence in rebuttal to the NOF offering that the one year of college requirement constitutes a business necessity. As evidence that the job of secretary cannot be performed without the year of college, Employer stated that "[I]n the past, the Employer has hired people who did not have this basic [secretarial] college training with unfavorable results. The people hired proved to lack the capacity needed to fulfill their obligations at Employer's business" (A31). Employer stated that "its requirement of one year of [secretarial] college education would give the Employer immediate assurances that the potential employee has at the very least, a basic training in those skills which are vital to its business operations" (A32). As evidence of its desire to employ someone with the necessary skills,

Employer submitted as part of its rebuttal, a series of examples of correspondence, telex messages, and math, grammar, typing and translation tests which the Employer gives (A35-52).

On October 16, 1987, the CO issued a Final Determination, denying labor certification. The CO stated:

The Notice of Findings was issued on the basis that one year of college is unduly restrictive. There is no evidence that a person with one year of college could perform better or as well as a person with two or more years successful secretarial experience. One year of college would not guarantee a successful employee, especially when no degree or diploma is required. Requiring one year of college without a certificate of completion would only serve to exclude qualified U.S. workers who may have demonstrated experience as successful secretaries who have not attended college for one year.

This case is denied on the grounds that the one year of college is unduly restrictive (A27).

Discussion

We agree with the CO's succinct and accurate determination. The Employer has not shown why an alternative requirement of two years experience in the job offered would not provide as equal a basis for a qualified executive secretary as its requirement of one year of secretarial college and one year of experience. Had the Employer expanded its unduly restrictive requirement, it would have been free to also require an applicant to successfully complete the test it states it routinely administers to all prospective secretaries. In fact, the use of its test undercuts the Employer's argument that one year of secretarial college (with no requirement of a certificate of skills) is a necessity in order for it to predict whether an applicant would be a qualified executive secretary. Therefore, the Employer has not shown that one year of secretarial college is essential to perform, in a reasonable manner, the job duties of executive secretary as described by the Employer. Information Industries, Inc., 88-INA-82 (Feb. 9, 1989) (en banc).

ORDER

The Final Determination of the Certifying Officer denying labor certification is AFFIRMED.

For the Board:

LAWRENCE BRENNER
Administrative Law Judge

LB/gaf

In the Matter of Business Men's Insurance, 88-INA-78
Joel R. Williams, Administrative Law Judge, dissenting:

I cannot agree with the majority's decision in that it is inconsistent with the Board's decision in In re Quincy School Community Council, 88 INA 81 (Feb. 21, 1989) (en banc). Therein, the Board unanimously held that the requirements of a Master's degree and two years of teaching experience ". . . are essential to perform, in a reasonable manner, the job duties. . . ", id. at 3, based on the employer's statement that the degree is needed to ensure that the applicant will have a theoretical background in teaching techniques and the experience is needed to ground the theoretical knowledge in reality and on the employer's assertion that in the past, employees hired with a degree but no practical experience had developed inappropriate material which led to a high student dropout rate.

Similarly, in the instant case, Employer maintains that "[t]he argument that years of experience are the equivalent of a college education is not the rule in every case. In most cases experience is based on the particular whims of the Employer in question. A college education on the other hand is a much broader training that covers all facets of the soon to be encountered business world." (Brief of Employer at 11). Employer states that in the past, employees hired without the basic college training proved to lack the capacity needed to fulfill their obligation at the employer's business and this resulted in the employees being asked to leave or in the employees leaving on their own after realizing that they could not handle the job. A31.

In this case, as in Quincy, the employer explains why an applicant's possession of only experience or only education is not sufficient and then relies on its own experiences in running its business to show the negative impact on an applicant's ability to fulfill the job duties which the lack of the experience or education requirement will have.

Since this Board is bound by its prior decisions, and the majority has not distinguished the facts of this case from those presented in Quincy, I would hold that Employer has established that the requirement of one year of secretarial college is essential to perform the job duties and thus, grant labor certification.

JOEL R. WILLIAMS
Administrative Law Judge