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Issue Date: 09 September 2004

BALCA Case No.: 2003-INA-287
ETA Case No.: P2001-TX-06336071

In the Matter of:

CORPORATE SYSTEMS, INC.,
Employer,

on behalf of

RANJIT BHASKAR,
Alien.

Appearance: Rajiv S. Khanna, Esquire
Arlington, Virginia
For the Employer and the Alien

Certifying Officer: John W. Bartlett
Dallas, Texas

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 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 Certifying Officer ("CO") denied certification and the Employer's request for review, as contained in the appeal file ("AF") and any written arguments. 20 C.F.R. § 656.27(c).

STATEMENT OF THE CASE

On July 19, 2001, the Employer filed an application for alien employment certification on behalf of the Alien, Ranjit Bhaskar, to fill the position of Lead Programmer Analyst. (AF 127). The CO issued a Notice of Findings (“NOF”) on September 30, 2002, stating that he intended to deny certification because the Employer had failed to comply with 20 C.F.R. § 656.21(b)(5). (AF 122).

The Employer timely submitted its rebuttal on November 1, 2002. (AF 118).

The CO issued a Final Determination (“FD”) on July 20, 2003, concluding that the Employer did not establish the minimum job requirements because it failed to submit documentation to establish that the Alien possessed the required experience at the time of hire. (AF 117).

The Employer filed a motion for reconsideration on July 30, 2003, and on August 8, 2003, the Employer submitted its request for review. (AF 13). The CO denied the Employer’s motion for reconsideration on August 22, 2003. (AF 11). The matter was docketed by the Board on September 8, 2003.

DISCUSSION

The CO denied certification because the Alien did not have the required experience prior to being hired in the job opportunity by the Employer. To obtain labor certification, an employer must clearly document, *inter alia*, that its requirements for the job opportunity, as described, represent the employer’s actual minimum requirements for the job opportunity, and the employer has not hired workers with less training or experience for a job similar to that involved in the job opportunity or that it is not feasible to hire workers with less training or experience than that required by the employer’s job offer. 20 C.F.R. § 656.21(b)(5). An employer may not require U.S. applicants to have the same type of experience that the alien acquired only while working for the employer

in the same job. 20 C.F.R. § 656.21(b)(6); *Central Harlem Group, Inc.*, 1989-INA-284 (May 14, 1991).

In its application for certification, the Employer described the job to be performed as follows:

Provide technical lead for software development projects. Meet with clients and prepare detailed specifications. Lead and perform program design, coding, testing, debugging and documentation for risk management and related systems using JAVA, PowerBuilder, DB2/MVS, Oracle and MS SQL Server.

(AF 127). The Employer required a Master's degree in Computer Science, Engineering or Math and two years of experience in the job offered. The Employer was willing to accept a Bachelor's degree plus five years of "related, progressively responsible, post bachelor's experience" in lieu of the Master's degree requirement. Other special requirements included experience with design and development of software using JAVA, PowerBuilder, DB2/MVS, and Oracle or MS SQL Server. When the application for labor certification was filed, the Alien had worked for the Employer in the position of Lead Programmer Analyst for over three and a half years; prior to that, he worked for the Employer as a Programmer Analyst Staff Specialist for two and a half years. (AF 120).

In the NOF, the CO specifically stated that the Employer had listed minimum experience requirements for the job opportunity which the Alien himself did not possess when initially hired and which afforded the Alien a more favorable opportunity than the U.S. worker. (AF 123). The Employer was directed either to submit documentation to establish that the Alien possessed the required experience at the time of hire, or to reduce the experience requirements. *Id.*

In rebuttal, the Employer did not dispute the CO's conclusion that the Employer's application failed to show that the Alien met the stated minimum requirements for the job opportunity when hired. Instead, it stated that "[s]ince the position is a promotion, the two years' experience gained with the employer is taken into consideration." (AF 118-119). The Employer thus confirmed the CO's determination that the Alien met the stated

experience requirement solely as a result of working for the Employer, rather than having the requisite two years of experience when first hired for the job opportunity.

The Employer failed to adequately respond to the CO's stated findings in NOF. It provided no documentation to establish that the Alien had the requisite experience at the time of hire, nor did it reduce the experience requirements of the job opportunity. Requiring more stringent qualifications of a U.S. worker than an employer requires of the alien impermissibly favors the alien over a U.S. worker. *See ERF Inc., d/b/a Bayside Motor Inn*, 1989-INA-105 (Feb. 14, 1990). We conclude that the Employer failed to meet its burden to establish the minimum job requirements and that the Employer hired the Alien with less training or experience than it required of U.S. applicants.

ORDER

For the foregoing reasons, 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.