



**Issue Date: 09 March 2004**

**BALCA Case No.: 2003-INA-15**  
ETA Case No.: P2000-CA-09507049/ML

*In the Matter of:*

**METRO DIGITAL PRINTING,**  
*Employer,*

*on behalf of*

**FARINAZ VAFAIE,**  
*Alien.*

Appearance: Nicholas A. Netty, Esquire  
Orange, California  
For Employer and the Alien

Certifying Officer: Martin Rios  
San Francisco, California

Before: Burke, Chapman, and Vittone  
Administrative Law Judges

**DECISION AND ORDER**

**PER CURIAM.** This case arose from an application for labor certification on behalf of Farinaz Vafaie (“the Alien”) filed by Metro Digital Printing (“Employer”) pursuant to § 212(a)(5)(A) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1182(a)(5)(A) (“the Act”), and the regulations promulgated thereunder, 20 C.F.R. Part 656. The Certifying Officer (“CO”) denied the application and Employer requested review pursuant to 20 C.F.R. § 656.26. The following decision is based on the record upon which the CO denied certification and Employer's request for review, as contained in the Appeal File (“AF”), and any written arguments of the parties. 20 C.F.R. § 656.27(c).

## **STATEMENT OF THE CASE**

On March 19, 1999, Employer, Metro Digital Printing, filed an application for labor certification on behalf of the Alien, Farinaz Vafaie, for the position of Persian Typesetter, which the Job Service classified as Typesetter. (AF 33). The job duties for the position were “[w]ill use computer to design layout and typesetting of books and other publications in Farsi language.” The job requirements were a Bachelor’s degree in English and the ability to speak and write in Farsi. Employer subsequently deleted the Farsi language requirement and the job duties associated with it. (AF 33).

In a Notice of Findings (“NOF”) issued on May 28, 2002, the CO proposed to deny certification on the grounds that Employer had not established that there was a bona fide job opportunity which was clearly open to any qualified U.S. worker and that Employer had not properly tested the labor market for available U.S. workers. (AF 29-31). On July 1, 2002, Employer filed its rebuttal. (AF 4-28). The CO found the rebuttal unpersuasive and issued a Final Determination (“FD”), dated August 16, 2002, denying certification on the same basis. (AF 2-3). On September 19, 2002, Employer requested review and the matter was docketed in this Office on October 29, 2002. (AF 1).

## **DISCUSSION**

In the NOF, the CO found that Employer, a copy shop, had no printing capability. The CO stated that it was unclear whether the paper submitted (The Mahnameh Metro) was printed at Employer’s shop or at another facility. Further, the CO noted that almost all of Employer’s workers had Hispanic surnames. The CO stated that although Employer deleted the Farsi requirement on the ETA 750A, the job advertisement required knowledge of Farsi. Therefore, the CO found the recruitment to be inadequate. The CO directed Employer to provide a draft advertisement for a retest of the labor market. (AF 30).

Employer's rebuttal to the NOF consisted of a cover letter from Employer's counsel, a statement by Employer's President, Mike Jafari, Employer's 2001 Federal income tax returns, duplicate copies of a proposed new advertisement and other documentation. (AF 4-28). Employer argued that it was a printing production center, not a copy shop and that most of its employees did not need to speak Farsi because they printed a finished product. However, Employer claimed that it needed someone who spoke Farsi to edit and set up jobs in Farsi and English. (AF 5). In addition, Employer submitted a proposed advertisement to retest the labor market. (AF 27-28). Employer's proposed advertisement omitted the reference to Farsi language, which had been included in the earlier advertisements, but listed the job title as Typesetter, Persian. (AF 27-28).

In the FD, the CO questioned Employer's willingness to readvertise because Employer claimed it was important to have a worker who spoke Farsi, despite deleting it as a requirement. (AF 3).

Employer deleted all references to Farsi language as a duty and stated job requirement on the ETA 750A. (AF 33). However, Employer's rebuttal clearly indicated that he wanted to hire the Alien because of her language skill in Farsi. (AF 5). Employer's rebuttal stated that it was important that the worker spoke Farsi, yet Employer deleted the requirement and instead renamed the job as Typesetter, Persian. In essence, this does not change the requirement of knowledge of Farsi. Such an attempt to cure is insufficient. Accordingly, as found by the CO, the position in question is not clearly open to qualified U.S. workers.

Furthermore, we find Employer's belated attempt, in the request for review, to address the question raised in the NOF regarding The Mahnameh Metro publication and to delete all references to Persian typesetting in a proposed new advertisement to be untimely. (AF 1). Such matters should have been provided in the rebuttal.

In view of the foregoing, we find that labor certification was properly denied.

## **ORDER**

The Certifying Officer's denial of labor certification is hereby **AFFIRMED**.

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  
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.