U.S. Department of Labor

Board of Alien Labor Certification Appeals
1111 20th Street, N.W.
Washington, D.C. 20036

DATE: MAY 18 1989
CASE NO. 87-INA-564

IN THE MATTER OF

SPUHL ANDERSON MACHINE CO.,
Employer

on behalf of

ANDREAS GRAF,
Alien

Patrick C. Leung, Esq.
Minneapolis, MI
For the Employer

BEFORE: Litt, Chief Judge; Vittone, Deputy Chief Judge; and Brenner, Tureck, Guill and Williams, Administrative Law Judges

JEFFREY TURECK
Administrative Law Judge

DECISION AND ORDER

This application was submitted by the Employer on behalf of the above-named Alien pursuant to Section 212(a)(14) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(14) (hereinafter "the Act"). The Employer requested review from U.S. Department of Labor Certifying Officer Wellington C. Howard's denial of a labor certification application pursuant to 20 C.F.R. §656.26.[1]

Under Section 212(a)(14) of the Act, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is ineligible to receive a visa unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that: (1) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work; and (2) the employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

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[1] All of the regulations cited in this decision are contained i n Title 20 of the Code of Federal Regulations.

An employer who desires to employ an alien on a permanent basis must demonstrate that the requirements of Part 656 of the regulations have been met. These requirements include the responsibility of the employer to recruit U.S. workers at the prevailing wage and under prevailing working conditions through the public employment service and by other reasonable means, in order to make a good faith test of U.S. worker availability.

This review of the denial of a labor certification is based on the record upon which the denial was made, together with the request for administrative - judicial review, as contained in an Appeal File ("AF"), and any written arguments of the parties [see §656.27(c)].

Statement of the Case

Employer, Spuhl Anderson Machine Company, is a wholly owned subsidiary of Spuhl Ltd., a Swiss manufacturer of coil and spring manufacturing machines, and derives a substantial portion of its business from sales and service of Spuhl Ltd. wire wounding machines (AF 21).[2] On October 29, 1986, Employer filed an application for alien employment certification on behalf of the Alien to fill the position of Machinery Mechanic (AF 28-29). Requirements for the position, as set forth in Form ETA 750, Part A, were a high school education and two years experience in the job offered. Other special requirements were listed as fluency in reading, writing and speaking Swiss German. Job duties were described as providing support for the marketing of Swiss-made wire wounding machines; training service personnel in the maintenance and repair of such machines using service manuals published in Swiss-German, and communicating with the customers of Swiss engineers regarding design improvements (AF 28-29).

Following the issuance of a Notice of Findings ("NOF") by the Certifying Officer ("CO") on March 23, 1987 (AF 23-25), and the filing of a rebuttal by Employer on April 22, 1987, (AF 16, 20-22), a Final Determination denying certification was issued on May 22, 1987 (AF 13-15). The denial was based upon a finding that the rejection of U.S. worker J. Brady was for other than lawful job-related reasons and that Employer had failed to establish the business necessity for the Swiss-German language requirement.

DISCUSSION

At the time of application, Employer submitted a letter setting forth its business justification for imposing a Swiss-German language requirement (AF 21). Employer indicated that a good portion of its business derives from the sales and service of wire wounding machines made by its parent company in Switzerland. It stated that the position for which certification is being sought involves sales and service support for the Swiss-made machines, thus necessitating a command of Swiss-German in order to communicate with the sales and service personnel and understand the service manuals and sales brochures which are not translated into English.

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[2] Since Employer refers to the machines as wire wounding machines rather than wire winding machines, this decision will use Employer's terminology.

Employer also pointed out that fluency in German (as opposed to Swiss German) is insufficient, contending that there are significant differences, between them (AF 50).

In the NOF, the Swiss-German language requirement was found to be unduly restrictive and not adequately documented as arising from business necessity.

In rebuttal, Employer set forth its business reasons for imposing a Swiss-German language requirement, indicating first, that some of the service manuals, parts lists and schematic diagrams are in Swiss-German only, and second, that communication with the parent company and recent intracompany transferees requires a command of Swiss-German (AF 20-21).

We agree with the CO that Employer failed to establish the business necessity for the Swiss-German requirement. Employer has asserted that the Swiss-German requirement is justified as a business necessity because the position requires frequent communication with its parent company in Switzerland and an ability to read manuals and drawings not translated into English. While Employer's assertions clearly establish a need for foreign language ability, at issue is the question of whether Swiss-German is really so different from German as to justify the more restrictive requirement of fluency in Swiss-German. We find Employer's statement regarding applicant J. Brady to be persuasive. In an April 20, 1987 letter, Employer stated that "[w]hile Mr. Brady had some difficulty with Swiss German, I found his German by and large adequate for our purpose" (AF 22). We find Employer's admission that one applicant's command of German (as opposed to Swiss-German) was adequate compels a finding that Employer has failed to establish business necessity for the more specific Swiss-German requirement.

Since Employer has failed to establish business necessity for the Swiss-German language requirement, the CO's denial of certification is affirmed.

ORDER

The CO's denial of Alien labor certification is affirmed.

JEFFREY TURECK
Administrative Law Judge

JT/jb