



Issue Date: 30 April 2010

BALCA Case No.: 2010-TLN-00059

ETA Case No.: C-10048-49370

In the Matter of:

MARGARET PIROVANO,
Employer

Certifying Officer: William L. Carlson
Chicago National Processing Center

Before: **WILLIAM S. COLWELL**
Associate Chief Administrative Law Judge

DECISION AND ORDER REVERSING
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 February 9, 2010, the Department of Labor's Employment and Training Administration ("ETA") received an application for temporary labor certification from Margaret Pirovano, ("the

Employer”). AF 46-63.¹ The Employer requested certification for one “Horse Groom” from January 1, 2010, until October 1, 2010. AF 53. The Employer indicated in her application that the position required one year of experience. AF 56. In her recruitment report, the Employer stated that one applicant, Mr. D’Angelo, was a “licensed thoroughbred horse trainer,” but the Employer did not hire him because he did not “have any experience being a groom.” AF 62.

On February 22, 2010, the CO sent a *Request for Further Information* (“RFI”). AF 42-45. Citing to 20 C.F.R. § 655.15(j)(2)(iii), the CO stated that the Employer did not comply with the regulatory requirements regarding her recruitment report. Specifically, the CO questioned the Employer’s failure to hire Mr. D’Angelo, given that he was a licensed thoroughbred horse trainer. AF 45. The CO required the Employer to submit “the lawful job-related reason(s) for not hiring any U.S. worker(s) who applied or were referred to the position.” *Id.*

On March 1, 2010, the Employer responded to the RFI. AF 17-40. In its response, the Employer wrote:

Mr. D’Angelo stated during the interview that he had “not actually been a groom for the last 25 years.” Therefore, Mr. D’Angelo is not qualified for the subject position offered as he does not have one year of experience in the position. Alternate experience is not acceptable.

Notwithstanding, Mr. D’Angelo’s work experience has been as a Thoroughbred owner, breeder and trainer. He has been a licensed Thoroughbred Horse Trainer in several states since 1986. Within the horse industry, the positions of trainer and groom are vastly different.

The positions of Trainer and Groom differ greatly. Someone with experience as a Trainer does not need to have had experience as a groom. While a Groom contributes to the daily care of a horse, a Trainer’s sole responsibility is to further the education of the horse to achieve its owner’s goals.

AF 18. In addition to her statements, the Employer provided job descriptions for a horse trainer and a horse groom. AF 40. According to Equimax, the duties of a horse groom include the daily care and personal care of horses such as bathing, brushing, and clipping. AF 37. Additionally, horse grooms may be required to operate farm equipment and help with basic training activities. *Id.* A trainer,

¹ References to the 63-page appeal file will be abbreviated “AF” followed by the page number.

according to Equimax, must possess a significant background in training and competing. AF 40. In addition to training horses, a trainer must have knowledge of buying and selling horses and relating to clients. *Id.*

On March 24, 2010, the CO denied the Employer's application. AF 9-14. Citing to 20 C.F.R. § 655.15(j), the CO asserted that the Employer failed to give a "lawful job-related reason" for failing to hire Mr. D'Angelo. AF 14. The CO reasoned that a groom is an entry level position, while a trainer requires significant experience. AF 13. Therefore, the CO found that a trainer would be adequately qualified to perform the duties of the groom. Further, the CO interpreted the Employer's report that "Mr. D'Angelo . . . had not been a groom for the last 25 years" to mean that at some point, Mr. D'Angelo had grooming experience, and the fact that it occurred 25 years ago, was not a lawful job-related reason to disqualify him. AF 14. The CO subsequently denied the Employer's application, and her appeal followed.

In her request for review, the Employer underscored the differences between a trainer and a groomer. AF 1-2. The Employer asserted: "a Horse Trainer has a significant background in training, competing, and in buying [and] selling horses. Comparatively, the duties of a Horse Groom are significantly different and include the personal care of horses, basic training activities, assisting the vet, and doing light maintenance." AF 2. The Employer also stated:

The CO takes statements made in the response to the RFI out of context, stating that "the Employer stated that D'Angelo had not been a groom for the last twenty-five years." Quoted accurately, the employer stated through counsel "that he had not *actually* been a groom for the last twenty-five years." This was the report of a concession by Mr. D'Angelo that he did not have the requisite experience. The CO evidently interprets this misquotation to mean that Mr. D'Angelo had groom experience more than 25 years ago. There is no evidence of such in the record at all.

AF 2.

In its brief, the CO asserted that Mr. D'Angelo was qualified to perform the duties of a horse groomer based on "common sense." The CO further stated that the Employer's view "suggests that a trainer sees a horse only when it is ready for training or competing and is not aware or concerned about what occurs at the stable."

Discussion

The Employer must explain the “lawful job-related reasons(s) for not hiring any U.S. workers who applied or were referred to the position.” 20 C.F.R. 655.15(j)(2)(iii). An applicant is considered qualified for the position if he or she “meets the minimum requirements specified in the labor certification application.” *Collier’s Reserve Country Club, Inc.*, 2009-TLN-00078, slip op. at 3 (Sept. 2, 2009). In the present case, the Employer’s application indicated that applicants needed to possess 12 months of experience as a horse groom in order to be qualified for the position. Accordingly, the only real question before the Board is whether Mr. D’Angelo possessed one year of experience as a horse groom.

The record indicates that Mr. D’Angelo does not have any specific experience as a horse groom. Though the CO interpreted one of the Employer’s statements to mean that Mr. D’Angelo had experience as a groom more than 25 years ago, a review of all of the Employer’s statements coupled with the recruitment report indicates that Mr. D’Angelo claimed 25 years of experience with horses. Moreover, during this time, he was considered a horse trainer, not a groom. His statement that he had “not actually been a groom for the last 25 years” was not a statement of past experience as a groom but instead a response to the Employer’s specific question as to whether or not he had actual grooming experience. In response to the Employer’s question, Mr. D’Angelo stated that during the past 25 years, while he has worked with horses, he had not “actually” worked as a groom but as an owner, trainer, and breeder.

Since Mr. D’Angelo has not worked as a horse groom specifically, the question then becomes whether his experience as a horse trainer by its very nature implies that Mr. D’Angelo has experience as a horse groom. A review of the job descriptions provided by the Employer and used by the CO in his denial and brief indicate that a horse groom and a horse trainer are innately separate jobs. A groom spends the vast majority of his time cleaning, brushing, and clipping the horse. Additionally, the groom may be required to operate farm equipment or occasionally help out with exercise. However, a trainer spends the vast majority of his time preparing the horses for competition on the track, and the remainder of a trainer’s time is spent pursuing business aspects of the job, such as dealing with buyers and sellers. Certainly, as the CO suggested, a trainer is a more experienced position, while a groom is an entry level position, but nothing in the descriptions suggest that in order to become a trainer, a person need work as

a groom. Moreover, a groom may care for a horse when the trainer is finished with his work, but it is not obvious that a trainer would perform the duties of a groom. Ultimately, while the two jobs may overlap somewhat based on their proximity to the horses, a trainer would not necessarily be experienced as a groom any more than a groom is experienced as a trainer. Since Mr. D'Angelo did not have any actual experience as a groom, the Employer had a lawful job-related reason for denying him employment. Therefore, the CO incorrectly denied the Employer's application.

Order

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

For the Board:

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WILLIAM S. COLWELL
Associate Chief Administrative Law Judge