

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 04 October 2004**

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In the Matter of

TITO ELI GONZALEZ  
Authorized agent for:  
Celia Medellin DBA: Romero  
Harvesting, Inc. and Valente Pineda  
DBA: Super Harvesting, Inc.  
14 North Desoto Ave.  
Arcadia, Florida 34266  
Petitioner

Case No. 2004 TLC 00014

v.

U.S. DEPARTMENT OF LABOR  
REGIONAL ADMINISTRATOR,  
ATLANTA, GEORGIA 30303  
Respondent  
.....

**Decision and Order**

This matter arises pursuant to a request by Petitioner for expedited administrative judicial review of a decision denying acceptance of a temporary alien labor certification application for 90 workers to pick oranges in vicinity of Okeechobee, Florida. The Administrative record was filed in the Office of Administrative Law Judges on September 28, 2004. A telephone hearing on the petition convened on October 1, 2004, and was stenographically record as part of the record. For the reasons which follow, the decision of the Certifying Officer will be affirmed.

The Certifying Officer denied the Application on several grounds and each is considered below, seriatim.

1. Petitioner's application included a start date of October 30, 2004 at ETA Form 790, Item 5, but an incomplete start date at ETA Form 750, Item 18b. Petitioner acknowledged the discrepancy and agreed to correct it. In addition, the Certifying Officer noted that regulations provide that the start date should be 45 days from the date ETA receives the Application, not the date a petitioner places on the Application. Having reviewed the record and the regulations, I conclude that the Certifying Officer's cited deficiencies are supported by the evidence and his application of the regulation at 20 C.F.R. §655.101(c) was correct.
2. Petitioner proposes to house the workers, but had not, as of the time it filed its application, obtained an inspection of its housing or a state certificate for occupancy by migrant agricultural workers. Petitioner advised that he expects the state inspection to take place and a certificate to issue next week, and he offered to submit the documentation to the Certifying Officer upon their issuance by the state. Having reviewed the record and the regulations, I conclude that the Certifying Officer's cited deficiency is supported by the evidence and his application of the regulation at 20 C.F.R. §655.102(b)(1)(iii) was correct.
3. Petitioner proposes to transport the workers by bus from the housing location to the jobsites each day, but the record contained only one ETA transport authorization issued to Celia Medellin and was that authorization was limited to 15 passengers or less. Petitioner asserts that ETA authorizations for two other drivers were also filed with the Application, however, the certified record in this matter forwarded by ETA does not contain those authorizations. Petitioner agreed to resubmit them; however based upon the certified record before me, and a review of the applicable regulations, I conclude that the Certifying Officer's cited deficiency is supported by the evidence and his application of the regulations at 20 C.F.R. §653.104(b); and 655.102(a)(5)(iii) was correct.
4. The Certifying Officer concluded that Certificate of Workers' Compensation Insurance filed with the application was deficient. Based upon the certified record before me, and a review of the applicable regulations, I conclude that the Certifying Officer's cited deficiency is supported by the evidence and his application of the regulation at 20 C.F.R. § 655.102(a)(2) was correct. The certificate provided by Petitioner does not indicate that the Employer is a named insured, it does not cover all of the Employer's workers, and the coverage does not commence as

of the first day of employment for each worker. *See, In Re Barajas, 2004 TLC 4.* Petitioner acknowledged these deficiencies, agreed to correct them, and offered to resubmit the insurance certificate for ETA's consideration.

For all of the foregoing reasons, the decision of the Certifying Officer will be affirmed. However, given the extenuating circumstances caused by recent hurricane damage to the economy of central Florida, generally, and the citrus crops, in particular, the Certifying Officer agreed during the telephonic hearing to consider, on an expedited basis, the new information Petitioner may submit to cure the forgoing deficiencies, and Petitioner agreed that a new starting date of November 10, 2004, would be acceptable. The order which follows incorporates the agreement of the parties in these respects. Accordingly;

#### ORDER

IT IS ORDERED THAT the decision of the Certifying Officer not to accept the Petitioner's temporary agricultural labor certification application be, and it hereby is, affirmed, and;

IT IS FURTHER ORDERED THAT Petitioner shall, on or before October 12, 2004, submit to the Certifying Officer such information and documentation which Petitioner believes will cure the deficiencies in its application, and;

IT IS FURTHER ORDERED that the Certifying Officer shall review the Application and decide, on or before October 15, 2004, whether or not to accept it.

**A**

Stuart A. Levin  
Administrative Law Judge