



DATE: May 22, 1989
CASE NO. 88-INA-249

IN THE MATTER OF

METROPLEX DISTRIBUTORS,
Employer

on behalf of

MARIA A. GOMES,
Alien

Milton S. Kramer, Esquire
For the Employer

BEFORE: Litt, Chief Judge; Vittone, Deputy Chief Judge;
Brenner, Guill, Tureck, and Williams,
Administrative Law Judges

NAHUM LITT
Chief Judge:

DECISION AND ORDER

This case arose from an application for labor certification submitted by the Employer on behalf of the Alien pursuant to Section 212(a)(14) of the Immigration and Nationality Act, 8 U.S.C. §1182(a)(14). The Certifying Officer (CO) of the U.S. Department of Labor denied the application, and the Employer requested administrative-judicial review pursuant to 20 C.F.R. §656.26 (1988).¹

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 there are not sufficient workers who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform such labor, and that the employment of the alien will not adversely affect the wages and working conditions of the United States workers similarly employed.

¹All regulations cited in this decision are contained in Title 20 of the Code of Federal Regulations.

An employer who desires to employ an alien on a permanent basis must apply for labor certification pursuant to §656.21. 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 labor certification is based on the record upon which the denial was made, together with the request for review, as contained in the Appeal File (A1-A148), and any written arguments of the parties. See §656.27(c).

Statement of the Case

On November 24, 1986, the Employer filed an application for alien labor certification to enable the Alien to fill the position of Bookkeeper, DOT code 210.382-014. The Employer, which is located in Edison, New Jersey, is a Food Distributor. The requirements of the job were keeping a complete set of books. The worker would keep records of all financial transactions, accounts payable and receivables, sales, purchases, disbursements, receipts, general ledger and payroll. (AF 1-43)

In her Notice of Findings (NOF), the Certifying Officer (CO) concluded that it appeared that three U.S. workers who were qualified for the job had been denied the position. She afforded the Employer the opportunity to submit rebuttal evidence to show that the rejections had been for lawful, job related reasons (AF 49-50).

After considering the rebuttal evidence, the CO found that the Employer's rejection of two of the U.S. workers were for lawful reasons. However, she found that Anthony J. DeLeon who was an accountant was willing to accept the job even though he was overqualified. Therefore, the Employer had not documented that it had rejected a qualified U.S. worker for lawful, job related reasons (AF 55-56).

Discussion

Under §656.21(b)(7), if U.S. workers have applied for the job opportunity, the employer shall document that they were rejected solely for lawful, job related reasons. In this case, Anthony J. DeLeon who is an accountant applied for the job. He had obtained a Bachelors of Arts Degree from the City University of New York, Evening Division, while performing bookkeeping accounting functions for RCA Corporation (AF 40, 41). He had continued to work in the accounting field for over 20 years after obtaining his degree. According to Mr. DeLeon's response to a local job office questionnaire, he was never contacted by the Employer (AF 42). Mr. DeLeon believes that his age of 54 years in 1986 was the reason he was not considered. His salary requirements were flexible and within the range of that listed by the Employer for the Bookkeeping job (AF 42).

In rebuttal to the NOF, the Employer stated that Mr. DeLeon's experience was as an accountant, not as a bookkeeper, that his experience has been in such rarified matters as financial

analysis and preparation of financial reports, not in the day to day performance of the duties of bookkeeper (AF 53). The Employer conceded that Mr. DeLeon was qualified as an Accountant, but justified the rejection of Mr. DeLeon [because] "we do not need and are not seeking the services of an accountant; we need a full charge bookkeeper." (AF 53)

Mr. DeLeon was clearly qualified for the job by education, training and experience. The Employer argues on appeal that the experience and the duties of an accountant do not constitute experience in the mundane day to day duties of posting in ledgers sales, purchases, receipts, disbursements, etc. The Dictionary of Occupational Titles lists similar, or overlapping duties for Bookkeepers, Accountants and Auditors. Moreover, Mr. DeLeon's resume indicates that he has experience performing such day to day duties of recording transactions in journals.

The Employer also argues on appeal that as a matter of business judgment, it was justified in taking into consideration the likelihood of an accountant being unwilling to hold the job of a bookkeeper on a permanent basis. In In Re Southpoint Seafood Market, 87-INA-614 (Jan. 20, 1988), the Board rejected, as a lawful, job related reason, an employer's subjective assertion that an overqualified applicant would become quickly bored in an unchallenging job.

The Employer has failed to document lawful, job related reasons for rejecting each U.S. worker; therefore, the CO properly denied certification.

ORDER

The Final Determination of the Certifying Officer denying certification is hereby AFFIRMED.

NAHUM LITT
Chief Administrative Law Judge

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