

U.S. Department of Labor

Board of Alien Labor Certification Appeals
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)



Issue Date: 03 March 2004

BALCA Case No.: 2003-INA-13
ETA Case No.: P2001-NJ-02475714

In the Matter of:

MEINEKE DISCOUNT MUFFLERS,
Employer,

on behalf of

KORDIAN MARIUSZ CECHOWICZ,
Alien.

Appearance: Albert Lefkowitz, Esquire
New York, New York
For Employer and the Alien

Certifying Officer: Dolores Dehaan
New York, New York

Before: Burke, Chapman, and Vittone
Administrative Law Judges

ORDER OF DISMISSAL

PER CURIAM. On October 30, 2002, the Board issued a "Notice of Docketing and Order Requiring Statement of Position or Legal Brief." The Notice provided that the parties may file a statement of position or a legal brief within twenty-one (21) days of its issuance and cautioned that if the grounds for review are not stated in either the request for review or a statement or brief, the matter may be dismissed for failure to specify grounds for appeal. 20 C.F.R. § 656.27(b).

The foregoing Notice was mailed to the parties, including Employer, Employer's counsel, and the Alien. The Notice mailed to the Alien was returned because the Alien's

address had changed and the period for forwarding mail had expired. Accordingly, on November 22, 2002, the Board issued another Order, directing Employer's attorney or the Alien to submit the Alien's current mailing address and instructing Employer to submit to the Board a statement confirming that this is an active appeal and that it was still sponsoring the labor certification application on behalf of the Alien. Furthermore, the Order expressly stated: "Failure to submit a statement of intent to proceed will result in a finding that the appeal has been abandoned and an issuance of an order of dismissal." To date, no statement or brief has been filed; nor has Employer submitted a statement of intent to proceed. Accordingly, it is ordered that the appeal in the above-referenced matter is hereby **DISMISSED**.¹

Entered at the direction of the panel by:

A

Todd R. Smyth
Secretary to the Board of
Alien Labor Certification Appeals

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary unless within 20 days from the date of service, a party petitions for review by the full Board of Alien Labor Certification Appeals. Such review is not favored, and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

**Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, N.W., Suite 400**

¹ Assuming arguendo that Employer is still pursuing the appeal, we would still affirm the CO's denial of labor certification. The basis for appeal, as set forth in its review request, was that none of the U.S. applicants were qualified for the position because they did not have even minimal experience in any facet of the automotive trades. (AF 210). However, the position is that of an "Office Manager" and experience with the automotive trades was not a stated requirement on either the ETA 750A or the job advertisement. To the contrary, the only stated requirement was a high school education. (AF 4). An otherwise qualified U.S. applicant who meets the minimum stated job requirements is unlawfully rejected for failing to meet an undisclosed requirement. *Jeffrey Sandler, M.D.*, 1989-INA-316 (Feb. 11, 1991) (*en banc*). Employer has failed to demonstrate lawful rejection of numerous qualified U.S. applicants, in violation of 20 C.F.R. §§ 656.20(c)(8), 656.21(b)(6).

Washington, D.C. 20001-8002

Copies of the petition must also be served on other parties, and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five double-spaced typewritten pages. Responses, if any, shall be filed within ten days of the service of the petition, and shall not exceed five double-spaced typewritten pages. Upon the granting of the petition the Board may order briefs.