



Issue Date: 23 January 2008

OALJ Case No.: 2008-TLC-00009
ETA Case No.: A-07269-04765

In the Matter of

TRADELINK INTERNATIONAL GROUP LLC,
Employer.

Certifying Officer: Renata Jones Adjibodou
Atlanta Processing Center

DECISION AND ORDER

On December 26, 2007, the Office of Administrative Law Judges (OALJ) received the Employer's request for a hearing on the denial of its H-2A application for temporary alien labor certification in the above-referenced matter. *See* 20 C.F.R. Part 655, Subpart B. Under the temporary labor certification regulations, an employer can request two types of hearings: (1) "administrative review" (*i.e.*, review on the record), § 655.112(a), or (2) *de novo* hearing, § 655.112(b). Upon determining that the Employer in this matter was seeking administrative review rather than *de novo* review, and receipt of the Appeal File, an Order Setting Briefing Schedule was issued on January 17, 2007 providing the parties until noon, EST, on January 22, 2008 to file briefs. Neither party filed a brief or communicated in any way with this office by the deadline. Accordingly, the decision in this matter is based solely on the Employer's letter requesting review and the Appeal File.

In an administrative review case, the judge has five working days from the date of receipt of the Appeal File to render a decision. The judge's scope of review is limited to a check for legal sufficiency. The judge is not allowed to remand the matter or to receive new evidence.

The Employer filed an application requesting H-2A temporary alien labor certification for 50 positions on September 26, 2007. (AF 46-53). On October 2, 2007 and October 12, 2007, the Certifying Officer ("CO") sent the Employer a notice detailing a number of deficiencies. (AF 35-45). The Employer responded on November 28, 2007. (AF 12-34). The CO found that the response did not cure the deficiencies, and on December 5, 2007 issued a second letter identifying deficiencies and requiring corrections. (AF 6-11). Having obtained no response, the CO issued a determination letter on December 20, 2007 denying certification. (AF 4-5).

The Employer requested a hearing on December 26, 2006, arguing that it was “working hard” to satisfy the list of modifications to the application required by the CO’s December 5, 2007 letter, and that the CO had not permitted it sufficient time to complete the modifications. (AF 2-3). The Employer then listed actions it was in the process of completing and the deficiencies it intended to fix upon resubmission of its amended application.

In other words, the Employer did not argue that the deficiencies identified by the CO were legally insufficient. Rather, the Employer’s grounds for appeal were (1) a promise to cure the errors in the near future, and (2) lack of sufficient time to respond to the CO’s December 5, 2007 notice of deficiencies.

A mere promise to cure errors in the future does not state grounds for finding that the CO’s denial was legally insufficient. Moreover, as noted above, neither the Employer nor the CO filed a timely brief. I have no information before me as to whether the Employer has now cured the deficiencies. Thus, I find that the December 20, 2007 denial of certification was legally sufficient.

In regard to the timing of the denial letter, although that time was not long, I do not find based on the sparse record before me that it caused the denial to be legally insufficient. Moreover, it is now January 23, 2008. I have no evidence that the modifications have yet been made.

Based on the foregoing, the CO’s denial of certification is hereby **AFFIRMED**.

SO ORDERED.

A

JOHN M. VITTON
Chief Administrative Law Judge