

U.S. Department of Labor

Board of Alien Labor Certification Appeals
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Issue Date: 01 November 2013

BALCA Case No.: 2011-PER-01112
ETA Case No.: A-08207-73190

In the Matter of:

PRITHVI INFORMATION SOLUTIONS LLC,
Employer

on behalf of

PRAVEEN KUMAR VUNNAM,
Alien.

Certifying Officer: William Carlson
Atlanta Processing Center

Appearances: Rami Lee, Esq.
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Pittsburgh, PA
For the Employer

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Office of the Solicitor
Division of Employment and Training Legal Services
Washington, DC
For the Certifying Officer

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

TIMOTHY J. McGRATH
Administrative Law Judge

DECISION AND ORDER
AFFIRMING 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 affirm the denial of the Employer’s Application for Permanent Employment Certification.

BACKGROUND

On September 25, 2008, the Certifying Officer (“CO”) accepted for filing the Employer’s Application for Permanent Employment Certification for the position of “Account Manager.” (AF 446).¹ On April 17, 2009, the CO issued an Audit Notification. (AF 441-43). The CO required the Employer to submit recruitment documentation, including documentation outlined in 20 C.F.R. § 656.17(e). (AF 441-43). On May 8, 2009, the Employer responded to the Audit Notification, attaching among other documents, an advertisement it placed on Dice.com, a “tech trade website,” which the Employer considered to be a professional or trade organization publication. (AF 300 & 344).

The CO denied the Employer’s application on October 27, 2010, because, “[t]he employer failed to provide adequate documentation of the additional recruitment steps for professional occupations,” in violation of 20 C.F.R. § 656.17(e)(1)(ii)(E). (AF 289). Specifically, the Employer’s documentation showed that it advertised the Account Manager position on an IT-oriented job search internet website, rather than through a trade or professional organization. (AF 289). On November 22, 2010, the Employer requested reconsideration, arguing that Dice.com is a professional organization, on par with other well-recognized organizations such as the American Society of Mechanical Engineers (ASME), the American Society of Civil Engineers (ASCE), Computer World, and the Institute of Electrical and Electronics Engineers (IEEE). (AF 8). The Employer noted that the U.S. Department of Labor (DOL) has allowed employers to “use an advertisement in a trade or professional organization’s national *electronic* journal as one of the three additional recruitment methods for professionals.” (AF 8) (emphasis in original). As further support, the Employer also attached online articles from Wikipedia.org about trade and professional organizations (AF 172-176), and a statement from Dice.com’s Inside Sales Manager, affirming Dice.com is a trade or professional organization for IT professionals. (AF 215).²

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

² We do not find the attached Wikipedia articles to be a credible or reliable source about the nature of professional or trade organizations. Further, the statement from the Inside Sales Manager, which emphasizes the job-oriented services Dice.com provides, confirms rather than rebuts the CO’s argument that Dice.com is primarily an online job search website for IT professionals.

On April 13, 2011, the CO forwarded the case to BALCA. (AF 1). In his transmittal letter, the CO maintained the Employer failed to satisfy the additional recruitment requirements, because the Employer's recruitment source, Dice.com, is "a career website serving IT and Engineering professionals and is not a professional organization or association." (AF 1). Consequently, the CO reiterated his finding that the Employer had not provided adequate documentation of the additional recruitment required for professional positions. (AF 1).

BALCA issued a Notice of Docketing on June 29, 2011. The Employer filed a Statement of Intent to Proceed on July 14, 2011, and a Statement of Position (Er. Br.) on August 15, 2011. The CO filed a Statement of Position (CO Br.) on August 26, 2011. This Panel issued an Order Requiring Certification on Mootness on March 27, 2013; the Employer responded on April 22, 2013, indicating the alien remained ready and willing to fill the position.

DISCUSSION

When an employer files an application for labor certification, it must attest that it conducted certain recruitment steps prior to filing its application. 20 C.F.R. § 656.17(e). If the position on the application is for a professional occupation, pursuant to 20 C.F.R. § 656.17(e)(1), the Employer must conduct two mandatory recruitment steps (placement of a job order and an advertisement in a newspaper or professional journal), and select three additional recruitment steps from a list of alternatives provided in the regulations. 20 C.F.R. § 656.17(e)(1). One of these additional alternative recruitment steps is an advertisement through a professional or trade organization, which the Employer can document "by providing copies of pages of newsletters or trade journals containing advertisements for the occupation involved in the application." 20 C.F.R. § 656.17(e)(1)(ii)(E). The regulations state, "a substantial failure by the employer to provide required documentation will result in that application being denied." 20 C.F.R. § 656.21(b).

In its ETA Form 9089, the Employer indicated it had advertised with a trade or professional organization. (AF 449). The Employer argued Dice.com is a professional organization because of the similarities between Dice.com and the websites for other well-recognized professional associations, such as ASME, ASCE, Computer World, AITP,³ and IEEE. (Er. Br. 2-3 & AF 7-8 & 172-269). In particular, the Employer noted, "Dice.com offers career building seminars, resume creation and job search aids. Dice.com distributes and

³ Association of Information Technology Professionals.

publishes news and information relevant to [the] Information Technology field. Dice.com publishes and maintains open discussions regarding the field, provides reviews of products and materials, and publishes upcoming event data.” (Er. Br. 3). The Employer then pointed out the other professional organizations “all provide the same services, forums, and publications as Dice.com.” (Er. Br. 3).

