



DATE: DEC 20 1988
CASE NO. 87-INA-546

IN THE MATTER OF

SNOWBIRD DEVELOPMENT CO.
Employer

on behalf of

ASHLEY COLIN JACKSON
Alien

Peter Stirba, Esq.
Salt Lake City, Utah
For the Employer

Darryl A. Stewart, Esq.
Washington, DC
For the Certifying Officer

BEFORE: Litt, Chief Judge, Vittone, Deputy Chief Judge, and Brenner, DeGregorio, Tureck,
Guill and Schoenfeld, Administrative Law Judges

JEFFREY TURECK
Administrative Law Judge

DECISION AND ORDER

This application was submitted by the Employer on behalf of the above-named Alien pursuant to Section 212(a)(14) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(14) (hereinafter "the Act"). The Employer requested review from U.S. Department of Labor Certifying Officer Rebecca A. Stuart's denial of a labor certification application pursuant to 20 C.F.R. Section 656.26.

Under Section 212(a)(14) of the Act, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is ineligible to receive a visa unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that: (1) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work; and (2) the employment of the alien will

not adversely affect the wages and working conditions of United States workers similarly employed.

An employer who desires to employ an alien on a permanent basis must demonstrate that the requirements of Part 656 of the regulations 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 reasonable means, in order to make a good faith test of U.S. worker availability.

This review of the denial of a labor certification is based on the record upon which the denial was made, together with the request for review, as contained in an Appeal File ("AF"), and any written arguments of the parties. See §656.27(c).

Statement of the Case

The Employer is in the business of developing and operating a ski resort located 15 miles east of Salt Lake City in the Wasatch National Forest. It filed for labor certification on August 12, 1986 to enable the Alien to fill the position of President at a salary of \$80,000 a year. On the ETA Form 750-A, Employer listed the basic requirements for the job as a Masters Degree in Business Administration and ten years experience in Engineering and Construction Management. As special requirements, Employer listed an understanding of PURPA (Public Utilities Regulatory Power Act) and familiarity with all levels of government agencies to obtain building permits and variances (AF 50). Finally, although listed in the job duties section of the Form 750-A, other job requirements were identified including five years experience as a president or administrator; two years experience as a construction superintendent or equivalent; three years experience in hydro-electric and co-generator energy; and the ability to ski, in order to escort investors around the property and to assist in emergency situations (id.).

In a lengthy Notice of Findings ("NOF") issued on January 28, 1987 (AF 37-44), and an almost as long Final Determination issued on April 21, 1987 (AF 4-9), the Certifying Officer ("CO") denied certification for a variety of reasons. Several of these reasons related to one factor -- the all-encompassing nature of the job requirements. It was the CO's position that Employer's job requirements were unduly restrictive (AF 5), unlawfully combined (AF 6), and tailored to the Alien's experience and skills (AF 8). Employer alleged that, due to the nature of its business and its financial constraints, the combination of job duties was a business necessity and was not unduly restrictive.¹

¹ The CO denied certification for other reasons as well, including the alleged inadequacy of Employer's advertising for the position and Employer's alleged failure to comply with the Specific Vocational Preparation Time for the position of "President" set out in the Dictionary of Occupational Titles ("DOT"). While it is not necessary to decide these issues, it should be noted that the Employer's allegedly inadequate advertising produced almost 60 responses from job applicants in 15 states across the country; and the SVP for "'President (any industry)", DOT Code 189.117-026, appears to be 9, meaning over ten years of experience may

(continued...)

DISCUSSION

According to Employer's Brief in this case, Snowbird Ski Resort is an internationally known skiing and recreational facility which, as initially constructed in 1970, contained three highrise lodges with an overnight capacity of 3000 people, and related shops, restaurants and ski facilities (Employer's Brief at 3). An expansion program variously listed as costing either \$100,000,000 (*id.*) or \$350,000,000 (AF 15), and consisting of "the largest lodge at any resort in America; two convention centers; four parking structures, a shopping mall, a dam and two hydroelectric power generation stations and the accompanying expansion of sewer, gas and electric service facilities . . ." (AF 15-16), was begun in the early 1980's. It was as President of the company doing this development² that certification for the Alien was sought. The Alien described the job as involving the administration of a \$90,000,000 budget.

Employer alleges that it is necessary to have a President who has all of the training and skills listed on the Form 750-A. But the Employer's documentary and narrative evidence failed to convince the CO that it was necessary for one person to have such in-depth knowledge of all aspects of the business, or that it was customary for the President of a company on the scale of Employer, in addition to performing the day-to-day administrative duties required in that position, to perform such jobs as construction supervisor; supervisor of the construction and operation of hydroelectric and cogeneration facilities; the negotiation of and securing loans, both in the U.S. and abroad; the lobbying of the National Park Service, State legislature and Public Utility Commission on highly technical matters to get zoning variances and building and other permits; and the ability to ski well enough to act as a tour guide for investors and assist in emergency situations such as rescuing people caught in avalanches.

We agree with the CO. The variety of the job requirements is such that it invariably leads to the conclusion that they were tailored for the Alien, and do not represent Employer's actual minimum job requirements, in violation of §656.21(b)(6). It strains one's credulity to believe that the President of a business with a budget of anywhere from \$90,000,000 to \$350,000,000 would be expected to virtually run the business single-handed, even to the point where he or she would be required to help rescue stranded skiers. Employer's unsupported assertion that the business's financial constraints make it necessary for one person to handle all these jobs appears far-fetched. Therefore, Employer has also violated §656.21(b)(2), by failing to establish that the job is being described without unduly restrictive requirements.

Accordingly, the CO's denial of certification is affirmed.

¹(...continued)
be required.

² The exact relationship between Snowbird Development Co. and Snowbird, Ltd., the company which apparently owns the Snowbird resort, is uncertain. But it appears that Snowbird Development is owned and controlled by Snowbird, Ltd. See Employer's Brief, at 1-5; AF 15-16.

ORDER

The Certifying Officer's denial of alien labor certification is affirmed.

JEFFREY TURECK
Administrative Law Judge

JT/jb