

**U.S. Department of Labor**

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**Issue Date: 18 June 2010**

**OALJ Case No.: 2010-TLC-00038**

ETA Case No.: C-10127-24189

*In the Matter of*

**AGRICULTURE WORKFORCE MGT. ASSOCIATION,**  
*Employer*

Certifying Officer: William L. Carlson  
Chicago Processing Center

Before: **WILLIAM S. COLWELL**  
Associate Chief Administrative Law Judge

**DECISION AND ORDER**

On June 3, 2010, Agriculture Workforce Mgt. Association (“the Association”) filed a request for review of the Certifying Officer’s determination in the above-captioned temporary agricultural labor certification matter. *See* 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a), 1184(c)(1); 20 C.F.R. § 655.115(a) (2009). On June 10, 2010, the Office of Administrative Law Judges received the Administrative File from the Certifying Officer (“the CO”). In administrative review cases, the administrative law judge has five working days after receiving the file to “review the record for legal sufficiency” and issue a decision. § 655.115(a).

## Statement of the Case

On May 7, 2010, the United States Department of Labor's Employment and Training Administration ("ETA") received an application from Agriculture Workforce Management Association ("the Association") for temporary labor certification. AF 65-100.<sup>1</sup> In particular, the Association requested certification for four "Farm workers & laborers, crop, nursery, greenhouse" between July 15, 2010, and January 10, 2011. AF 65. Included with its application, *inter alia*, was a cover letter, which stated "Enclosed is an H-2A Contract for the above noted Joint Employers. We, Agriculture Workforce Management Association, are the agent for the Joint Employers." AF 64. In the application, the Association then noted that it was filing as "Association—Filing as Agent (H-2A only)." AF 66.

On May 13, 2010, the CO issued a Notice of Deficiency ("NOD"), indicating that the Association's application had not been accepted for processing, and in order to proceed, the Association would need to modify its application. AF 14-16. Specifically, the CO cited to 20 C.F.R. § 655.131(a), and stated: "Associations of agricultural employers may file an [application] as a sole employer, joint employer, or agent." AF 16. Further, the CO wrote that "an association may file a master application on behalf of its employer-members covering multiple areas of intended employment only where the association is filing as a joint employer."

*Id.* The CO required the Association to make the following modification:

Since the Association filed as an agent and not as an Association filing jointly with its employer-members, you will not be allowed the benefit of filing one application on behalf of your employer/members. Therefore, the Association must amend the application to indicate with employer will remain on this application. A separate application will need to be filed for the other employers.

AF 16.

On May 17, 2010, the Association submitted its response to the NOD. AF 9-33. The response included a letter, which stated:

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<sup>1</sup> Citations to the 109-page Administrative File will be abbreviated "AF" followed by the page number.

Regulations 20 CFR 655.131(b) only refers to Associations that are filing Master Applications and where the Association is a Joint Employer. The contract for Raygan Baxter, Charles C. Brown, Joseph S. Mobley and James C. Mobley is not a Master Application and [the Association] is not a joint employer.

Regulations do allow for employers to share the workers amongst themselves only when they are members of an Association. [Baxter, Brown, Mobley, and Mobley] are members of our Association and the contract was submitted as AWMA being the Agent for the employers.

AF 9.

On May 27, 2010, the CO denied the Association's application. AF 4-6. Pursuant to 20 C.F.R. § 655.131(a), the CO asserted that the Association failed to file as a joint-employer, but instead as an agent. AF 6. Additionally, the application contained multiple employers. Since the Association failed to "indicate which employer would remain on the application neither were separate applications filed for the other employers," the CO denied certification. *Id.* The Association's appeal followed.

### **Discussion**

20 C.F.R. § 655.131 provides:

(a) Individual applications. Associations of agricultural employers may file an Application for Temporary Employment Certification for H-2A workers as a sole employer, a joint employer, or agent. The association must identify in the Application for Temporary Employment Certification in what capacity it is filing. The association must retain documentation substantiating the employer or agency status of the association and be prepared to submit such documentation in response to a Notice of Deficiency from the CO prior to issuing a Final Determination, or in the event of an audit.

(b) Master applications. An association may file a master application on behalf of its employer-members. The master application is available only when the association is filing as a joint employer. An association may submit a master application covering the same occupation or comparable work available with a number of its employer-members in multiple areas of intended employment, just as though all of the covered employers were in fact a single employer, as long as a single date of need is provided for all workers requested by the Application for Temporary Employment Certification and all employer-members are located in no more than two contiguous States. The association must identify on the

Application for Temporary Employment Certification by name, address, total number of workers needed, and the crops and agricultural work to be performed, each employer that will employ H-2A workers. The association, as appropriate, will receive a certified Application for Temporary Employment Certification that can be copied and sent to the United States Citizenship and Immigration Services (USCIS) with each employer-member's petition.

The Department of Labor indicated in comments contained in the Federal Register that “it is reasonable to permit employers and workers in regions where similar activities take place at the same time to increase efficiency and effectiveness by working together through the use of master applications.” 75 *Fed. Reg.* 6918 (Feb. 12, 2010). The Department comments also indicate that master applications should be used by associations applying on behalf of multiple members in order to “track compliance with the terms and conditions.” *Id.* The master application is required to retain “program integrity” and to “aim at greater protections for U.S. and foreign workers.” *Id.* Further, the instructions of the ETA Form 9142 instruct master applicants to “submit a separate attachment that identifies each employer, by name, mailing address, and total worker positions needed, under the application.

The Association argued in its brief and request for review<sup>2</sup> that it was not submitting a master application, and therefore, under the new regulations, the Association did not have to file as a joint employer. Accordingly, a review of the record, and the Association’s application in particular, reveals that it listed one member of the association as the “primary” member on the application, but then submitted separate attachments identifying each of the subsequent members, their addresses, and total number of permanent workers. Based on the instructions of the ETA Form 9142, it is clear that the Association and its members filled out the form in accordance with the rules governing master applications. It is undisputed that under the regulations, an association must be listed as a joint employer for the purposes of master applications. Because the application was inconsistent, the CO properly denied certification.

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<sup>2</sup> The Association submitted a variety of exhibits along with its brief. The Association submitted the exhibits in an effort to prove that the Association was listed as an agent on previously approved applications of multiple members. However, the current regulations, which became effective March 15, 2010, changed through notice and comment rulemaking several substantive rules regarding associations and master applications. Therefore, the Association’s previously approved certifications have little relevance to the current proceedings.

**Order**

In light of the foregoing, it is hereby **ORDERED** that the Certifying Officer's decision is **AFFIRMED**.

For the Board:

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**WILLIAM S. COLWELL**  
Associate Chief Administrative Law Judge