



Issue Date: 05 July 2007

Case No: 2007-TLC-13

In the Matter of:

**CAROL PAUL FLC,
Petitioner,**

v.

**UNITED STATES DEPARTMENT OF LABOR,
Respondent.**

**DECISION AND ORDER DENYING
TEMPORARY ALIEN AGRICULTURAL LABOR CERTIFICATION**

This matter arises under the temporary alien agricultural labor certification provisions in Section 218 of the Immigration and Nationality Act (the "Immigration Act"), codified at 8 U.S.C. § 1188, and its implementing regulations published at 20 C.F.R. Part 655. Carol Paul Farm Labor Contractor ("Petitioner") applied on March 26, 2007 for the certification from the United States Department of Labor that is required for it to obtain H-2A visas from the Department of Homeland Security. Such visas would admit 140 alien farm workers to the United States, under Section 218 of the Immigration Act, which permits the temporary admission of nonimmigrants to perform seasonal agricultural work.

On June 20, 2007, Ms. Renata Jones Adjibodou, the Certifying Officer, advised Mr. Tito Gonzalez, the authorized agent for the Employer, that the temporary alien agricultural labor certification application had been reviewed, but it was determined that it did not meet the requirements of 20 C.F.R. §§ 655.101 – 655.103. The Certifying Officer indicated that the application was not being accepted for consideration on the grounds that the availability of U.S. workers could not be tested, because the benefits, wage rates, and/or working conditions did not meet the criteria of the regulations. A checklist was provided with modifications that were required for consideration of the application. Mr. Gonzalez was also advised that he had the opportunity to request an expedited administrative judicial review, or a de novo hearing before a Department of Labor Administrative Law Judge on the non-acceptance of the application.

On June 22, 2007, Mr. Gonzalez submitted a "Request to the Chief Administrative Law Judge for an Administrative Review Before an Administrative Law Judge of the Non Acceptance of the Employer Application." The Administrative File was received in this office on June 27, 2007. As it was not clear from Mr. Gonzalez's submission whether the Employer wished to have the decision not to accept for consideration a temporary alien labor certification application

reviewed on the basis of the written submission, or whether the Employer wished to have a de novo hearing, I issued an Order Requesting Clarification on June 28, 2007, advising the parties that if the Employer wished to have a hearing, it would take place the week of July 2, 2007, in Washington, D.C. Mr. Gonzalez advised that the Employer wished to have a hearing, and a hearing took place on July 3, 2007, in Washington, D.C. This hearing, which was stenographically recorded, was attended by Mr. Gonzalez on behalf of the Employer, and Mr. Peter Nessen, Esq., and Mr. Harry Sheinfeld, Esq., on behalf of the Respondent. For the reasons discussed below, the decision of the Certifying Officer is affirmed.¹

- (1) Citing to 20 C.F.R. § 655.102(b), the Certifying Officer indicated that the Petitioner had provided two different addresses where the workers would be housed. Additionally, the application did not include a rental agreement for the use of either property to house the workers. According to the Certifying Officer, the application included a message on JSM Blueberry LLC stationery, from Mr. Carol Paul to Mrs. Crystal Layssard, dated April 27, 2007, which stated “Enclosed please find Camp Inspection and my Driver License.” The application also included a copy of a request for housing, addressed to the New Jersey Department of Labor, requesting inspection of housing located at 175 Middle Road, Hammonton, New Jersey. The application did not include documentation to indication that an inspection of housing had been completed. I have reviewed the record and the regulations, and I find that the Certifying Officer’s cited deficiencies are supported by the evidence, and her application of the regulations at 20 C.F.R. § 655.102(b) was correct.
- (2) Citing to 20 C.F.R. § 655.101(a), the Certifying Officer indicated that the referral instructions on the ETA 790, Item 5, read that Mr. Tito Gonzalez and Mr. Carol Paul would accept applications. The listed addresses were both in Florida, and instructions for applying were not provided. Mr. Gonzalez advised that he had corrected this deficiency. I have reviewed the record and the regulations, and I find that the Certifying Officer’s cited deficiencies are supported by the evidence, and her application of the regulations at 20 C.F.R. § 655.101(a) was correct.
- (3) Citing to 20 C.F.R. § 655.102(b)(9), the Certifying Officer stated that the ETA Form 750, Item 12, and ETA 790, Item 11 listed the rate of pay as \$9.29, which is the AEW for the State of New Jersey. However, the ETA 790 Attachment Number 1, Item 1, listed the AEW as \$8.95 and \$9.29. At the hearing, Mr. Gonzalez pointed out that the rate of \$8.95 was in the body of the document, while the rate of \$9.29 was in bold numbers in the margin. I agree with Mr. Nessen that while the correct rate of \$9.29 was listed in the ETA Form, the two different rates of pay in Attachment Number 1, Item 1 created an ambiguity for which the Certifying Officer appropriately requested

