



DATE ISSUED: May 26, 1989

CASE NO. 88-INA-379

IN THE MATTER OF THE APPLICATION  
FOR AN ALIEN EMPLOYMENT CERTIFI-  
CATION UNDER THE IMMIGRATION AND  
NATIONALITY ACT

BAY AREA WOMEN'S RESOURCE CENTER  
Employer

on behalf of

VIBHA LAL  
Alien

Terry J. Helbush, Esq.  
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 matter arises 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) (1982). The Certifying Officer (CO) of the U.S. Department of Labor denied the application, and the Employer requested review pursuant to 20 C.F.R. §656.26 (1988).<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 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

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

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.

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-A162), and any written arguments of the parties. See § 656.27(c).

#### Statement of the Case

On December 23, 1986, the Employer, Bay Area Women's Resource Center, filed an application for alien employment certification to enable the Alien, Vibha Lal, to fill the position of Community Organization Worker. (A16-A162). The job duties included: providing services primarily to women in low income area; interviewing clients to ascertain need for services such as shelters, job training, substance abuse treatment, psychological counseling, child care, medical, prisoner rehabilitation, financial counseling, etc; maintaining job referral ban; leading group discussions; discussing community needs with government officials; preparing and disseminating public service announcements, publications, grant proposals; and making presentations to various bodies. (A16). The Employer required one year of experience in the job offered or one year experience as a community service worker. (A16). The Employer also required experience with multi-national cultural low income persons, especially low income women, in a community organization setting, and experience in liaison work with media and public officials. (A16).

The Employer's recruitment efforts yielded 41 referrals, all of whom the Employer rejected as unqualified or unavailable. (A19-A24). One U.S. worker, Carmen T. Rosales, applied for the job on February 20, 1987, by letter. Ms. Rosales asked for a personal interview and gave a telephone number at which she could be contacted. She listed a second telephone number in her resume. (A49). She also enclosed a letter of recommendation from her supervisor at the University of California, Berkeley, where she was then working. The supervisor listed another telephone number for anyone to call who was interested in information about the worker. (A51-A52). In rejecting Ms. Rosales, the Employer stated that "Ms. Rosales gave us a work number to call. We called that number twice and left two messages for her to call us. She has not responded." (A24).

On November 30, 1987, the CO issued a Notice of Findings, stating that Employer must specify lawful, job-related reasons for rejecting each U.S. worker who applied. (A12-A14). The CO found that the Employer's reasons for rejecting five U.S. workers, including Ms. Rosales, were not convincing. The Employer was required to submit documentation that the U.S. workers were not qualified, willing, or available at the time of initial consideration and referral. (A14).

On December 30, 1987, the Employer submitted rebuttal. (A5-A11).

None of the persons listed in your Notice of Findings had the necessary background and experience that would enable her to perform the duties of this position. A possible exception was Carmen Rosales. However, we attempted to contact Ms. Rosales at her work number to arrange an interview. We called her on two separate occasions and left two messages to return our call, but she never responded. We have to assume that she was not seriously interested in the position. (A6).

On March 18, 1988, the CO issued a Final Determination denying certification. (A3-A4). The CO stated that Ms. Rosales was qualified for the position. After considering the Employer's statements in rebuttal, the CO found that there was no evidence that the Employer attempted to contact Ms. Rosales by mail, and that the Employer made minimal efforts to contact her. (A4). The CO concluded that the Employer had not presented a lawful, jobrelated reasons for rejecting this U.S. worker. (A4).

On April 5, 1988, the Employer requested review arguing that it had made a good faith effort to recruit a qualified U.S. worker. (A1-A2). According to the Employer, it left detailed messages at the number given to them by Ms. Rosales. "It is not unreasonable to assume that if Ms. Rosales was interested in the position, she would have returned the call." (A2). In its Brief on Appeal, the Employer argued that its efforts to contact Ms. Rosales were reasonable.

#### Discussion and Conclusion

The CO denied certification on the ground that the Employer failed to document a lawful, job-related reason for rejecting U.S. worker, Carmen Rosales. Under § 656.21(b)(7), the employer bears the burden of establishing that it has made reasonable efforts to contact qualified U.S. workers. See generally, In re William W. Wright Stables, 87 INA 502 (Jan. 6, 1988); In re Churchill Cabinet Co., 87 INA 539 (Feb. 17, 1988).

In the instant case, the Employer only attempted to contact Ms. Rosales at one of three possible telephone numbers. No attempt was made to contact her by mail. Based on the information given by Ms. Rosales, the Employer's two messages do not constitute reasonable efforts to contact a qualified U.S. worker. In re Bruce A. Fjeld, 88 INA 333 (May 26, 1989) (in a decision published concurrently, the Board also found the Employer's attempts to contact the U.S. worker at one telephone number were insufficient). Accordingly, 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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