



Issue Date: 11 August 2010

BALCA Case No.: 2010-TLC-00087

ETA Case No.: C-10165-50270

In the Matter of:

WOLAN TOOLS CO.,
Employer.

Certifying Officer: William L. Carlson
Chicago National Processing Center

Before: **ROBERT B. RAE**
U. S. Administrative Law Judge

DECISION AND ORDER
AFFIRMING DENIAL OF CERTIFICATION

This case arises from a request for review of a United States Department of Labor Certifying Officer's ("the CO") denial of an application for temporary alien labor certification under the H-2B non-immigrant program. The H-2B program permits employers to hire foreign workers to perform temporary nonagricultural work within the United States on a one-time occurrence, seasonal, peakload, or intermittent basis. *See* 8 U.S.C. § 1101(a)(15)(H)(ii)(b); 8 C.F.R. § 214.2(h)(6); 20 C.F.R. Part 655, Subpart A (2009).

Statement of the Case

On June 14, 2010, the Department of Labor's Employment and Training Administration ("ETA") received an application for temporary labor certification from Wolan Tools Co. ("the

Employer”). AF 53-62.¹ The Employer requested certification for one “First Line Supervisor/Manager of Production and Operating Workers” from May 1, 2010 until April 30, 2011. AF 53.

On June 17, 2010, the CO issued a Request for Further Information (“RFI”). AF 45-52. The CO noted that the Employer’s dates of need lasted longer than ten months. *Id.* Accordingly, the CO required² the Employer to submit its job order and all newspaper advertisements in order to “verify that the employer had complied with pre-filing recruitment requirements.” AF 51.

On June 24, 2010, the Employer responded to the RFI. AF 17-44. In its response, the Employer included a copy of its job order with the local State Workforce Agency (“SWA”) and order confirmations for newspaper advertisements placed with *The Springfield Republican*. AF 31-33. The Employer did not include tear sheets, and the order confirmations for the newspaper did not contain the content of the advertisements. AF 32-33.

On July 6, 2010, the CO denied the Employer’s application for temporary labor certification. AF 12-16. Citing to 20 C.F.R. §§ 655.15(e)(2) and 655.15(f)(3), the CO found the Employer’s job order and newspaper advertisements failed to comply with the pre-filing recruitment requirements. AF 14-16. The CO stated:

The job order did not include the following requirements:

1. The job opportunity’s minimum education and experience requirements and whether or not on-the-job training will be available was not indicated;
2. The work days, expected start and end dates of employment, and whether or not overtime will be available was not included; and
3. The job order failed to indicate that the position was temporary.

AF 16. The CO also noted that the Employer submitted an order confirmation for the newspaper advertisements published in *The Springfield Republican*, but the Employer failed to “include a newspaper advertisement that included the content of the advertisement in order to apprise the [CO] of whether or not the Employer complied with regulatory requirements.” *Id.* Having found that the Employer failed to satisfy pre-filing recruitment, the CO denied the Employer’s application. The Employer’s appeal followed.

¹ Citations to the 62-page appeal file will be abbreviated “AF” followed by the page number.

² The CO also found four other deficiencies, but the Employer successfully satisfied the CO’s requirements.

Discussion

When conducting domestic recruitment under the H-2B program, the Employer must place an “active job order with the SWA.” 20 C.F.R. § 655.15. The job order must contain:

1. The job opportunity’s minimum education and experience requirements and whether or not on-the-job training will be available;
2. The work days, expected start and end dates of employment, and whether or not overtime will be available; and
3. That the position will be temporary.

20 C.F.R. § 655.17.

The Employer does not dispute that it failed to comply with the recruitment requirements. Instead, the Employer, in its request for review, stated that it was a gunsmith licensed by the Alcohol, Tobacco, and Firearms Agency. AF 1. Due to the Employer’s profession, it argued that “gun control laws in Massachusetts prohibit [the Employer] from carrying out the job order and advertisement requirements.” *Id.* However, the Employer failed to cite to any legal authority which would prohibit the Employer from complying with the regulations, and even assuming that the Employer’s statements are accurate, the Employer failed to address these issues with the CO prior to its denial. Moreover, the Employer’s arguments lack merit, given the content that it failed to include in the job order. Whether or not the Employer will offer overtime, for example, has no bearing on the Employer’s profession, and its failure to include this information in the job cannot be attributed to a conflict with state gun laws. The same argument applies to the Employer’s failure to indicate the job order was temporary.³ Ultimately, the recruitment requirements are in place in order to protect domestic workers. *See Chris Orser Landscaping*, 2010-TLN-00031 (BALCA Feb. 5, 2010). The Employer failed to comply with the H-2B pre-filing recruitment requirements, and therefore, the CO properly denied certification.

³ Employer’s failure to submit the content of the newspaper advertisements need not be addressed since the Employer’s job order deficiencies were grounds for the CO’s denial.

ORDER

In light of the foregoing, it is hereby **ORDERED** that the Certifying Officer's decision is **AFFIRMED**.

For the Board:

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ROBERT B. RAE

U. S. Administrative Law Judge