

U.S. Department of Labor

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Issue Date: 19 July 2010

OALJ Case No.: 2010-TLC-00056

ETA Case No.: C-10139-24273

In the Matter of

AGRICULTURE WORKFORCE MGT. ASSOC.—JAMES A. LYONS,
Employer

Certifying Officer: William L. Carlson
Chicago Processing Center

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

DECISION AND ORDER
AFFIRMING DENIAL OF CERTIFICATION

On July 1, 2010, Agriculture Workforce Management Assoc. (James A. Lyons), (“the Employer”) 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 July 12, 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 19, 2010, the United States Department of Labor's Employment and Training Administration ("ETA") received an application from Agriculture Workforce Mgmt. Assoc.— James A. Lyons, ("the Employer") for temporary labor certification. AF 185.¹ In particular, the Employer requested certification for six "Farmworkers & Laborers, crop, nursery, greenhouse" between July 26, 2010, and January 15, 2011. *Id.* The Employer's application was accepted for processing on June 22, 2010.² AF 19-23. The Notice of Acceptance ("NOA") instructed the Employer, *inter alia*, that "in order to receive a labor certification, [the Employer] must also submit evidence that [the Employer had] obtained workers' compensation coverage for [the Employer's] employees. Such evidence, including the name of the insurance carrier and the policy number or proof of State law coverage, must be submitted to this office at the same time that [the] recruitment report is due. In the event that your workers compensation insurance does not cover the entire dates of need, [the Employer] must also submit a signed written assurance indicating that [the Employer] will renew [insurance] coverage to cover the dates of need." AF 22.

On June 24, 2010, the CO sent a "courtesy reminder" via email that the Employer must provide a written assurance that it will renew the worker's compensation insurance policy, since the Employer's policy ends on August 1, 2010. AF 5. The Employer responded on June 24, 2010, and stated: "The employer attested to providing workers compensation in ETA 9142 Appendix A.2 Item 8 (iv). By affixing his signature[,] he assured that he would provide the insurance. Therefore, there is no need to provide additional written assurances." AF 5.

On June 25, 2010, the CO denied the Employer's application for temporary labor certification. AF 9-11. The CO stated in its denial letter that although the Employer signed ETA 9142 Appendix A.2, the Employer's proof did not cover the entire contract period. AF 11.

¹ Citations to the 215-page Administrative File will be abbreviated "AF" followed by the page number.

² Before the application was accepted for processing, the Employer made modifications pursuant to two Notices of Deficiency issued on May 26, 2010 and June 4, 2010. AF 144-176, AF 77-108. However, the Employer corrected the deficiencies, and they are unrelated to the present appeal.

Since the Employer failed to provide a written assurance that it would renew its worker's compensation policy to cover the entire period of need, the CO denied certification. AF 11.

Discussion

An employer seeking labor certification must submit proof of workers' compensation insurance coverage prior to the "issuance of the temporary labor certification." 20 C.F.R. § 655.122(e). In the present case, the NOA provided that the Employer must submit proof of insurance coverage at the time that the recruitment report was due. Moreover, the NOA further required that the proof of insurance must cover the entire period of need, or the Employer must submit a written assurance that it would renew the policy to cover the period of need. AF 22.

It is undisputed that the Employer did not provide a written assurance that it would renew its insurance policy to cover the entire period of need as the Employer was instructed to do in the NOA. The Employer, however, argues in its request for review that it should not be required to submit an additional written assurance because it signed the ETA 9142 Appendix A.2, which stated, under penalty of perjury, that the Employer would provide worker's compensation insurance in accordance with the regulations. The Employer also argues that it was not given proper notice of the written assurance requirement.

While the ETA 9142 Appendix A.2 does note the requirement that employers must supply insurance, the ETA 9142 also notes, for example, an employer's duty to provide a surety bond, an FLC certificate, or proper housing. Despite the signature of the Employer on the form attesting to all of these requirements, the Department of Labor still requires an Employer to submit FLC certificates, surety bonds, and proof of housing inspections through the local State Workforce Agency. Just as the surety bond or proper housing is tantamount to the execution of the H-2A program, so is worker's compensation insurance, which protects workers, both domestic and foreign, from injury on the job. Therefore, given the importance of worker's compensation insurance, it is not unreasonable to require an additional written assurance from the Employer, just as the DOL requires additional assurances about many other matters. Finally, the Employer argues that the CO did not give it adequate notice about a deficiency, but the

record indicates that the Employer was put on notice twice about the additional requirement, once in the NOA and again in the June 24, 2010 email. To its detriment, the Employer, however, chose not to respond because it deemed the written assurance unnecessary. The Employer failed to supply the written assurance to the CO, and therefore, the CO properly denied certification.

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