Despite the Employer’s efforts to establish Dice.com is a professional organization, we agree with the CO that Dice.com is a job search website for IT professionals, *not* a professional organization. Since the Department of Labor allows employers to use a professional organization’s electronic journal to satisfy the additional recruitment requirements under 20 C.F.R. § 656.17(e)(1)(ii)(E), (OFLC⁴ Frequently Asked Questions and Answers, <http://www.foreignlaborcert.doleta.gov/faqsanswers.cfm#acceptpub2>, (last visited Sept. 18, 2013)), the issue in this case is not whether an advertisement must appear in print, rather than online, but whether, for purposes of Section 656.17(e)(1)(ii), Dice.com is a bona fide professional organization rather than a job search website.

The first indication that Dice.com is not a professional organization is in its name. While there is no fixed criteria for naming a professional organization, four of the five organizations the Employer provides for comparison have names that are descriptive abbreviations, for example, “ASME,” which stands for “American Society of Mechanical Engineers”. (Er. Br. 3). “Computer World,” the only name that is not an abbreviation, still describes the focus of the organization. The Employer did not provide examples of any established professional organizations with names that deviated from this descriptive model. The Employer has neither argued that “Dice” is an abbreviation for a group within the IT/Engineering community, nor a description of an area within the IT/Engineering field. Since a name is such a significant feature of an organization, the fact that Dice.com does not follow the above naming conventions, while not dispositive, is a reason to find that Dice.com is not a professional organization for purposes of 20 C.F.R. § 656.17(e)(1).

The substantive information the Employer provides failed to show Dice.com is a professional organization. The Employer argues both Dice.com and the professional organizations’ websites provide similar services, such as news related to the professional field. (Er. Br. 3). Although Dice.com has a news section, it is easily distinguishable from the news

⁴ Office of Foreign Labor Certification.

sections found on the professional organizations' websites. The Dice.com news section is titled "Career News and Advice" and its internet address begins with "http://career-resources.dice.com." (AF 196-99 & 205-9). Furthermore, Dice.com simply provides links to other articles in "newspapers of general circulation," such as *USA Today* and *The Sacramento Bee* (AF 196 & 198). It does not generate its own original news content, or link to professional or technical journals. By contrast, the news section on the Computer World website is separate from the jobs/careers section.⁵ (AF 220-24). Since the articles in Computer World's news section do not cite or link to another source, Computer World seems to produce original content. (AF 220-21). Overall, the content and presentation of Dice.com's news section is consistent with a job search website, not a professional organization's website.

A comparison between the events section of Dice.com and professional organizations' websites reveals a similar discrepancy. On Dice.com, the events section promotes job fairs exclusively. (AF 213). By contrast, the IEEE events section promotes academic and research conferences and local chapter meetings. (AF 264-65). AITP also promotes conferences in its events section. (AF 246). Neither IEEE nor AITP advertises job fairs in its events section. (AF 246 & 264-65). Again, Dice.com appears to be more of a job search website than a professional organization.

Although the professional organizations provide all (or many) of the same career advancement services as Dice.com, (AF 178-216, 223-24, 229-34, 238-39, 247-56, & 260-63), the Employer has not shown that professional organizations provide *only* these services, and has, therefore, failed to demonstrate that there is no appreciable difference between a professional organization, such as the ASME, and Dice.com. The news and events sections from professional organizations' websites, discussed above, show professional organizations cover a much broader range of topics than the career-oriented news and events on Dice.com. Although professional organizations' websites also include job/career sections, (AF 223-24, 229-34, 238-39, 247-56, & 260-63), this is by no means the full extent of their services. (*See, e.g.*, AF 261). The Employer, in an effort to support its position, has simply produced those sections of the professional organizations' websites that provide services similar to the ones Dice.com provides.

If the Employer had wanted to clearly demonstrate the similarity between Dice.com and professional organizations, it could have provided a print-out of Dice.com's "About" page,

⁵ This is the only professional organization for which the Employer provides a news section.

accessible through the “About Us” tab (*see, e.g.*, AF 178, 180, 183, & 185) and, for example, ASME’s “About” page, accessible through the “About ASME” tab (AF 229).⁶ The “About” page of a website, which often describes the core values and purpose of an organization, would provide a more meaningful basis for establishing similarity between Dice.com and professional organizations than would the news, events, or career section. If Dice.com were a professional organization, the Employer could have shown this with information from the “About” pages, without resorting to strained comparisons between other, less integral, portions of the websites. (Er. Br. 3). Since the Employer did not provide this information, it has not demonstrated Dice.com is a professional organization, instead of a job search website for IT professionals.

This decision does not provide an exhaustive list of required factors in deciding what constitutes a professional or trade organization, nor can any one factor be determinative. For the purposes of this decision only, we assumed that the Employer correctly identified five comparable entities as professional organizations, and the list of factors utilized stems from the comparison of these organizations to Dice.com.

We agree with the CO that the Employer failed to conduct the three additional recruitment steps required by 20 C.F.R. § 656.17(e)(1), because the Employer did not establish Dice.com to be a professional or trade organization. (CO Br. 2 & AF 1). Accordingly, we affirm the CO’s denial of certification.

ORDER

It is **ORDERED** that the denial of labor certification in this matter is hereby **AFFIRMED**.

For the Panel:

TIMOTHY J. McGRATH
Administrative Law Judge

⁶ There are also “About” tabs on the Computer World and ASCE websites. (AF 219 & 238). The Employer provides the “About” page for IEEE. (AF 259).

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.