U.S. Department of Labor

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

DATE: DEC 22 1988
CASE NO. 88-INA-104

IN THE MATTER OF:

ROSIELLO DENTAL LABORATORY,

Employer,

on behalf of

JOSE EDGARDO PLEITEZ,

Alien,

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

James L. Guill
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 whereby such immigrant labor certifications may be applied for, and granted or denied, are set forth in 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

On October 24, 1986, the Employer, a dental laboratory operator, filed an application for alien labor certification (AF 13) to enable alien to fill the position of Dental Technician. Requirements for the position, as stated in the ETA 750A, are four years experience in the occupation of Dental Technician. (AF 13).

Following the issuance of the Notice of Findings by the Certifying Officer on July 8, 1987 (AF 8), and the Employer's filing of its rebuttal on August 12, 1987 (AF 8, 22), the Final Determination denying certification was issued on August 14, 1987 (AF 6-7). On September 9, 1987, the Employer filed a request for review of the denial of labor certification (AF 1-2).

Discussion

This case presents the question of whether the Employer has conformed with 20 C.F.R. §656.21(b)(6) which requires, in part, that the job requirements "represent the [E]mployer's actual minimum requirements for the job opportunity" and that "the [E]mployer has not hired workers with less training or experience for jobs similar to that involved." 20 C.F.R. §656.21(b)(6). In this case, the Certifying Officer requested that the ETA 750A submitted by the Employer be substantiated in the form of "a signed statement on company letterhead from the alien's previous employer, verifying that the alien had 4 years of experience performing the duties of the petitioned position . . . . The [Certifying Officer specified that the] letter of reference must be specific with regard to duties performed, length of employment, weekly work schedule and salary." (AF 10).

The Certifying Officer acted within his authority in requesting such documentation. See In re Gencorp, 87-INA-659 (January 13, 1988). As such, the Employer was put on notice that the alien's previous employment had to be adequately documented. There is no documentation of record that Employer made any attempt to contact the alien's previous employer as requested by the Certifying Officer. Its rebuttal established merely that the alien had worked for his previous employer for five years and provided no documentation regarding the alien's weekly work schedule, salary, or duties performed. (AF 8, 21, 22)

Employer, having failed to establish that the alien had the training and experience required of U.S. workers at the time of hire, failed to establish that the requirements were the actual minimum for its job opportunity as required by §656.21(b)(6).

ORDER

The Certifying Officer's denial of labor certification upon the application for Dental Technician is hereby AFFIRMED.

For the panel:

James L. Guill
Administrative Law Judge

JG:JO