



DATE: 20 November 1987  
CASE NO. 87-INA-600

IN THE MATTER OF

Colorgraphics Corporation,  
Employer

on behalf of

Mon-chou Shaw  
Alien

BEFORE: Litt, Chief Judge; Vittone, Associate Chief Judge; and Brenner, DeGregorio,  
Fath, Levin, and Tureck, Administrative Law Judges

**DECISION AND ORDER**

This proceeding was initiated by the above named Employer who requested review, pursuant to 20 C.F.R. Section 656.26, from the determination of a Certifying Officer of the U.S. Department of Labor denying an application for labor certification which the Employer submitted on behalf of the above named Alien, pursuant to Section 212(a)(14) of the Immigration and Nationality Act, § U.S.C. 1182(a)(14) [hereinafter, the Act.]

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 labor certification unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that 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 (1) there are not sufficient workers in the United States who are able, willing, qualified, and available for employment and (2) the employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

The procedures governing labor certification are set forth at 20 C.F.R. Part 656. An employer who desires to employ an alien on a permanent basis must demonstrate that the requirements of 20 C.F.R. § 656.21 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 labor certification is based on the record upon which the denial was made, together with the request for review, as contained in an Appeal File [hereinafter, AF], and any written arguments of the parties. 20 C.F.R. § 656.27(c).

### STATEMENT OF THE CASE

The employer, ColorGraphics Corporation, filed its application for alien employment certification on behalf of the alien, Mon Chou Shaw, on 21 October 1985. The employer seeks a Bid Analyst and Estimator. It requires a Bachelor's degree in printing management or technology with a 3.5 or better grade point average. Additionally, the firm required applicants to have at least one course in cost estimating, a computer related course, and three months estimating experience for printing on Web equipment. The employer added that the experience could be "hands on" training received while in college." The wage offered was \$8.65 per hour. The prevailing wage for printing estimators in the area of employment, Tulsa, Oklahoma, is \$9.75 per hour.

The job opportunity was advertised for three consecutive days in the Tulsa World and notice of the opportunity was sent to college placement offices. A job order was also submitted to the Oklahoma Employment Security Commission (OESC). Six United States applicants were referred. ColorGraphics rejected all of the applicants because each lacked at least one of the specified requirements.

The certifying officer found that the requirement that applicants have a 3.5 or better grade point average was unduly restrictive. He instructed ColorGraphics to show that all of its other employees working in similar occupations have equal or better grades.

The certifying officer also found that the employer's experience requirement was unduly restrictive:

The alien obtained all of his experience with the petitioning employer, which cannot be counted. Since the employer hired the alien without experience, he must be willing to hire a U.S. worker without the experience requirement also.

The certifying officer instructed the employer to reconsider the application of Ronald P. Metz, who had previously been rejected because he had no experience on Web printers and because it had been four years since he had last worked in printing.

In its rebuttal, the employer stated that its Chief Estimator had a 3.72 grade point average and pointed out that the applicant R.P. Metz had a 3.59 grade point average and was rejected for reasons unrelated to his grades. The employer also pointed out that the alien's resume clearly indicated that he had experience as a printer before he began work at ColorGraphics, contrary to the certifying officer's finding.

The certifying officer found that the employer's statement was insufficient to rebut the finding that the requirement of a 3.5 grade point average was unduly restrictive. He further

found that the employer had failed to show that the United States applicant R.P. Metz was rejected for lawful and job-related reasons. The certifying officer concluded by stating that the employer had failed to comply with its instructions given in the Notice of Findings and that the findings had not been rebutted. The application was therefore denied.

The employer requests review of the denial based upon the following arguments. The United States applicant, R.P. Metz, had no experience estimating and no experience on Web printing presses. ColorGraphics therefore contends that he was correctly rejected.

The employer did not contact Metz, as it was instructed to do in the Notice of Findings, because it relied on telephone conversations with certifying officer Bustos. Bustos told the employer that if the employer rebutted the certifying officer's findings on unduly restrictive requirements, it was unnecessary for the employer to contact Metz.

Finally, ColorGraphics states that it is now willing to eliminate the grade point average requirement.

### CONCLUSION

The employer's requirement that applicants have a 3.5 grade point average or better was unduly restrictive. The mere fact that Mr. Metz was not rejected because of this requirement is irrelevant. Other qualified applicants may have been discouraged from applying. The employer has offered no independent evidence that such an arbitrary requirement was based upon business necessity. The offer to eliminate the requirement now is untimely and the certifying officer's denial should therefore be affirmed.

### ORDER

It is adjudged and ordered that the certifying officer's denial of ColorGraphics Corporation's application for alien employment certification be, and is hereby, affirmed.

George A. Fath  
Administrative Law Judge