U.S. Department of Labor

Board of Alien Labor Certification Appeals
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Issue Date: 11 May 2016

BALCA Case No.: 2012-PER-01275
ETA Case No.: A-11047-55886

In the Matter of:

BOODELL & DOMANSKIS, LLC,
Employer,

on behalf of

ADOMAS SIUDIKA,
Alien.

Certifying Officer: William Carlson, Ph.D.
National Processing Center

Appearance: Derek Strain, Esq.
Minsky, McCormick & Hallagan P.C.
Chicago, IL
For the Employer

Before: **Geraghty, Calianos, McGrath**
Administrative Law Judges

COLLEEN A. GERAGHTY
Administrative Law Judge

DECISION AND ORDER
REVERSING DENIAL OF CERTIFICATION

This matter arises under Section 212(a)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(5)(A), and the "PERM" regulations found at Title 20, Part 656 of the Code of Federal Regulations ("C.F.R."). For the reasons set forth below, we reverse the denial of the Employer's Application for Permanent Employment Certification.

BACKGROUND

On February 17, 2011, the Certifying Officer ("CO") accepted for filing the Employer's Application for Permanent Employment Certification for the position of "Foreign Legal

Consultant." (AF 77-88).[1] On March 2, 2011, the CO denied the Employer's application based on 20 C.F.R. 656.17(i)(1) which provides "the job opportunities, as described, must represent the employer's actual minimum requirements for the job opportunity." (AF 75-76). In the denial letter, the CO stated the "alien's qualifications listed on the application demonstrate the alien does not meet the requirements as described in Section H.4/H.6, a Master's degree and 12 months experience." (AF 75-76). The CO noted the foreign worker's experience includes only a Master's degree and 6 months of experience. (AF 75-76).

On March 17, 2011, the Employer filed a request for reconsideration. (AF 3-74). In its request, the Employer asserted the foreign worker's qualifications meet the requirements as described in Section H of the application. (AF 3). Specifically, the Employer stated the alien has 13 months of part-time experience as Legal Research Assistant working in EU legal matters as indicated in Section K of the application. (AF 4). The Employer further noted Section H.6.A "indicates 12 months of experience is required, however the section only allowed for numerical answers, and therefore the Employer could not add any qualifying language." (AF 4). The Employer stated Section H.14 of the application specifies that "12 months of full or part-time experience in the job offered or as a Legal Research Assistant is acceptable." (AF 4).

The CO forwarded the case to BALCA on April 24, 2012. The CO's transmittal letter stated the foreign worker's qualifications listed in Section K demonstrate the foreign worker does not meet the employer's requirements as indicated in Section H. (AF 1-2). Specifically, the CO noted the alien only has 6 months of qualifying experience in the related occupation because "one year of part-time experience equates to 6 months of experience." (AF 1-2). The CO explained the "Department considers full-time employment to be a minimum of 35 hours per week, thus, a year of part-time experience at 20 hours per week would not be equivalent to a year of full-time experience." (AF 1-2).

On June 28, 2012, BALCA issued a Notice of Docketing. The Employer filed a Statement of Intent to Proceed on July 6, 2012. On August 9, 2012, the Employer submitted its legal brief. The CO did not file a position statement. On March 8, 2016, BALCA issued an Order Requiring Certification on Mootness. On March 17, 2016, the Employer filed a letter certifying the Foreign Legal Consultant job is still open and available, and Siudika is still ready, willing, and able to fill the position.

DISCUSSION

The PERM regulations require an employer seeking to apply for permanent labor certification on behalf of an alien to file an ETA Form 9089. 20 C.F.R. § 656.17(a). The requirements for the job opportunity listed in an employer's ETA Form 9089 "must represent the employer's actual minimum requirements for the job opportunity." § 656.17(i)(1). If a foreign worker is currently employed by his sponsoring employer, in order to determine whether the job requirements listed in the application represent the actual minimums, the CO "will review the training and experience possessed by the alien beneficiary at the time of hiring by the employer." § 656.17(i)(3). The employer cannot require potential applicants to have more experience than

[1] In this decision, AF is an abbreviation for Appeal File.

that of the alien at the time of his hire. *Id.* The burden is on the employer to ensure that it is submitting a complete application to the CO. 20 C.F.R. § 656.20(b); *All Ohio Air Filter Sales & Service Co.*, 2009-PER-205 (April 7, 2010); *Alpine Store Inc.*, 2007-PER-40 (June 27, 2007).

Here, the Employer's application indicated 12 months of relevant work experience is required for the position of Foreign Legal Consultant. (AF 79). The foreign worker possesses 13 months of part-time relevant work experience as stated on the Employer's application in Section K. (AF 82-83). The CO's transmittal letter stated the alien's qualifications do not meet the Employer's minimum job requirements as listed on the application because the "Department considers full-time employment to be a minimum of 35 hours per week, and thus, a year of part-time experience at 20 hours per week would not be equivalent to a year of full-time experience." (AF 1). However, the Employer attached an addendum to Section H.14 specifically noting the "[p]osition requires one year of full or part-time experience in the job offered or as a Legal Research Assistant working with EU matters" when the application was filed. (AF 88). Therefore, we find the foreign worker meets the minimum requirements for the job opportunity because the Employer's job application addendum to Section H specified that one year of part-time work experience was adequate.

Accordingly, we reverse the CO's finding that the foreign worker did not meet the Employer's minimum requirements for the job opportunity as detailed in its application.

ORDER

Based on the foregoing, **IT IS ORDERED** that the Certifying Officer's **DENIAL** of labor certification in the above-captioned matter is **REVERSED**.

SO ORDERED.

For the panel:

Digitally signed by Colleen Geraghty
DN: CN=Colleen Geraghty, OU=Administrative Law Judge, O=US DOL Office of Administrative Law Judges, L=Boston, S=MA, C=US
Location: Boston MA

COLLEEN A. GERAGHTY
Administrative Law Judge

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary unless within twenty days from the date of service a party petitions for en banc review by the Board. Such review is not favored and ordinarily will not be granted except (1) when en banc 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, NW Suite 400
Washington, DC 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 en banc review with supporting authority, if any, and shall not exceed ten double-spaced pages. Responses, if any, shall be filed within ten days of service of the petition, and shall not exceed ten double-spaced pages. Upon the granting of a petition the Board may order briefs.