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: 14 July 2004

BALCA Case No.: 2003-INA-152
ETA Case No.: P2000-CA-09509592/ML

In the Matter of:

PIONEER ELECTRONICS,
Employer,

on behalf of

ROMEO MARTINEZ,
Alien.

Appearances: Erwin A. Bautista, Esquire
Los Angeles, 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 arises from an application for labor certification[1] filed by an electronics company for the position of Lead Electronics Technician. (AF 13-14).[2] The following decision is based on the record upon which the Certifying Officer ("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).

[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 June 26, 2000, the Employer, Pioneer Electronics Technology, Inc., filed an application for alien employment certification on behalf of the Alien, Romeo Martinez, to fill the position of Lead Electronics Technician. The Employer is in the business of repair of modern technology high definition projection televisions. The job duties include analysis and diagnosis of electrical malfunction of high definition projection televisions, repair and corrective maintenance of circuitry and components and modification design. The minimum requirement for the position was listed as one year of experience in the job offered. (AF 41-42).[3]

The Employer received one applicant referral in response to its recruitment efforts; the Employer rejected that applicant for failure to appear for a scheduled interview. (AF 46-55).

A Notice of Findings ("NOF") was issued by the CO on November 5, 2002, proposing to deny labor certification based upon a finding that the Employer failed to state its actual minimum requirements for the position, as it did not appear that the Alien met the stated minimum requirement at the time of hire. In addition, the CO questioned the Employer's good faith recruitment effort of the qualified U.S. worker applicant, noting that the Employer had waited almost four weeks from receipt of the resume to contact the applicant. (AF 36-39).

In Rebuttal, the Employer presented documentation of the Alien's experience, including a letter of experience, a Certificate of Training, and a Certificate of Award and Citation issued by the U.S. Naval Ship Repair Facility. With respect to the issue of good faith recruitment, the Employer stated that he had made numerous calls to an answering machine after the applicant failed to respond to his letter, and finally reached the applicant, who told the Employer he was not interested. (AF 14-35).

[3] The Employer initially required three years training in addition to the experience requirement; this was deleted in response to the local office's finding that it was duplicative. (AF 4, 41).

A Final Determination ("FD") denying labor certification was issued by the CO on January 10, 2003, based upon a finding that the Employer had failed to state and advertise its actual minimum requirements for the position. Noting that both the ETA 750A and the advertisement specified the Employer's requirement of one year experience with Modern Technology High Definition Projection TV, and that the Alien does not show any experience with Projection TVs prior to hire, the CO concluded that the Employer had failed to state its actual minimum requirements for the position. In addition, the CO concluded that the Employer had demonstrated insufficient recruitment efforts, as the Employer waited twenty-six days before sending a contact letter and then submitted no documentation showing that the applicant had actually received the letter. (AF 12-13).

The Employer filed a Request for Reconsideration and Administrative Review by letter dated January 10, 2003, and the matter was referred to this Office and docketed on April 10, 2003. (AF 1-11). The Employer filed a Legal Brief on June 2, 2003.

DISCUSSION

Pursuant to 20 C.F.R. § 656.21(b)(5), an employer is required to document that its requirements for the job opportunity are the minimum necessary for performance of the job and that it has not hired or that it is not feasible for employer to hire workers with less training and/or experience. Twenty C.F.R. § 656.21(b)(5) addresses the situation of an employer requiring more stringent qualifications of a U.S. worker than it requires of the alien; the employer is not allowed to treat the alien more favorable than it would a U.S. worker. *See ERF Inc., d/b/a Bayside Motor Inn,* 1989-INA-105 (Feb. 14, 1990).

In the instant case, the Employer set its requirements for the job at one year of experience in the job offered. The Employer provided no alternative or related experience requirement. The job offered was described as working on Modern Technology High Definition Projection TVs. The Alien showed no experience with

Projection TVs prior to hire, thus the evidence as presented indicated that the Employer required more stringent qualifications of a U.S. worker than those required of the Alien.

The Employer has documented that the Alien worked as an electronics technician for the U.S. Navy; however, the Employer has not documented the Alien's specific experience with Projection TVs prior to hire by the Employer. Inasmuch as the Alien gained his qualifying experience with the Employer, the Employer must offer that same opportunity to prospective U.S. worker applicants, or it must document why it is not now feasible to hire workers with less training or experience than that it is requiring. *See, e.g., Brent-Wood Products, Inc.,* 1988-INA-259 (Feb. 28, 1989)(*en banc*); *James Northcutt Associates,* 1988-INA-311 (Dec. 22, 1988)(*en banc*); *Keithley Instruments, Inc.,* 1987-INA-717 (Dec., 19, 1988)(*en banc*). The Employer failed to do so. As such, alien employment 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 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.