



Date: APRIL 21, 1992

Case No: 89-INA-261

In the Matter of

INTERNATIONAL STUDENT EXCHANGE
OF IOWA, INC.,
Employer

on behalf of

INGRID CASILLO NIELSEN,
Alien

BEFORE: Brenner, De Gregorio, Glennon, Groner, Guill,
Litt and Romano
Administrative Law Judges

DECISION AND ORDER

PER CURIAM. On June 20, 1991, the Board granted en banc review in this matter. Upon consideration of the matter, the Board concludes that the panel's April 30, 1991 Decision and Order reversing the Certifying Officer's denial of labor certification must be affirmed.

First, the Certifying Officer argues that business necessity was improperly found for the foreign language degree requirement. The Certifying Officer did not challenge, in the Notice of Findings, the degree requirement on a business necessity basis. Instead, the Certifying Officer suggested that other degrees might also satisfy Employer's needs. Moreover, the Certifying Officer did not challenge the foreign language degree requirement in the Final Determination. Accordingly, the issue was not preserved by the Certifying Officer and Employer is not required to explain potential deficiencies in its rebuttal evidence concerning this requirement.¹

Second, the Certifying Officer argues that the panel incorrectly based a finding of business necessity, for a foreign language ability requirement, on the employer's clients' preference that the person occupying this position speak in certain foreign languages. However, this case did not involve only the clients' preference that business be conducted in a foreign

¹ Had the Certifying Officer, in the Final Determination, found inadequate documentation to justify requiring a foreign language degree for the job opening, the Board might not have found the requisite business necessity based on the record presented on appeal.

language.² Therefore, the Board will not address whether an employer's clients' preference alone can justify a foreign language ability requirement, as the record in the instant matter does not present that issue.

Accordingly,

IT IS ORDERED that the panel's April 30, 1991 Decision and Order is hereby REINSTATED and AFFIRMED in all respects.

At Washington, D.C.

Entered at the direction of the Board

by:

Todd R. Smyth
Secretary to the Board of Alien
Labor Certification Appeals

TS/DS

² The panel found that some of the students' parents, who communicate with the alien and her supervisors, do not speak English. The requirement that they conduct business in a foreign language cannot, accordingly, be merely a preference.