



Date: DEC 7 1990

Case No: 90-INA-438
(Formerly 90-INA-220)

In the Matter of:

LINEN STAR,
Employer

on behalf of

NAFTALI MENDELOVITZ,
Alien

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

JAMES GULL
Associate Chief Judge

ORDER OF REMAND

On March 30, 1990, the undersigned issued an Order of Remand to the Certifying Officer for a ruling on Employer's motion for reconsideration. It was noted that the record contained no request for review.

On May 3, 1990, the Board docketed a new Appeal File in this matter, and issued a Notice of docketing on July 11, 1990. Typed onto an undated Memorandum attached to the Appeal File is the statement: "Request for reconsideration denied." Once again, the record contained no request for review.

On August 31, 1990, the Board received a Motion to Remand in this matter offering as grounds that the Certifying Officer had failed to state her reasoning for denying the request for reconsideration.

Certifying Officers must rule on timely requests for reconsideration. Harry Tancredi, 88-INA-441 (Dec. 1, 1988) (en banc); Charles Serouya & Son, Inc., 88-INA-261 (Mar. 14, 1989) (en banc). Although the regulations do not address requests for reconsideration of a Final Determination, it is clear that Certifying Officers must state the reasons for their determinations. Compare 20 C.F.R. §656.25(g)(2)(ii) and §656.25(c)(2). While there may be an occasion where

the CO may summarily dispose of a request for reconsideration, the facts of this case do not present such a situation. Accordingly,

IT IS ORDERED that this matter be REMANDED to the Certifying Officer for issuance of a ruling on the motion for reconsideration that states the reasoning for the determination.¹

At Washington, D.C.

Entered: 12/7/90

by:

James Guill
Associate Chief Judge

JG/trs

Judge Lipson, joined by Judge Williams, dissenting:

The regulations cited by my colleagues compel disclosure of the specific bases for denying a labor certification in a Notice of Findings or a Final Determination; in the latter case, enabling an aggrieved party to request Board review of a Certifying Officer's adverse determination. There is no requirement that, before requesting review, a party must move for reconsideration by the Certifying Officer. But, having done so, I think it is "gilding the lily" to require a Certifying Officer to give reasons for ruling adversely on such a motion. At this point, it is within the Certifying Officer's prerogative to give a good reason, a bad one, or none at all. The issues are nevertheless preserved for the Board on review.

In this case, I would not remand. Neither would I review, in the absence of a proper request therefor.

Groner, J., dissenting:

Judicial candor compels me to acknowledge with humility my feeling of respect and envy at the freshness and optimism, of which my own evidently jaded experience at the bar and the bench must at some unfortunate time in the past have deprived me, that I see as the foundation for both the majority opinion and the motion that requested it. For, I must admit, I never had much success with motions for reconsideration when I was at the bar. And, on the bench, I confess to the same sin of which the Certifying Officer here is accused: denying summarily, and with an unexplaining ink stamp -- so that the petitioning party can get on with acceptance of the

¹ In this matter the Certifying Officer evidently treated Employer's motion for reconsideration as a request for review. Therefore, it is noted that if, on remand, the Certifying Officer determines that the Final Determination must be affirmed, the Alien and/or Employer must request review in accordance with 20 C.F.R. §656.26(a) in order for the Board of Alien Labor Certification Appeals to consider an appeal on the merits.

denial or pursuit of an appeal -- motions for reconsideration that seem to me to offer no basis for being granted.

I do not quite see what moves the majority, in this case, to interpret the notation "Request for reconsideration denied" as suggesting that "the Certifying Officer evidently treated Employer's motion for reconsideration as a request for review" (footnote, p. 2). The movant here is not alleging that the Certifying Officer failed to rule on a timely request for reconsideration, as the majority observes that she must, nor that she failed to "State the specific bases on which the decision to issue the Notice of Findings was made," as required by 20 C. F. R. 656.25(c)(2), or to "State the reasons for the [Final D]etermination" denying certification, pursuant to Section 656.25(g)(2) (ii). It seems to me that the motion for remand itself, and its granting by the Board, cannot reasonably be expected to have any practical result beyond delaying a final resolution of the matter and adding to the party's costs in obtaining it.

Upon reflection, I must add one more ground for dissenting from this Order of Remand: I don't see where we get the jurisdiction to issue it. "If a labor certification is denied, a request for review of the denial may be made to" this Board, and "In considering requests for review before" us we may sit in panels of three, under 20 C. F. R. 656.26(a) and 656.27(a), and no doubt a request for review may include a prayer for remand, but what we have here is a motion in a proceeding that is not before us. I do not see that we have any alternative but to deny or return it for lack of jurisdiction.

I would deny the motion to remand, with leave to file a request for our review of the denial of certification if Employer wishes to do so.

Samuel B. Groner
Administrative Law Judge