**U.S. Department of Labor**

Board of Alien Labor Certification Appeals
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)



**Issue Date: 12 April 2004**

**BALCA Case Nos.: 2003-INA-44**
**2003-INA-45**
ETA Case Nos.: P2000-CA-09508619/VA
P2000-CA-09508618/VA

*In the Matters of:*

**SISNEROS, INC.,**
*Employer,*

*on behalf of*

**CARLOS CISNEROS,**

*and*

**JUAN CISNEROS,**
*Aliens.*

Appearance: Moza Marquez, Esquire
Van Nuys, CA
For Employer

Certifying Officer: Martin Rios
San Francisco, CA

Before: Burke, Chapman and Vittone
Administrative Law Judges

## DECISION AND ORDER

**Per Curiam.** This case arises from two applications for labor certification[1] filed by Sisneros, Inc. ("Employer"), an office furniture manufacturer, on behalf of two aliens for

[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.

the position of Furniture Makers. (AF 14-15).[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 AF, and any written arguments of the parties. 20 C.F.R. § 656.27(c). Because the same or substantially similar evidence is relevant and material to each of these appeals, we have consolidated these matters for decision. *See* 29 C.F.R. § 18.11.

## STATEMENT OF THE CASE

On April 27, 1998, Employer, Sisneros, Inc., filed an application for alien labor certification on behalf of the Alien,[3] Juan Cisneros, to fill the position of Furniture Maker. The minimum requirement for the position was listed as two years experience in the job offered. Duties of the job included preparation and construction of furniture from blueprints, drawings or instructions. (AF 14-15).

Employer received six applicant referrals in response to its recruitment efforts. Employer rejected all six applicants as unqualified, disinterested and/or unavailable for the position. (AF 19-20).

The CO issued a Notice of Findings ("NOF") on July 18, 2002, proposing to deny labor certification based upon a finding that Employer had rejected four qualified U.S. workers for other than lawful, job-related reasons. (AF 10-12). The CO challenged Employer's rejection of applicants Avendano and Chavez on the basis that they appeared qualified yet Employer had not contacted them. Employer was instructed to further

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

[3] In this decision, "Alien" refers specifically to Juan Cisneros and references to the AF refer to J. Cisneros' AF as representative of both of the appeals. A virtually identical application was filed for both aliens and the issues raised and dealt with by the CO in each case are identical.

document how each U.S. worker was recruited in good faith and rejected solely for job-related reasons.[4]

In Rebuttal, Employer stated that applicant Avendano's resume and cover letter indicated his experience in building furniture included sales and design, hence he did not meet the two years minimum experience requirement. With respect to applicant Chavez, Employer stated that he had contacted the applicant's former employer and concluded he was not qualified and that he had not contacted the applicant directly because the phone number was invalid and he felt "further efforts to contact this applicant were unnecessary." (AF 6-8).

On October 9, 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 applicants Avendano and Chavez. (AF 3-4). Noting that Avendano's resume and cover letter indicated he had experience with building different kinds of furniture, the CO concluded that Employer's failure to contact and determine this applicant's qualifications showed a lack of good faith efforts to recruit. The CO similarly found Employer's basis for rejection of applicant Chavez unsubstantiated because the applicant's resume reflected more than two years experience in the furniture building industry, yet he was not contacted or interviewed to determine his actual work experience and qualifications for the job. The CO found Employer's contact of a previous employer insufficient to determine the applicant's qualifications, and thus concluded Employer did not demonstrate good faith efforts to recruit.

By letter dated November 12, 2002, Employer filed a Request for Review and the matter was docketed in this Office on December 24, 2002. (AF 1-2).

[4] In the FD, the CO found Employer had demonstrated lawful rejections of applicants Dobson and Pantera. Therefore, we will limit our discussion to Employer's rejection of applicants Avendano and Chavez.

## DISCUSSION

Twenty C.F.R. § 656.21(b)(6) provides that qualified U.S. workers applying for a job opportunity offered to an alien may be rejected solely for lawful job related reasons. Implicit in the application process is a good faith effort in the recruitment of U.S. workers. Actions by the employer which indicate lack of a good faith recruitment effort, or actions which prevent qualified U.S. workers from further pursuing their applications, are thus a basis for denying certification. *H.C. LaMarche Enterprises, Inc.,* 1987-INA-607 (Oct. 27, 1988). In such circumstances, the employer has not proven that there are not sufficient United States workers who are "able, willing, qualified and available" to perform the work. 20 C.F.R. § 656.1.

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. Where a U.S. applicant is facially qualified, an employer has a duty to investigate further by interviews or otherwise. *Gorchev & Gorchev,* 1989-INA-118 (Nov. 29, 1990). Moreover, where an applicant's resume shows a broad range of experience, education, and training that raises a reasonable possibility that the applicant is qualified, although the resume does not expressly state that he or she meets all the job requirements, an employer bears the burden of further investigating the applicant's credentials. *Ceylion Shipping, Inc.,* 1992-INA-322 (Aug. 30, 1993); *Executive Protective Serv., Inc.,* 1992-INA-392 (July 30, 1993). Labor certification is properly denied where an employer unlawfully rejects a U.S. worker who meets the stated minimum requirements for the job. *Coventry Place,* 1995-INA-319 (Feb. 6, 1997).

In the instant case, Employer sought to hire a Furniture Maker with two years experience in the job offered. Employer rejected applicants Avendano and Chavez for the petitioned position based upon their resumes. Both applicants' resumes reflect sufficient experience to qualify them for the job. Applicant Avendano's resume and

cover letter show two years experience in many of the duties described in Employer's job requirements. (AF 23-24). Applicant Chavez's resume shows extensive experience in the duties described. (AF 21). Employer's failure to contact both of these facially qualified applicants resulted in their unlawful rejection. Employer, at a minimum, had the duty to interview the applicants to further investigate their credentials. As was noted by the CO in the FD, Employer's contact with applicant Chavez's previous employer does not provide a basis for failing to contact and interview the applicant for the position.

As such, Employer has failed to adequately document that applicants Avendano and Chavez were rejected for lawful, job-related reasons and labor certification was properly denied.

## 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.