



**Issue Date: 08 May 2009**

**BALCA Case No.: 2009-PER-00198**  
ETA Case No.: A-07005-97337

*In the Matter of:*

**FLORIDA AIR TEMP. INC.,**  
*Employer,*

*on behalf of*

**RICHARD SARROUF,**  
*Alien.*

Certifying Officer: William Carlson  
Atlanta Processing Center

Appearances: Robert Leff, Esquire  
Law Offices of Robert Leff & Associates, PA  
Boca Raton, Florida  
*For the Employer*

Gary M. Buff, Associate Solicitor  
Vincent C. Costantino, Senior Trial Attorney  
Office of the Solicitor  
Division of Employment and Training Legal Services  
Washington, DC  
*For the Certifying Officer*

Before: **Chapman, Wood and Vittone**  
Administrative Law Judges

**DECISION AND ORDER**

**PER CURIAM.** 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.

## **STATEMENT OF THE CASE**

On February 28, 2008, the CO accepted for filing the Employer's Application for Permanent Employment Certification for the position of "Supervisor/Service Manager" (AF 43). The Employer required seven years of experience in the job offered (AF 44, ETA Form 9089, Sections H6, H6-a), or seven years of experience as a Supervisor/Service Manager. (AF 44, ETA Form 9089, Sections H10, H10A). The SOC/O\*Net (OES) Code was 49-1011.00. (AF 43, ETA Form 9089, Sections F2, F3).

We take administrative notice that the SOC/O\*Net Code categorizes this occupation as "Job Zone" three, in which employees usually need one or two years of training involving both on-the-job experience and informal training with experienced workers. The SOX/O\*Net Code stated a Specific Vocational Preparation rating of 6.0 to < 7.0.<sup>1</sup> See [online.onetcenter.org/link/summary/49-1011.00](http://online.onetcenter.org/link/summary/49-1011.00).

The CO later selected the case for audit. (AF 12-14). The Audit Notification required the Employer to provide proof of business necessity as outlined by 20 C.F.R. § 656.17(h) if the job requirements exceeded those defined by the SOC/\*Net code and Occupation Title assigned by the State Workforce Agency. (AF 12). The Audit Notification also required the Employer to submit its recruitment report. (AF 12-13).

After the Employer submitted its audit response, the CO denied certification on several grounds, one of which was that the Employer had failed to provide proof of business necessity. (AF 9-11).<sup>2</sup>

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<sup>1</sup> An SVP of 6 is defined as "Over 1 year up to and including 2 years." An SVP of 7s "Over 2 years up to and including 4 years." *Dictionary of Occupational Titles* at 1009.

<sup>2</sup> We note that the Employer's recruitment report indicates that several job applicants were rejected for lacking sufficient experience. (AF 29-30).

The Employer filed an appeal by letter dated November 7, 2007. (AF 3-11). In regard to the question of proof of business necessity, the appeal contained a letter signed by the Employer's president. (AF 5). The letter explains why the Employer needs the Alien's skills in speaking English, French and Spanish. But the letter does not specifically address the question of why the experience requirement was so long.

On February 13, 2009, the CO issued a letter on reconsideration finding that the denial of certification was valid. (AF 1). In regard to the business necessity issue, the CO found that the Employer's letter only addressed the Employer's need for a multi-lingual supervisor.

On appeal, the CO filed an appellate brief urging that the denial of certification be affirmed.

## **DISCUSSION**

The regulations provide that:

The job opportunity's requirements, unless adequately documented as arising from business necessity, must be those normally required for the occupation and must not exceed the Specific Vocational Preparation level assigned to the occupation as shown in the O\*NET Job Zones. To establish a business necessity, an employer must demonstrate the job duties and requirements bear a reasonable relationship to the occupation in the context of the employer's business and are essential to perform the job in a reasonable manner.

20 C.F.R. § 656.17(h)(1). In the instant case, the Employer's seven year experience requirement well exceeded the O\*Net Job Zone SVP for the position. We concur with the CO that the letter provided by the Employer with its Appeal submission failed to provide any documentation supporting business necessity for an experience requirement that exceeded the Job Zone SVP for the position.<sup>3</sup> Accordingly, the CO correctly denied certification on this ground.

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<sup>3</sup> We note that the ETA Form 9089 indicated that knowledge of a foreign language was not a job requirement. (AF 44, ETA Form 9089, Section H-13). Thus, the business necessity letter's explanation of the need for a multi-lingual service manager was not material to the citation identified by the CO. We also

In view of this ruling, we do not reach the second ground cited by the CO for denying the application.

## **ORDER**

**IT IS ORDERED** that the denial of labor certification in this matter 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. 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 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 full Board review with supporting authority, if any, and shall not exceed five double-spaced pages. Responses, if any, shall be filed within ten days of service of the petition, and shall not exceed five double-spaced pages. Upon the granting of a petition the Board may order briefs.

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note that, despite the ETA Form 9089 not identifying knowledge of a foreign language as job requirement, the job was advertised as for a “multi-lingual service manager,” (AF 37, 39-41) and two applicants were rejected for not being multi-lingual. (AF 29).