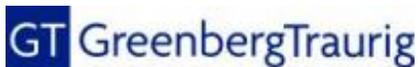


BALCA Reverses PERM Denial, says Employer Complied with Supervised Recruitment Instructions



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In *Matter of SDG Post Oak*, the employer was issued a notice of supervised recruitment by the **Atlanta National Processing Center (ANPC)**. After the draft recruitment was approved by the ANPC, the employer placed an online advertisement on online job listing forums. The duty requirement field of the advertisement properly listed the minimum experience as six months, but the experience field which also served as the header of the advertisement mistakenly listed \ 1-2 years of experience required, per the website's sole publisher selection. The Certifying Officer ("CO") denied certification stating that the minimum requirements exceeded the requirements entered on the application form by the Employer.

After the Employer's request for reconsideration, the CO reviewed and reaffirmed the denial upholding that the Employer had the opportunity to review the advertisement before its publication. In addition, the CO argued that U.S. citizens who could have been qualified may not have read the entirety of the advertisement due to the header listing the experience requirements as 1-2 years, and consequently may not have applied to the position.

The Board of Alien Labor Certification Appeals ("BALCA") found that the Employer showed by preponderance of evidence that it had no control over the information listed in the header of the advertisement, and that it did not have an opportunity to

proofread the advertisement before it was published by the website. In addition, the body of the ad fully incorporated the exact minimum requirements and experience for the position. Further, BALCA stated that “the error was not sufficient to reasonably conclude that job seekers would have been discouraged from applying for the job”.

BALCA held that it would be “fundamentally unfair” to deny the certification in these circumstances. This is yet another case following a [string of pro-employer BALCA decisions](#) that were issued [last week](#).

Dieynaba Diabate also contributed to this article.

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