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Issue Date: 01 July 2004

BALCA Case No.: 2003-INA-92
ETA Case No.: P2000-CA-09509112

In the Matter of:

INTEGRITY ENVIRONMENTAL CONSULTANTS, INC.,
Employer,

on behalf of

MAHYAR HAGHIGHI JALILI,
Alien.

Appearance: Rick L. Eby, Esquire
Irvine, California
For the Employer and the Alien

Certifying Officer: Martin Rios
San Francisco, California

Before: Burke, Chapman and Vittone
Administrative Law Judges

DECISION AND ORDER

PER CURIAM. This case arose from an application for labor certification on behalf of Mahyar Haghghi Jalili (“the Alien”) filed by Integrity Environmental Consultants, Inc. (“the Employer”), pursuant to § 212(a)(5)(A) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1182(a)(5)(A) (“the Act”), and the regulations promulgated thereunder, 20 C.F.R. Part 656. The Certifying Officer (“CO”) of the United States Department of Labor, San Francisco, California, denied the application, and the Employer requested review pursuant to 20 C.F.R. § 656.26. The following decision is based on the record upon which the CO denied certification and the Employer's request

for review, as contained in the Appeal File ("AF"), and any written arguments of the parties. 20 C.F.R. § 656.27(c).

STATEMENT OF THE CASE

On August 21, 2000, the Employer, Integrity Environmental Consultants, Inc., filed an application for labor certification to enable the Alien, Mayhar Haghighi Jalili, to fill the position of Senior Engineer-Associate, which was classified by the Job Service as Project Engineer. The prevailing wage rate was \$7000 per month. The job duties for the position were to supervise a team of five junior engineers and to coordinate development of clean-up operations for contaminated lands. The job required a Master's degree in Civil Engineering. (AF 28).

In a Notice of Findings ("NOF") issued on October 25, 2002, the CO proposed to deny certification on the following grounds: 1) there is a question whether a current job opening exists to which U.S. workers can be referred, or whether there is a current existing business operated by the Employer in the United States; and 2) the minimum requirements and wage rate set forth on the advertisement are not consistent with those stated on the ETA 750A. (AF 24-26). The CO noted that the advertisement stated that the job was located in Europe and the interviews would be conducted in California. Therefore, the CO questioned whether there was a job opening in the U.S. for U.S. workers. In addition, the CO found that the job advertisement contained requirements not listed on the ETA 750A, such as a total of eight years of experience and fluency in French. The Employer was instructed to re-advertise with the requirements of the position as stated on the ETA 750A. (AF 25-26).

The Employer filed its rebuttal on November 27, 2002. (AF 16-23). The Employer's rebuttal consisted of a cover letter by the Employer's counsel, dated November 27, 2002, a letter by the Employer's President, Massoud Rahdari, the Employer's "Profit & Loss" statements for the years 1998 through 2001, and a draft advertisement. (AF 16-22). The Employer stated that the position was located in

California, with heavy travel to Europe. The Employer argued that it was necessary that the worker be bilingual. The Employer included a draft advertisement with the same requirements as those previously advertised and not listed on the ETA 750A. (AF 17, 22).

The CO found the rebuttal unpersuasive and issued a Final Determination (“FD”) dated December 3, 2002, denying certification on the above grounds. (AF 14-15). The CO stated that the Employer had failed to provide a copy of the firm’s business license and/or to show that a job opening currently exists. Furthermore, the Employer did not agree to advertise the position as described on the ETA 750A. To the contrary, the proposed draft advertisement included requirements not listed on the ETA 750A and a wage offer lower than that stated on the ETA 750A. Accordingly, the CO determined that the application must be denied. (AF 15).

On January 7, 2003, the Employer requested review and the matter was docketed in this Office on February 19, 2003. (AF 82).

DISCUSSION

A petitioning employer must provide directly relevant and reasonably obtainable documentation requested by a CO. *See, e.g., Gencorp*, 1987-INA-659 (Jan. 13, 1988)(*en banc*); *Kogan & Moore Architects, Inc.*, 1990-INA-466 (May 10, 1991); *Bob’s Chevron*, 1993-INA-498 (May 31, 1994).

In the present case, the Employer was asked to document that there is an on-going business in the United States, to show that an unfilled job opening currently exists, and to submit a copy of the firm’s business license. Instead, the Employer submitted unsupported assertions by its President, together with Profit & Loss Statements, which failed to even list the Employer’s address and/or telephone number. The Employer also failed to supply the firm’s business license as requested.

Even if the Employer had presented the requested documentation to demonstrate that there is a bona fide, full-time, job opportunity available to qualified U.S. workers, it has clearly failed to comply with the CO's instructions regarding re-advertising the petitioned position. As stated by the CO, the Employer's previous advertisement listed numerous requirements which are not stated on the ETA 750A, such as eight years of experience, fluency in French, and experience with civil engineering and construction in France. In contrast, the ETA 750A only lists a requirement of a Master's Degree in Civil Engineering. Furthermore, the position was advertised at a wage \$70,000 per year. (AF 36-38). The ETA 750A lists a wage of \$84,000 per year. In the proposed advertisement, the Employer again included the same unstated job requirements as it had in its initial advertisement. Moreover, the Employer's wage of \$75,000 listed in the proposed advertisement is still below the stated wage of \$84,000. (AF 22, 28). The Employer has not demonstrated its actual minimum requirements and the new advertisement does not remedy this deficiency. As such, the CO properly denied certification.

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 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, N.W., 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 ten days of the service of the petition, and shall not exceed five double-spaced typewritten pages. Upon the granting of the petition the Board may order briefs.