U.S. Department of Labor

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

DATE: March 1, 1989
CASE NO. 88-INA-67

IN THE MATTER OF

EMIL SZTYKIEL
Employer

on behalf of

EDWARD HENDLER
Alien

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

Nicodemo DeGregorio
Administrative Law Judge

DECISION AND ORDER

The above-named Employer requests review pursuant to 20 C.F.R. §656.26 of the United States Department of Labor Certifying Officer's denial of a labor certification application. 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) (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 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. Part 656 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 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

Emil Sztykiel of East Lansing, Michigan is the employer in this case. On March 26, 1987, Mr. Sztykiel filed an Application for Labor Certification on behalf of Edward Hendler for the position of live-in companion. The duties of the position are to clean and maintain the Sztykiel household, cook, drive and shop for Mr. Sztykiel and his wife and "be a good, understanding companion." A special requirement of the job is that the employee must speak Polish. The wage offered by Mr. Sztykiel is $3.35 per hour. (AF 47-48).

The Certifying Officer issued his Notice of Findings on September 8, 1987, stating that the offered wage of $3.35 per hour is below the prevailing wage of $5.00 per hour. (AF 26-28). The Certifying Officer based his prevailing wage determination on a survey conducted by the Michigan Employment Security Commission. (AF 32). Mr. Sztykiel submitted his rebuttal on September 23, 1987. He did not raise his wage offer to conform with the prevailing wage but rather stated that he is unable to pay anyone $5.00 per hour. (AF 29-30). The Certifying Officer issued his Final Determination on October 28, 1987, in which he denied labor certification based on two grounds. First, the Certifying Officer found Mr. Sztykiel to be in violation of 656.21 due to his refusal to bring his wage offer into conformity with the prevailing wage. Secondly, the Certifying Officer stated that the job offer does not appear to be open to U.S. workers. (AF 4-5).

On November 14, 1987, Mr. Sztykiel filed a Request for Review (AF 1-3), and on January 12, 1988 he filed a Statement of Position. These have been duly considered.

Discussion

Mr. Sztykiel is 82 years old, legally blind, and lives with his wife on social security. He does not contest the findings that the prevailing wage for live-in companions in his area is $5.00 per hour. He simply pleads that he cannot afford to pay such a wage to anyone. The alien, who is Mr. Sztykiel's grand nephew, would be willing to accept the job at $3.35 per hour, because the job would give him the opportunity to learn English, the American way of life, and attend a community college. In sum, both parties view the arrangement as mutually advantageous.

Although we appreciate Mr. Sztykiel's need for a congenial companion, as well as his financial constraints, we have no choice but to affirm the denial of labor certification. The policy of the law is to protect the American labor market from an influx of foreign labor. If American employers were allowed to import foreign laborers willing to work in the United States at wages substantially below those prevailing in the domestic market, the general effect would be to depress the wages and reduce the employment opportunities of American workers. This is the very result that the labor certification process is designed to prevent.

No doubt, allowing Mr. Sztykiel to hire his Polish grand nephew at less than prevailing wages could not possibly do so much harm. But we cannot make a special case for Mr. Sztykiel. The law is general and ought to apply equally to everyone. For this reason, the consequences of allowing what Mr. Sztykiel would like to do in this case must be judged on the assumption that all Americans were allowed to do a similar thing.

Thus, we must conclude that labor certification was properly denied on the ground that the wage offered is below the prevailing wage. 20 C.F.R. 656.20(c)(2).

ORDER

The Certifying Officer's determination denying labor certification is affirmed.

Nicodemo DeGregorio
Administrative Law Judge

NG/pah