¹ At the hearing, Mr. Gonzalez acknowledged that, although the deficiencies cited by the Certifying Officer have been addressed since the issuance of the decision, based on the information that was before the Certifying Officer at the time she made her decision, her findings regarding the deficiencies were justified.

clarification. Thus, while this discrepancy may be the result of a clerical error, I find that the Certifying Officer's cited deficiencies are supported by the evidence, and her application of the regulations at 20 C.F.R. § 655.102(b)(9) was correct.

- (4) Citing to 20 C.F.R. § 655.101(a), the Certifying Officer stated that the application was not simultaneously filed with the New Jersey Department of Labor in Trenton, New Jersey when it was filed with the National Processing Center, and directed that the Petitioner submit a duplicate of the amended application to the New Jersey Department of Labor & Workforce Development. At the hearing, Mr. Gonzalez stated that he had submitted a duplicate of the application with the New Jersey Department of Labor. As Mr. Nessen argued, the Certifying Officer had no way to know that Mr. Gonzalez had done so, and Mr. Gonzalez acknowledged that there was nothing in the administrative file that reflected that he had done so. I find that the Certifying Officer's cited deficiencies are supported by the evidence (or lack thereof), and that her application of the regulations at 20 C.F.R. § 655.101(a) was correct.
- (5) Citing to 20 C.F.R. § 655.103(b), § 653.104(b), and the ET Handbook No. 398, the Certifying Officer stated that the ETA Form 750, Item 7, and ETA Form 790, Items 2 and 3, indicated that the Petitioner would provide housing and transportation for the workers who would be working in Hammonton County, New Jersey. However, the Petitioner did not provide any proof that work was available for the employees. The contract that was provided from JSM Blueberry LLC did not specify the number of workers provided, or the date of need. The provided Federal Farm Labor Contractor Certificate of Registration indicated that the Petitioner was not authorized to transport or house workers. The Petitioner did not provide copies of Farm Labor Contractor Employee Certificate of Registration with driving authorized without restrictions, and adequate transportation for 140 workers was not included. Although Mr. Gonzalez has subsequently obtained the necessary documentation, he acknowledged at the hearing that it was not before the Certifying Officer at the time of her determination. I have reviewed the record and the regulations, and I find that the Certifying Officer's cited deficiencies are supported by the evidence, and her application of the regulations at 20 C.F.R. § 655.103(b), § 653.104(b), and the ET Handbook No. 398 was correct.

For the foregoing reasons, the decision of the Certifying Officer is affirmed. At the hearing, Mr. Gonzalez expressed his concerns about the potential loss of crops if certification is not obtained shortly. As pointed out by Mr. Nessen and Mr. Sheinfeld, Mr. Gonzalez is free to file an emergency application under 20 C.F.R. § 655.101(f)(2), curing the deficiencies noted by the Certifying Officer in this application.

ORDER

Based on the foregoing, IT IS HEREBY 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.

SO ORDERED.

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LINDA S. CHAPMAN
Administrative Law Judge