



Issue Date: 17 December 2009

BALCA Case No.: 2010-TLN-00024

ETA Case No.: C-09286-46652

In the Matter of:

SOHRAB LTD,

Employer

Certifying Officer: Robert E. Meyers
Chicago National Processing Center

Before: **WILLIAM S. COLWELL**
Associate Chief 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 October 1, 2009, the Department of Labor's Employment and Training Administration ("ETA") received an application for temporary labor certification from Sohrab, Ltd., ("Sohrab" or "the Employer"), requesting certification for one "Indian Specialty Cook"

from October 1, 2009, until September 30, 2010. AF66-92.¹ On October 20, 2009, the CO issued a *Request for Further Information* (“RFI”) citing multiple deficiencies, only one of which is relevant to this appeal. AF 59-65. Specifically, the CO requested evidence of the Employer’s pre-filing recruitment requirements, including copies of any newspaper advertisements. AF 64.

On October 28, 2009, the Employer responded to the RFI. AF 31-62. The Employer submitted its newspaper advertisements from the *Amarillo Globe-News*. AF 57-58. The advertisements, which ran the required two days, failed to include the wage offered for each position, the days and hours of work, or the number of workers needed. *Id.*

On November 12, 2009, the CO issued a *Final Determination* denying the Employer’s application. AF 20-23. The CO found that the Employer failed to comply with the advertisement requirements. AF 22. Citing to 20 C.F.R. § 655.17, the CO found that the job postings did not comply with regulatory requirements because the postings failed to list the wage offer, the work days and hours, and the number of workers needed. *Id.* The CO denied certification based on the Employer’s failure to comply with the recruitment requirements at 20 C.F.R. § 655.17. The Employer’s appeal followed.

Discussion

When conducting domestic recruitment under the H-2B program, all advertising must contain, *inter alia*, “[t]he work hours and days, expected start and end dates of employment,” “the wage offer,” and “the total number of job openings the employer intends to fill.” 20 C.F.R. § 655.17(f), (g), (h). These recruitment requirements are “designed to reflect what the Department has determined, based on program experience, are most appropriate to test the labor market.” *See* 73 Fed. Reg. 78,020, 78,031 (Dec. 19, 2008). Since the Employer failed to comply with the advertising requirements, the CO properly denied certification.

The Employer does not deny that its advertisements failed to include the total number of workers needed, the wage offer, and the work days and hours. However, in its request for

¹ Citations to the 92-page appeal file will be abbreviated “AF” followed by the page number.

review, the Employer characterized its recruitment efforts as “diligent,” and complained that the “recently enacted . . . rules are not clear . . . [and] should not be applied in a stringent fashion.” AF 3. Further, the Employer asserts that the rules should have “room for relaxation [because] any lapse in failing to mention the number of workers needed, the wage being offered or the work days and hours needed is not fatal to the certification.” *Id.* Finally, the Employer argues that the failure to mention the work days and hours or the number of workers needed did not make the “advertisement unduly restrictive so as to discourage U.S. workers from applying,” but actually made the advertisement “more opened ended and invited the attention of more people than it would have.” AF 5.

Employers must strictly comply with the newspaper advertisement requirements contained in § 655.17 in order to adequately test the domestic labor market. While the Employer may complain about the new regulatory requirements and assert it put forth a diligent effort, the Department has determined that all of the required advertisement steps are necessary in order to protect domestic workers. By failing to inform potential workers of the wage offered, the number of positions available, and the work hours, the Employer could not have conducted adequate domestic recruitment, regardless of the Employer’s effort. Since the Employer did not comply with the Department’s advertising requirements, I affirm the CO’s denial.

Order

For the foregoing reasons, it is hereby **ORDERED** that the Certifying Officer’s decisions are **AFFIRMED**.

For the Board:

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WILLIAM S. COLWELL
Associate Chief Administrative Law Judge