U.S. Department of Labor

Board of Alien Labor Certification Appeals
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Issue Date: 25 February 2004

BALCA Case No.: 2003-INA-29
ETA Case No.: P2002-CT-01320342

In the Matter of:

BEACON REEL CO.,
Employer,

on behalf of

RODRIGO SALAZAR,
Alien.

Certifying Officer: Raimundo A. Lopez
Boston, MA

Before: Burke, Chapman and Vittone
Administrative Law Judges

DECISION AND ORDER

PER CURIAM. This case arises from an application for labor certification[1] filed by Beacon Reel Co. ("Employer") on behalf of the Alien, Rodrigo Salazar, for the position of Assembler Welder. (AF 23-24).[2] The following decision is based on the record upon which the Certifying Officer ("CO") denied certification and Employer's request for review, as contained in the Appeal File ("AF"). 20 C.F.R. § 656.27(c).

[1] Alien labor certification is governed by § 212(a)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(5)(A) and 20 C.F.R. Part 656.

[2] "AF" is an abbreviation for "Appeal File".

STATEMENT OF THE CASE

On April 30, 2001, Employer filed an application for alien labor certification on behalf of the Alien, Rodrigo Salazar, to fill the position of Assembler Welder. Minimum requirements for the position were listed as two years experience in the job offered. (AF 23-24).

On June 12, 2002, the CO issued a Notice of Findings ("NOF") proposing to deny labor certification based upon a finding that Employer had rejected an apparently qualified U.S. worker for other than lawful, job-related reasons. (AF 5-6). The CO noted that applicant Slayton had twenty-three years of experience in the welding industry, well in excess of Employer's stated minimum requirement of two years experience. The CO concluded Employer had wrongfully rejected this U.S. applicant and instructed Employer to further document specific lawful, job-related reasons for rejection of this applicant.

In Rebuttal dated July 17, 2002, Employer emphasized the need for a person "with basic welding qualifications." (AF 4). Employer stated that the prospective applicant's knowledge and skill "greatly exceeds our basic needs" and "[o]ur job position and his background are not comparable and desirable." Employer indicated that he spoke with applicant Slayton and confirmed that he would not be happy in the position.

On October 18, 2002, the CO issued a Final Determination ("FD") denying labor certification based upon a finding that Employer had failed to adequately document lawful rejection of the cited U.S. worker. (AF 2-3). The CO concluded that Employer's rebuttal lacked documentary evidence suggesting that applicant Slayton was not able or qualified to perform the job duties. Employer's determination that the worker was overqualified and would not be happy in the position was insufficient to demonstrate lawful, job-related rejection of this qualified U.S. worker.

Employer filed a Request for Review by letter dated November 5, 2002 and the matter was docketed in this Office on December 10, 2002. (AF 1).

DISCUSSION

Twenty C.F.R. § 656.20(c)(8) requires that the job opportunity be clearly open to any qualified U.S. worker. Twenty C.F.R. § 656.21(b)(6) provides that U.S. workers applying for a job opportunity offered to an alien may be rejected solely for lawful job related reasons. Twenty C.F.R. § 656.24(b)(2)(ii) states that the CO shall consider a U.S. worker able and qualified for the job opportunity if the worker, by education, training, experience, or a combination thereof, is able to perform in the normally acceptable manner, the duties involved in the occupation as customarily performed by other workers similarly employed.

Labor certification is properly denied where an employer unlawfully rejects workers who meet stated minimum education and experience requirements. *ABC Home Video Corp.,* 1993-INA-480 (Nov. 16, 1994); *Banque Francaise Du Commerce Exterieur,* 1993-INA-44 (Dec. 7, 1993); *American Café,* 1990-INA-26 (Jan 23, 1991). An employer must state all the requirements for the petitioned position on the ETA 750A application and if an applicant meets the requirements as stated by the employer, he or she is deemed qualified for the job. *Bell Communications Research, Inc.,* 1988-INA-26 (Dec. 22 1988) (*en banc*). An employer may not reject a U.S. worker solely because he or she is overqualified and employer fears that they may not stay in the position for long. *World Bazaar,* 1988-INA-54 (June 14, 1989) (*en banc*); *IPF Int'l, Inc.,* 1994-INA-586 (Jul. 24, 1996).

In the instant case, Employer rejected applicant Slayton because he was overqualified for the position. Applicant Slayton had experience far in excess of that required by Employer. Employer surmised that the applicant would not be happy and that "the position would not be a challenge." Employer's assertion that applicant Slayton was overqualified is insufficient to support his rejection on this basis, as Employer did not document that the applicant was unwilling or unavailable to perform the job. Thus,

Employer has not proven that there are not sufficient United States workers who are "able, willing, qualified and available" to perform the job. 20 C.F.R. § 656.1.

ORDER

The Certifying Officer's denial of labor certification is hereby **AFFIRMED.**

Entered at the direction of the panel by:

A

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

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary of Labor unless within 20 days from the date of service, a party petitions for review by the full Board of Alien Labor Certification Appeals. Such review is not favored, and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, NW, Suite 400
Washington, D.C. 20001-8002

Copies of the petition must also be served on other parties, and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five, double-spaced, typewritten pages. Responses, if any, shall be filed within 10 days of service of the petition and shall not exceed five, double-spaced, typewritten pages. Upon the granting of the petition the Board may order briefs.