



DATE: FEB 21 1989  
CASE NO. 88-INA-81

IN THE MATTER OF

QUINCY SCHOOL COMMUNITY COUNCIL,  
Employer

on behalf of

TSOU HSUECH-CHEN,  
Alien

Harvey Kapland, Esq.  
Boston, MA

For the Employer

BEFORE: Litt, Chief Judge; Vittone, Deputy Chief Judge;  
and Brenner, DeGregorio, Tureck, Guill and Schoenfeld,  
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 Dennis Liberman'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 available at the time of application for a visa and admission into the United States

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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.

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 and Discussion

Employer is a non-profit social service agency whose business is providing English language instruction to Chinese-speaking adults living in the Greater Boston area. Its English as a Second Language Program has a student body of 375 at any given time. On October 23, 1986, Employer's application for alien labor certification was accepted for processing. Employer indicated that it was recruiting for the position of bilingual English as a second language teacher. Employer listed the duties of the position as follows:

Will work as English as a Second Language Teacher. Will be responsible for teaching English as a second language for adults. Also responsible for development of curriculum with specific responsibility for advising and further development of the bilingual survival oriented curriculum.

(AF 1) The stated minimum requirements for a worker to satisfactorily perform the job duties were: a Master's Degree in Education with an emphasis on teaching English as a Second Language; fluency in written and spoken Cantonese and English; and two years of experience teaching English as a foreign language (id.).

On May 26, 1987, the Certifying Officer ("CO") issued a Notice of Findings ("NOF"). He determined that Employer was in violation of §656.21(b)(2)(i), which requires that the job opportunity be described without unduly restrictive requirements. Specifically, the CO reasoned that the education and experience requirement of a Master's degree and two years of experience teaching English as a foreign language is unduly restrictive because it is in excess of the Specific Vocational Preparation period listed in the Dictionary of Occupational Titles, and Employer did not demonstrate that the requirement arises from business necessity (AF 7).

Employer submitted a 3 1/2 page, single-spaced letter dated June 3, 1987 in rebuttal to the NOF explaining in detail why both the educational background and the teaching experience are needed to perform the job. Employer, noting both the teaching and curriculum development aspects of the position, stated that the Master's Degree in Education is needed to ensure that the

applicant will have a theoretical background in traditional and innovative techniques. Employer argued that the teaching experience requirement serves to ground the applicant's theoretical knowledge in reality so that the applicant will be able to perform the duties of developing and revising the curriculum and training other teachers in new teaching methods and materials. Employer stated that in the past, teachers with a Master's Degree but no practical experience had developed material inappropriate to their students, leading to a high dropout rate (AF 8).

On August 11, 1987, the CO issued a Final Determination, denying labor certification. The entire substance of the CO's decision is as follows:

The documentation provided in rebuttal to the Notice of Findings does not show that the excessive requirements arise from a "business necessity" in violation of §656.21(b)(2)(1).

Since the CO failed to raise a single argument in response to Employer's detailed rebuttal, and the evidence filed by Employer establishes that the requirement of a Master's Degree in Education and two years of teaching experience "bear a reasonable relationship to the occupation in the context of the employer's business and are essential to perform, in a reasonable manner, the job duties as described by the employer . . . ", Information Industries, Inc., 88-INA-82, slip op. at 9 (Feb. 9, 1989 (en banc)), certification should have been granted. See Allied Towing Service, 88-INA-46 (Jan. 9, 1989) (en banc).

Therefore, the Final Determination denying certification is reversed.

#### ORDER

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

JEFFREY TURECK  
Administrative Law Judge

JT:jb