

**U.S. Department of Labor**



Board of Alien Labor Certification Appeals  
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**Issue Date: 11 August 2004**

**BALCA Case No.: 2003-INA-145**  
ETA Case No.: P2000-CA-09509392

*In the Matter of:*

**CORINA CARE HOME,**  
*Employer,*

*on behalf of*

**MAX LUNTUNGAN,**  
*Alien.*

Appearances: Evelyn Sineneng-Smith, Immigration Consultant  
San Jose, 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 Max Luntungan (“the Alien”) filed by Corina Care Home (“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 May 30, 2000, the Employer, Corina Care Home, filed an application for labor certification to enable the Alien, Max Luntungan, to fill the position of Household Domestic Worker/Caregiver, which the Job Service classified as Nurse Assistant. (AF 94). The job duties for the position included cleaning the house, preparing and serving meals, as well as performing all aspects of patient care, including personal hygiene needs for six developmentally disabled patients. The requirements for the position were four years of high school education and three months of experience in the job offered. The Employer also required that the worker live on the premises and be on-call twenty four hours per day.

In a Notice of Findings ("NOF") issued on November 1, 2002, the CO proposed to deny certification on the grounds that the Employer failed to establish that there is a bona fide, permanent full-time job opportunity to which qualified U.S. workers can be referred. (AF 88-92). The CO stated that the Employer claimed to have six rooms in the facility, but had not submitted a license to operate the facility. The CO requested documentation of the Employer's ability to provide permanent, full-time employment to a U.S. worker. (AF 89).

On January 13, 2002, the Employer filed rebuttal. (AF 17-87). The rebuttal consisted of a memo, dated January 7, 2003, signed by the Employer's Owner, Dumitru Dragnea, a layout of the facility, a nontransferable California license issued to Corina and Dumitru Dragnea authorizing them to operate and maintain a residential-elderly facility entitled "Corina Elderly Home #2," joint tax returns by Dumitru Dragnea and Corina Dragnea, and quarterly wage withholding reports. (AF 19-81).

On February 5, 2003, the CO issued a Final Determination (“FD”) denying certification. (AF 15-16). The CO found that the Employer’s tax return showed wages paid for only one worker, although the Employer was proposing to employ four workers. In addition, the license submitted was for a different location. (AF 16).

The Employer filed a Request for Review on March 7, 2003 and the matter was docketed in this Office on April 10, 2003. (AF 1-14).

### **DISCUSSION**

A petitioning employer must provide directly relevant and reasonably obtainable documentation requested by a CO. *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 CO directed the Employer to provide a copy of its business/care home license to document its ability to provide permanent, full-time employment to a U.S. worker at the terms and conditions stated on the ETA 750A. (AF 89). However, as set forth above, the license provided by the Employer on rebuttal was for a different facility at a different location. (AF 22). The ETA 750A listed the place of work as 8744 Superb Circle in Elk Grove, California. However, the license submitted was for a facility located at 9411 Skydome Court in Elk Grove, California. Nowhere on the ETA 750A does this address appear, nor has the Employer filed an amended ETA 750A changing the address of the Alien’s place of work. Furthermore, we note that the license submitted by the Employer in rebuttal involved a Residential-Elderly facility, not a facility for “developmentally-disabled residents, ages 18-59,” as described on the ETA 750A. (AF 22, 94). Accordingly, the Employer has failed to document that there is a bona fide job opportunity which is clearly open to U.S. workers.

Twenty C.F.R. § 656.24(b)(2) requires that the record be built before the CO, as they have “the resources to best determine the facts surrounding the application.” *Cathay*

*Carpet Mills*, 1987-INA-161 (Dec. 7, 1988) (*en banc*); 20 C.F.R. § 656.24(b)(2). We decline to consider any new evidence submitted by the Employer with its request for review, as such evidence should have been submitted prior to the issuance of the FD, and is not part of the record on appeal. *Import S.H.K. Enterprises, Inc.*, 1988-INA-52 (Feb. 21, 1989) (*en banc*).

In view of the foregoing, we find that labor certification was properly denied.<sup>1</sup>

### **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.

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<sup>1</sup> Accordingly, it is unnecessary to address the other grounds upon which the CO denied certification.