



Date: FEB 15 1991

Case No: 89-INA-249

In the Matter of

E & C PRECISION FABRICATING, INC.,
Employer

on behalf of

BARKET ALI MOMIN,
Alien

Before: Brenner, Glennon, Groner, Guill, Lipson,
Litt, Romano, Silverman and Williams
Administrative Law Judges

JAMES GUILL
Associate Chief Judge

DECISION AND ORDER

A panel of the Board of Alien Labor Certification Appeals issued a Decision and Order in this matter on November 21, 1990 directing the Certifying Officer to grant certification. Specifically, the panel determined that Employer had established that the positions of Machine Operator Trainee and Machine Operator were sufficiently dissimilar to avoid the proscriptions of 20 C.F.R. §656.21(b)(6). The Certifying Officer petitioned for en banc review, which the Board granted on January 2, 1991.

The list of factors for determining whether jobs are sufficiently dissimilar stated in Delitizer Corp. of Newton, 88-INA-482 (May 9, 1990) (en banc), clearly is not an exhaustive list. Further, that the position in which the Alien gained his experience involved training needed for the higher level position is relevant, but not determinative. Compare Duthie Electric Corp., 89-INA-182 (Nov. 30, 1989); Conde, Inc., 87-INA-598 (Dec. 11, 1987); and Eimco Processing Equipment Co., 88-INA-216 (Aug. 4, 1989). Had the Certifying Officer detailed why the training relationship prevented U.S. workers from applying for the job (such as a practice of Employer of only promoting from within) the panel's Decision might have been found to be incorrect.

However, upon review of the record presented, we conclude that the panel decision was proper. Accordingly,

IT IS ORDERED that the November 21, 1990 Decision and Order is hereby REINSTATED.

At Washington, D.C.

Entered:

JAMES GUILL
Associate Chief Judge

JG/trs