U.S. Department of Labor

Board of Alien Labor Certification Appeals
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Issue Date: 06 July 2004

BALCA Case No.: 2003-INA-198
ETA Case No.: P1998-CA-09395761/SJN

In the Matter of:

RICHLINE TEXTILE, INC.,
Employer,

on behalf of

AIMEE ALPARCE,
Alien.

Certifying Officer: Martin Rios
San Francisco, California

Appearances: Dan Korenberg, Esquire
Encino, California
For the Employer and the Alien

Before: Burke, Chapman and Vittone
Administrative Law Judges

DECISION AND ORDER

PER CURIAM. Richline Textile, Inc. ("the Employer") filed an application for labor certification[1] on behalf of Aimee Alparce ("the Alien") on October 21, 1996. (AF 31).[2] The Employer seeks to employ the Alien as an office manager (DOT Code 169.167-034).[3] This decision is based on the record upon which the Certifying Officer ("CO") denied certification and the Employer's request for review, as contained in the AF. 20 C.F.R. § 656.27(c).

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[1] Alien labor certification is governed by the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(5)(A) and 20 C.F.R. Part 656.
[2] In this decision, AF is an abbreviation for Appeal File.
[3] In this decision, DOT is an abbreviation for Dictionary of Occupational Titles.

STATEMENT OF THE CASE

On October 21, 1996, the Employer filed an application for labor certification on behalf of the Alien for the position of office manager. The Employer required a Bachelor's degree and two years of experience. (AF 31).

In the Notice of Findings ("NOF"), issued March 1, 2001, the CO found that the Employer failed to document a lawful, job-related reason for rejecting a qualified U.S. applicant. Citing the regulations at 20 C.F.R. § 656.24(b)(2)(ii), the CO stated that a U.S. worker is considered able and qualified for the job opportunity if the worker by education, training, experience or a combination thereof, is able to perform in the normally accepted manner the duties involved in the occupation as customarily performed by other U.S. workers similarly employed. The CO stated that the Employer's education requirement of a Bachelor's degree is equivalent to two years of experience. The CO noted that the specific vocational preparation ("SVP") time for the job was over two years and up to four years. Therefore, the CO concluded that the Employer's requirement of a Bachelor's degree and two years of experience was comparable to a requirement of four years of experience and fit into the SVP for the position. The applicant's resume indicated that she had seven years of experience; the applicant did not have a Bachelor's degree, but she did have a two year Associate's degree. The CO stated that the Employer could rebut the finding by documenting with specificity why the U.S. applicant was rejected for job-related reasons. (AF 28-30).

In its rebuttal, dated March 26, 2001, the Employer stated that the U.S. applicant was rejected because she did not have a Bachelor's degree. The Employer did not agree with the CO's finding that the U.S. applicant met the requirements due to her aggregate experience. The Employer did not support the assertion that a Bachelor's degree was equivalent to two years of experience. Therefore, the Employer argued that he had correctly concluded that the applicant lacked the minimum requirements for the job and she was rejected for lawful, job-related reasons in accordance with 20 C.F.R. § 656.24(b)(2)(ii). (AF 16-27).

The CO issued the Final Determination ("FD") on June 1, 2001, denying the Employer's application for labor certification. (AF 9-11). The CO argued that the U.S. applicant had over seven years of experience, which exceeded the Employer's cumulative requirement. The CO noted that the Employer confirmed that the applicant did not have a Bachelor's degree by a telephone conversation, but did not delve into the applicant's job-related experience. The CO found that the Employer did not demonstrate that the applicant did not possess at least four years of experience as an office manager, which was equivalent to the Employer's requirements. Rather, the emphasis the Employer placed on a non-specific degree appeared to tailor the opportunity to the Alien, who holds a Bachelor's degree in visual communication. The CO concluded that the Employer had not demonstrated why the U.S. applicant was not able, willing, available or qualified by experience for the job opportunity and would be unable to perform the duties customarily performed by other U.S. workers similarly employed. Therefore, the application for labor certification was denied. (AF 9-11).

On June 21, 2001, the Employer requested review by this Board. The Employer argued that he conducted a good faith recruitment of U.S. workers. The Employer again noted that the job requirement was that all applicants must have a Bachelor's degree; because the U.S. applicant did not have a Bachelor's degree, she did not meet the minimum requirement. The Employer argued, citing *ENY Textiles*, 1987-INA-641 (Jan. 22, 1998), that the employer is not required to interview every applicant who submits a resume. In addition, the Employer argued that the CO cannot substitute his/her judgment for the Employer's requirements and then penalize the Employer for having acted without regard to that judgment. *See, e.g, L.P. Bloomberg*, 1994-INA-619 (July 30, 1996).

On April 28, 2003, the Employer wrote to the CO noting that no correspondence had been received since the request for review was submitted on June 21, 2001. The case was referred to and docketed by the Board on June 9, 2003. There is no indication in the record as to why the CO did not refer the case to the Board in a timely manner.

DISCUSSION

An employer who desires to employ an alien on a permanent basis must demonstrate that the requirements of 20 C.F.R. Part 656 have been met. 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 means in order to make a good faith test of U.S. worker availability. It is the employer who bears the burden of proving that all regulatory requirements have been satisfied and this burden of proof must be met before an application for labor certification can be approved.

The only issue raised in the FD was the Employer's rejection of the U.S. applicant. Where a U.S. worker clearly does not meet the stated job requirements, it is the CO's burden to explain adequately why the applicant, nevertheless, is qualified pursuant to 20 C.F.R. § 656.24(b)(2)(ii). *Shakti Engineering & Design Group*, 1989-INA-347 (Nov. 2, 1990); *Houston Music Institute, Inc.*, 1990-INA-450 (Feb. 21, 1991).

In the instant case, the CO has met his burden. The CO's explanation of the U.S. applicant's qualifications in the NOF is consistent with long-standing policy. Pursuant to the Handbook for Analyzing Jobs (1972), the average four-year college curriculum (except for liberal arts) is considered the equivalent of about two years of specific vocational preparation. *See, e.g., Garland Community Hospital*, 1989-INA-217 (June 20, 1991). Based upon the foregoing, the CO properly noted that the Bachelor's degree requirement plus two years of experience was within the SVP for this job. Thus, the CO did not require the Employer to interview every applicant who submitted a resume, nor was the CO substituting his judgment for the Employer's requirements. Rather, the CO properly noted that the U.S. applicant's resume indicated over seven years of experience, which met the Employer's own minimum job requirements.

In light of the foregoing, we find that the CO properly found that the U.S. applicant was qualified for the job opportunity despite the fact that she lacked a

Bachelor's degree; fuller consideration of her experience of seven years showed that she clearly met the combined education and experience requirements of the job. A U.S. applicant who meets the employer's job requirements may not be rejected as unqualified. *Quality Products of America, Inc.*, 1987-INA-703 (Jan. 31, 1989)(*en banc*). Thus, we agree with the CO that the Employer has not demonstrated that the U.S. applicant was not able, willing, available or qualified by experience for the job opportunity and would be unable to perform the duties customarily performed by other U.S. workers similarly employed. Therefore, 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.