



DATE: February 1, 1989
CASE NO. 88-INA-147

IN THE MATTER OF

ESSEX COUNTY COLLEGE
Employer

on behalf of

QIAO SHEN WANG
Alien

Olive V. Williams, Esq.
For the Employer

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

NICODEMO DeGREGORIO
Administrative Law Judge

DECISION AND ORDER

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) (hereinafter "the Act"). The Employer requested review from U.S. Department of Labor Certifying Officer's denial of a labor certification application pursuant to 20 C.F.R. § 656.26¹

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 a visa unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that: (1) there are not sufficient workers in the United States who are able, willing, qualified, and available 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; and (2) the employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

¹ All of the regulations cited in this decision are contained in Title 20 of the Code of Federal Regulations.

An employer who desires to employ an alien on a permanent basis must demonstrate that the requirements of Part 656 of the regulations 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 a 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 written arguments of the parties [see § 656.27(c)].

Statement of the Case

On August 9, 1985, the Employer filed an application for alien employment certification (AF 16) to enable the Alien to fill the position of Program Director, D.O.T. Title and Code, Teacher, Junior College, 090227010. Employer is a college which is located in Newark, New Jersey. The requirements of the job of Program Director were a Master of Science degree in industrial art/design or five years experience in industrial art/design.

Following the issuance of the Notice of Findings ("NOF") by the Certifying Officer ("CO") on September 23, 1987 (AF 30-31), the Final Determination denying certification was issued on November 4, 1987 (AF 37-38). Certification was denied because the Employer failed to recruit through colleges and universities, as required by the CO pursuant to § 656.21(b)(4).

Discussion

The CO in her NOF gave three reasons for rejecting the certification, two of which were adequately rebutted by the Employer as acknowledged by the CO in the Final Determination.

The remaining issue involves the CO's determination that the Employer failed to comply with 20 C.F.R. § 656.21(b)(4) which requires an employer to document that its other efforts to locate and employ U.S. workers for the job opportunity have been and continue to be unsuccessful.

The Employer asserts that it worked diligently with the local job service. It placed a posting at its place of business which reached its students, faculty, staff and administrators and the local community. At the suggestion of the New Jersey Division of Employment Services, it advertised in the Education Section of The New York Times, a nationally recognized publication which reaches a large sample of the labor market. The foregoing was over and above the recruitment action which had taken place prior to filing the application for certification of the Alien. Employer argues before the Board that the advertisement it has conducted was the most likely to bring responses from qualified U.S. citizens; was most likely to include the same population which a college and university search would have reached; and, is in full compliance with 20 C.F.R. § 656.21. It asserts that the CO's demand may require a massive advertising campaign all over the country to reach a greater population than is necessary and would likely involve a significant expenditure which the Employer is unable to meet. Employer also claims

that the CO's requirements are inherently unfair and unreasonable, and impose an inequitable burden on it, particularly as its recruiting efforts should be judged according to standards which apply to job offers for college or university teachers.

The Employer's arguments are unpersuasive. Since a person with a Master of Science degree in industrial arts or design would be qualified to fill the position of Program Director, it was reasonable for the CO to insist that the employer submit inquiries to colleges and universities which frequently have referral services or placement offices where qualified students and former students register for future employment opportunities. Students at the educational institutions, faculty and staff members would also have access to institutional bulletin boards or other sources of public notice at the institutions concerning the job opening, and would then be able to seek employment as Program Director. The scope of the CO's request is not an issue in this case because the Employer did not raise it in rebuttal and made no attempts to recruit through any college or university.

While the Employer has complied with the suggestions of the New Jersey Employment Services when it placed its advertisement with The New York Times, the CO has the ultimate responsibility for determining the adequacy of the Employer's recruitment efforts and whether additional potential sources of U.S. workers may be available to fill the job. Section 656.21(b)(4) expressly authorizes the CO to require additional recruitment through colleges and universities. Although the CO gave no elaborate reasons in the NOF for finding such recruitment appropriate, see In the Matter of Intel Corp., 87-INA-570 (December 11, 1987), we believe the reasons are fairly obvious.

Based on the evidence of record, we find that the Employer has not complied with the requirements of 20 C.F.R. § 656.21(b)(4) by showing that its efforts to locate and employ U.S. workers for the job opportunity have been adequate and have been unsuccessful.

ORDER

The determination of the Certifying Officer denying the Employer's application for labor certification is AFFIRMED.

NICODEMO DeGREGORIO
Administrative Law Judge

Washington, D.C.

ND/jsp