

U.S. Department of Labor

Board of Alien Labor Certification Appeals
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Issue Date: 22 June 2012

BALCA Case No.: 2012-TLN-00039

ETA Case No.: C-12108-59033

In the Matter of:

EVOLUTION SOCCER ACADEMY,
Employer

Certifying Officer: William L. Carlson
Chicago National Processing Center

Appearances: Nancy Scarcella, Esquire
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Cleveland, Ohio
For the Employer

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Division of Employment and Training Legal Services
Washington, DC
For the Certifying Officer

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

DECISION AND ORDER
AFFIRMING DENIAL OF CERTIFICATION

This matter arises under the H-2B temporary non-agricultural labor or services provisions of the Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(15)(H)(ii)(b), 1184(c)(1), and the implementing regulations at 8 C.F.R. Part 214 and 20 C.F.R. Part 655, Subpart A. These provisions allow U.S. employers to bring foreign nationals to the United States to fill temporary

nonagricultural jobs when there are not sufficient workers who are able, willing, qualified, and available at the place where the alien is to perform such services or labor. 8 C.F.R. § 214(2)(h)(1)(ii)(D). Before filing a petition for H-2B visa classification, an employer must apply for and receive a temporary labor certification from the U.S. Department of Labor (“the Department”), Employment and Training Administration (“ETA”). 20 C.F.R. § 655.20. After ETA accepts an employer’s *Application for Temporary Employment Certification* for processing, a Certifying Officer (“CO”) reviews the application and makes a determination to either grant or deny the requested labor certification. 20 C.F.R. § 655.23. If the CO denies labor certification, in whole or in part, then the employer may request review before the Board of Alien Labor Certification Appeals (“BALCA” or “the Board”). 20 C.F.R. § 655.33(a). The scope of the Board’s review is limited to the appeal file prepared by the CO, legal briefs submitted by the parties, and the employer’s request for review, which may only contain legal argument and such evidence that was actually submitted to the CO in support of the employer’s application. 20 C.F.R. § 655.33(a), (e).

STATEMENT OF THE CASE

On April 17, 2012, ETA received an application for H-2B temporary labor certification from Evolution Soccer Academy (“the Employer”) for twenty (20) “Coaches and Scouts.” AF 146.¹ The Employer indicated that these positions were located in multiple worksites, including four cities in Los Angeles County, California (Manhattan Beach, Hermosa Beach, Redondo Beach, and Torrance) and two cities in Orange County, California (Tustin and Irvine). AF 149. To document its compliance with the pre-filing recruitment requirements, the Employer submitted a copy of the job order it filed with the California State Workforce Agency (“SWA”) and two tearsheets from advertisements that it published in the *Los Angeles Times*. AF 154-157. The Employer’s *Los Angeles Times* advertisements state, in relevant part:

Evolution Soccer Academy in CA has 20 temp. positions from 4/1/12 to 11/30/12
. . . . Qualified applicants send resume to: Evolution Soccer, Recruitment Office,
915 18th Street, Hermosa Beach, CA 90254 or email:
Dward@evosoccerprograms.com.

AF154-155.

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

On April 23, 2012, the CO issued a *Request for Further Information* (“RFI”) identifying four deficiencies in the Employer’s application. AF 134-171. Only one of these deficiencies—the Employer’s alleged failure to comply with pre-filing recruitment requirements—is relevant to the instant appeal. In particular, the CO observed that the Employer’s job order and newspaper advertisements did not provide all of the information required by 20 C.F.R. § 655.17, specifically noting that these postings did not indicate: 1) that work will be performed in multiple work locations in Los Angeles and Orange County, California; 2) whether the Employer will provide transportation to the worksites; and 3) the end date of employment. AF 137-38. To remedy this deficiency, the CO directed the Employer to provide evidence that it complied with the regulatory requirements. *Id.*

The Employer responded to the RFI on May 3, 2012, providing additional copies of its pre-filing recruitment documentation. AF 29-133. After reviewing the Employer’s response materials, the CO issued a *Final Determination* denying certification. AF 23-28. In an attachment to the denial, dated May 22, 2012, the CO found that the Employer failed to comply with the pre-filing recruitment requirements at 20 C.F.R. § 655.15. AF 25-28. In particular, the CO noted that the Employer’s SWA job order and *Los Angeles Times* advertisements did not provide all of the necessary information listed in 20 C.F.R. § 655.17, as required by 20 C.F.R. § 655.15(e)(2) and (f)(3). The CO specifically addressed several omissions, including the fact that the Employer’s *Los Angeles Times* advertisements “do not list any work locations.” AF 28.

On June 1, 2012, the Employer requested BALCA review. The Board received the Appeal File on June 8, 2012. Both the Employer and Counsel for the CO submitted briefs on June 15, 2012.

DISCUSSION

When conducting domestic recruitment under the H-2B program, an employer must publish two print advertisements in a newspaper of general circulation. 20 C.F.R. § 655.15(f). These advertisements must contain, *inter alia*, “[t]he geographic area of employment with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the services or labor.” 20 C.F.R. § 655.17(b); *see also* 20 C.F.R. § 655.15 (f)(3) (requiring newspaper advertisements to satisfy the requirements contained in § 655.17).

Here, the Employer's *Los Angeles Times* advertisements state only that the Employer is "in CA," and do not include the actual geographic area of the work sites with any degree of specificity.² The Employer seeks to minimize this deficiency, but as the Board held in *Michael E. March, d/b/a Mike's Stone Supply*, "[a]bsent unusual circumstances, it will be necessary for an employer to include the cities or towns where work will be performed in order to adequately apprise potential applicants of any travel requirements or where they will likely have to reside to perform the services or labor." 2011-TLN-25 (BALCA May 25, 2011). Furthermore, since the advertisement content requirements were "designed to reflect what the Department has determined, based on program experience, are most appropriate to test the labor market," 73 Fed. Reg. 78,020, 78,031 (Dec. 19, 2008), the Board has consistently affirmed the strict application of these requirements. See e.g., *Michael E. March, d/b/a Mike's Stone Supply*, supra; *Quality Construction & Production LLC*, 2009-TLN-77 (BALCA Aug. 31, 2009); *BPS Industries, Inc.*, 2010-TLN-14 (BALCA Nov. 24, 2009).

Because the Employer's advertisements only state that the Employer is located in California, I find that the Employer did not indicate the location of its job sites with enough specificity to apprise applicants of where they will likely have to reside to perform the work, as required by 20 C.F.R. §§ 655.17(b) and 655.15(f)(3). Accordingly, I find that the CO properly denied certification.

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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WILLIAM S. COLWELL
Associate Chief Administrative Law Judge

² Although the advertisement does provide an address for the Employer's Recruitment Office, it does not provide any indication of where the work sites for the advertised positions are located.