

**U.S. Department of Labor**

Board of Alien Labor Certification Appeals  
1111 20th Street, N.W.  
Washington, D.C. 20036



DATE: October 18, 1988  
CASE NO. 87-INA-706

IN THE MATTER OF

NEW CONSUMER PRODUCTS,  
Employer

on behalf of

KWAN FUK KOT,  
Alien

Stanley Chao, Esq.  
San Jose, CA  
For the Employer

BEFORE: Litt, Chief Judge; Vittone, Deputy Chief Judge;  
and Brenner, DeGregorio and Tureck,  
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 Paul R. Nelson's denial of a labor certification application pursuant to 20 C.F.R. §656.26.<sup>1</sup>

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

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<sup>1</sup> All of the regulations cited in this decision are contained in Title 20 of the Code of Federal Regulations.

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

On May 22, 1986, the Employer filed an application for alien employment certification (AF 14-15) to enable the Alien to fill the position of Purchasing Agent. Employer, which is located in South San Francisco, California, is an importer and wholesaler of household hardware products. The requirements of the job were two years of college and two years in the job offered. As special requirements, Employer noted that 30 of the time will be spent in Southeast Asia, and the employee must have knowledge of the import/export trade in Southeast Asia (AF 14). The job duties included purchasing small hardware items in Southeast Asia, reviewing requisitions, negotiating and preparing contracts, and acting as a liaison between domestic and foreign manufacturers in offering, bidding and distributing goods (id.).

Following the issuance of the Notice of Findings ("NOF") by the Certifying Officer ("CO") on February 27, 1987 (AF 11-12), and the Employer's filing of its rebuttal on April 20, 1987 (AF 5-7), the Final Determination denying certification was issued on May 27, 1987 (AF 3).

### Discussion

Following the filing of its application for certification, Employer advertised the position and received four responses. Employer rejected three applicants as unqualified, and noted that the fourth was not interested in the job (see AF 19-20). In his NOF, the CO found that one applicant, Cynthia Barry, had sufficient experience, including three years purchasing hardware and dealing with vendors in Southeast Asia, to qualify for the position; and found that Employer's reason for rejecting another applicant, David Newsom -- that he was not satisfied with the advertised salary -- was not established in a convincing manner (see AF 12).

In its rebuttal, Employer stated that it interviewed Ms. Barry and found that she had no foreign purchasing experience and had never done business in Southeast Asia (AF 6). In regard to Mr. Newsom, Employer, in addition to pointing out that he did not meet the job requirements,

reiterated that he was not interested in the advertised job (AF 7).

In his Final Determination, the CO again found Ms. Barry to be qualified for the position, based on her resume (AF 4). Likewise, he found Mr. Newsom to be qualified, although he ignored Employer's repeated statements that Mr. Newsom was not interested in the position being offered (id.). We hold that the CO erred in his findings regarding both applicants.

In regard to Ms. Barry, the evidence establishes that she has little experience in the import/export business of Southeast Asia. Although Ms. Barry indicated in a short letter enclosing her resume that she had experience with vendors in Southeast Asia (AF 25), her resume itself does not establish any such experience. The closest it comes is in a job from September 1983 to July 1984, in which she allegedly "[p]rocured foreign and domestic materials for wholesale company" (AF 26). But this falls far short of establishing knowledge of the import/export business of Southeast Asia in general, let alone with respect to hardware items.

Further, Employer's interview with Ms. Barry confirmed that she had no experience dealing with vendors in Southeast Asia, and that she had insignificant experience in the import/export business in general. On this record, the CO had no basis to reject the results of Employer's interview.

Likewise, the record provides no basis for the CO to dispute Employer's statement that Mr. Newsom was not interested in the job. The CO did not send Mr. Newsom a follow-up questionnaire or obtain any additional evidence from him after he was interviewed by Employer. Therefore, the CO is in no position to dispute Employer's statements, which are not inherently incredible and which are not otherwise impeached, that Mr. Newsom was looking for a different position at a higher salary.

Since the evidence establishes that there were no applicants both qualified and willing to accept the job, the CO's denial of certification is reversed.

#### ORDER

The Final Determination denying alien labor certification is reversed, and certification is granted.

JEFFREY TURECK  
Administrative Law Judge