

U.S. Department of Labor



Board of Alien Labor Certification Appeals
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Issue Date: 09 September 2004

BALCA Case No.: 2003-INA-253
ETA Case No.: P2000-CA-09509394

In the Matter of:

CORINA CARE HOME,
Employer,

on behalf of

MEIDI ANA MAILOOR,
Alien.

Appearance: Evelyn Sineneng-Smith, Immigration Consultant
San Jose, California
For the Employer and the Alien

Certifying Officer: Martin Rios
San Francisco, California

Before: Burke, Chapman and Vittone,
Administrative Law Judges

DECISION AND ORDER

PER CURIAM. This matter arises from the Employer's request for review of the denial by a U.S. Department of Labor Certifying Officer ("CO") of an application for alien employment certification. Permanent alien employment certification is governed by § 212(a)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(5)(A) ("the Act"), and Title 20, Part 656 of the Code of Federal Regulations. We base our decision on the record upon which the CO denied certification and the Employer's request for review, as contained in the appeal file and any written arguments. 20 C.F.R. § 656.27(c).

STATEMENT OF THE CASE

On May 30, 2000, the Employer filed an application for alien employment certification on behalf of the Alien, Meidi Ana Mailoor, to fill the position of “Caregiver/Household Domestic Worker” at one of the Employer’s residential care facilities. (AF 131).

The CO issued a Notice of Findings (“NOF”) on November 1, 2002, proposing to deny certification for three reasons: (1) lack of sufficient documentation of the Employer’s ability to provide permanent, full-time employment, (2) failure to document the actual minimum requirements for the position, and (3) insufficient efforts to recruit U.S. workers for the job opportunity. (AF 126-129). The CO found that the Employer failed to supply a license to operate a care home and that the Employer had petitioned for four live-in nurse assistants at its facility, despite the facility having only six rooms. (AF 126). Based on these findings, the CO questioned whether the Employer had a current job opening, whether the Employer operated an on-going business and whether it could provide permanent, full-time employment to which U.S. workers could be referred. To address these issues, the Employer was asked to submit a rebuttal documenting its ability to provide permanent, full-time employment to a U.S. worker at the terms and conditions stated on its initial application, along with copies of its home care license and state and federal business income and business tax returns.

The Employer timely submitted its rebuttal to the NOF on January 10, 2003. (AF 18-19). The Employer supplied a copy of a California Residential Care Facility License for its facility located at 9411 Skydome Court in Elk Grove, California. (AF 28). The application supplies a different address, 8744 Superb Circle, also located in Elk Grove, for the facility where the Alien will work. (AF 131). The Employer did not explain this discrepancy or note that the facility had moved at any time.

The CO issued a Final Determination (“FD”) denying labor certification on February 5, 2003. (AF 16-17). The CO noted that the Employer failed to adequately

document its ability to provide permanent, full-time employment at the terms and conditions stated on the ETA 750A. (AF 17). Specifically, the CO noted that the Employer failed to provide a business license for the home where the Alien was to work. The Employer provided a license for a home at a different address, which led the CO to believe that this home was unlicensed.

The Employer requested review of the FD on March 6, 2003, and the matter was docketed by the Board on August 5, 2003.

DISCUSSION

Twenty C.F.R. § 656.20(c) requires the employer to show that it has enough funds available to pay the wage or salary offered the alien and that the job opportunity has been and is clearly open to any qualified U.S. worker. The employer has the burden to provide clear evidence that a valid employment relationship exists, and that a *bona fide* job opportunity is available to domestic workers, and that the employer has, in good faith, sought to fill the position with a U.S. worker. *Amger Corp.*, 1987-INA-545 (Oct. 15, 1987) (*en banc*).

An employer's failure to produce a relevant and reasonably obtainable document requested by the CO is ground for the denial of certification. *See Gencorp*, 1987-INA-659 (Jan. 13, 1988) (*en banc*); *STLO Corp.*, 1990-INA-7 (Sept. 9, 1991); *Arjun Advani Mihinder*, 1994-INA-221 (Jan. 23, 1996). Upon a request by the CO, a petitioner must provide a business license or other documentation to prove the existence of an on-going business and job opening. *Kogan & Moore Architects, Inc.*, 1990-INA-466 (May 10, 1991). Here, despite the CO's specific request in the NOF, the Employer failed in its rebuttal to produce a business license for the residential care facility where the Alien was

to work.¹ Based on the Employer's failure to prove the existence of an on-going business and *bona fide* job opening, we find that certification was properly denied.²

ORDER

The Certifying Officer's denial of labor certification is hereby **AFFIRMED**.

Entered at the direction of the panel by:

A

Todd R. Smyth
Secretary to the Board of Alien Labor
Certification Appeals

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 review by the full Board of Alien Labor Certification Appeals. Such review is not favored and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of Board decisions; or (2) when the proceeding involves a question of exceptional importance. Petitions for review must be filed with:

Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, NW
Suite 400 North
Washington, D.C. 20001-8002

Copies of the petition must also be accompanied by a written statement setting forth the date and manner of that service. The petition must specify the basis for requesting review by the full Board, with supporting authority, if any, and shall not exceed five double-spaced typed pages. Responses, if any, must be filed within ten days of service of the petition, and shall not exceed five double-spaced typed pages. Upon the granting of a petition the Board may order briefs.

¹ Additional documents rebutting the CO's finding accompanied the Employer's Request for Review; however, as this evidence was submitted after the FD, it is not part of the record and cannot be considered on appeal pursuant to 20 C.F.R. § 656.27(c). See *Memorial Granite*, 1994-INA-66 (Dec. 23, 1994).

² Because certification was properly denied on these grounds, it is unnecessary to address the other grounds cited by the CO in the FD.