



DATE ISSUED: March 21, 1989

CASE NO. 88-INA-252

IN THE MATTER OF THE APPLICATION
FOR AN ALIEN EMPLOYMENT CERTIFI-
CATION UNDER THE IMMIGRATION AND
NATIONALITY ACT

JUST CLOTHES, INC.
Employer

on behalf of

HECTOR RODRIGUEZ
Alien

Robert D. Ahlgren, Esq.
For the Employer

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

NAHUM LITT
Chief Judge:

DECISION AND ORDER

This case arose from an application for labor certification submitted by the Employer on behalf of the Alien pursuant to Section 212(a)(14) of the Immigration and Nationality Act, 8 U.S.C. §1182(a)(14) (the Act). The Certifying Officer (CO) of the U.S. Department of Labor denied the application, and the Employer requested administrative-judicial review pursuant to 20 C.F.R. §656.26 (1988).¹

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 there are not sufficient workers who are able, willing, qualified, and available at the

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

time of application for a visa and admission into the United States and at the place where the alien is to perform such work, and that 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 apply for labor certification pursuant to §656.21. 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 (A1-A106), and any written arguments of the parties. §656.27(c).

Statement of the Case

On September 24, 1986, the Employer, Just Clothes, Inc., filed an application for alien employment certification to enable the Alien, Hector Rodriguez, to fill the position of apparel buyer. The duties of the position include: selecting and ordering women's and men's apparel for 3 retail stores; estimating and inspecting values according to knowledge of market price; receiving manufacturers' seasonal lines for retail and value; arranging transportation of purchases; authorizing payment or return of merchandise; contacting wholesalers in major cities; and interviewing wholesalers to obtain information concerning merchandise, price, and availability. The requirements include a high school education, and two years experience in the job offered or two years as "general manager of retail store." The Employer also listed a special requirement of willingness to travel 20 percent of the time. (A29).

The Alien's Statement of Qualifications indicate that he was employed from August, 1981 until January, 1984, as the general manager of a retail sales clothing store with the responsibility of managing the store. The duties included: assisting in coordination of buying by colors for best visual merchandising; knowledge of fashion trends, sizes and size scale trends; keeping records of merchandise (performance, costs, and quantity); managing mark up and mark down of merchandise; being responsible for payroll, bookkeeping and inventory; interviewing prospective employees; and supervising and managing personnel. (A32).

On January 19, 1988, the CO issued a Notice of Findings (NOF). (A18-A20). The CO listed the following deficiencies: the job opportunity is not clearly open to any qualified U.S. worker, under §656.20(c)(8); U.S. workers who have applied were not rejected solely for lawful, job-related reasons, under §656.21(b)(7); the requirements for the job opportunity do not represent the employer's actual minimum requirements for the job, under §656.21(b)(6). According to the CO, U.S. applicants, Kelli Joe Fullgraf, Michael Berilla, and Larry M. Cherry have more than two years experience as managers of retail stores and were improperly rejected.

In its rebuttal of February 19, 1989, (A23-A25), the Employer stated that none of the three applicants referred to in the NOF have been strictly "Apparel Buyers" for more than one store. The Employer also stated that this position is for a general manager/buyer, and that a general manager is different from a manager in that the general manager, in the Employer's employment structure, is in charge of three stores. According to the Employer, none of the three U.S. applicants listed has been a general manager; they have managed only one store. In addition, the Employer stated that U.S. applicant, Mr. Cherry, could not handle those responsibilities in his own business.

On March 8, 1988, the CO issued a Final Determination denying certification. (A9-A10). The grounds for denial included that the job opportunity was not clearly open to any qualified U.S. worker under §656.20(c)(8), and that U.S. workers were rejected for other than lawful, job-related reasons under §656.21(b)(7) and §656.21(j)(1). According to the CO, in item 14 of the ETA 750A, the Employer specified that an applicant must have two years of experience in the job offered or two years of experience as a general manager of a retail store. The CO then found that Ms. Fullgraf and Mr. Berilla were qualified for the job as having two years experience as a general manager of a retail store. The CO also found that the Employer rejected Mr. Cherry because his store went out of business, and that since the Employer did not state why the store went out of business, it could not use an unstated reason for rejection. (A9-A10)

On April 4, 1988, the Employer requested review, stating that the U.S. applicants did not have the experience of being a general manager of more than one retail store. (A2).

Discussion and Conclusion

The CO denied certification on the grounds that U.S. workers were rejected for other than lawful, job-related reasons, in violation of §656.21(b)(7). "'Ordinarily, an applicant is considered qualified for a job if the applicant meets the minimum requirements specified for that job in the labor certification application.'" Microbilt Corp., 87 INA 635 (Jan. 12, 1988).

The Employer sought labor certification to fill the position of apparel buyer for which the Employer required two years experience in the job offered, or two years experience as "general manager of retail apparel store." Applicants Fullgraf and Berilla each had two years experience as a manager of a retail store. The Employer contends that they are not qualified for this job because they were managers of a single retail store and were not "general managers" of retail apparel store. In attempting to distinguish a manager from a general manager, the Employer argues that, in its organization, a general manager manages three stores. Therefore, according to the Employer, the U.S. applicants do not qualify for the position since they only managed one retail store.

In the application for alien labor certification and in the advertisements, the Employer did not specify that a "general manager" managed more than one store. Since the Employer did not specify, in the application and in the advertisements, that two years experience as a general

manager of more than one retail store was required for the position, it cannot reject U.S. workers on that basis.² The U.S. applicants satisfy the minimum requirements for the job as described in the ETA 750A, and the CO's conclusion in this regard is correct.

The evidence establishes that U.S. applicants were qualified and available, but were rejected by the Employer for other than lawful, job-related reasons, in violation of §656.21(b)(7). Accordingly, the CO properly denied certification.

ORDER

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

NAHUM LITT
Chief Administrative Law Judge

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² It is also noted that the Alien, prior to being hired by the Employer, had two years experience in a position described as that of a manager of a single retail store, and that the Employer did not require that the Alien possess two years experience as a general manager of more than one retail store.