

**U.S. Department of Labor**

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**Issue Date: 19 July 2010**

**OALJ Case No.: 2010-TLC-00051**

**ETA Case No.: C-10070-23773**

*In the Matter of*

**BELCAN SERVICE GROUP,**  
*Employer*

Certifying Officer: William L. Carlson  
Chicago Processing Center

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

**DECISION AND ORDER**

On June 29, 2010, Belcan Service Group (“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 March 11, 2010, the United States Department of Labor's Employment and Training Administration ("ETA") received an application from Belcan Service Group ("the Employer") for temporary labor certification. AF 206-214.<sup>1</sup> In particular, the Employer requested certification for 19 "Farmworkers" between April 25, 2010, and December 25, 2010. AF 206. The Employer's application was accepted for processing on April 2, 2010.<sup>2</sup> AF 107-111.

On March 31, 2010, the State Workforce Agency ("SWA") sent an email to the CO, which stated that the "housing inspector has informed [the SWA] that the [housing locations] are duplexes which are being rented by the employer. . . . [The application] states that referrals should be made to Jeff Ross. . . . [The SWA] called that number and was told that Mr. Ross [was] not at that location. [The SWA] need[s] the correct contact person or telephone number." AF 112. In a follow-up email to the CO sent on April 2, 2010, the SWA noted that it needed additional information before it could open up a job order for the Employer. *Id.* Specifically, the SWA wrote: "[The SWA] requested from the employer a letter of affiliation between Bayer Crop Science and [the Employer]. Many of the supporting documentation . . . regarding the housing comes from Bayer Crop Science rather than [the Employer]." *Id.*

On May 4, 2010, the Employer submitted a statement to the CO, which clarified that the Employer will "be the employer of the H-2A Visa workers." AF 100. However, the Employer noted that the "workers will provide specialty rice breeding and harvesting services to our client, Bayer Crop Science." *Id.*

After the Employer's May 4, 2010 letter, the SWA sent an email to the CO stating that it received the updated information regarding the relationship between the Employer and Bayer Crop Science. AF 95. Because of the relationship, the SWA wrote that it would "need a valid

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<sup>1</sup> Citations to the 216-page Administrative File will be abbreviated "AF" followed by the page number.

<sup>2</sup> Before the application was accepted for processing, the Employer made modifications pursuant to a Notice of Deficiency issued on March 18, 2010. However, the Employer corrected the deficiencies pursuant to a response to the Notice of Deficiency on March 31, 2010. AF 145-175.

FLC license for [the Employer] showing that they are approved for recruiting, housing, transporting and driving workers.” *Id.* On May 11, 2010, the SWA sent an email to the CO, which stated that it had attempted to contact the Employer’s point-of-contact via phone, but “[the phone] was answered by Bayer Crop Science. [After asking for Mr. Ross, the SWA was told] that he does not work at that location.” AF 91. The SWA again noted that it would need a valid FLC license for the Employer, since it would be supplying workers to Bayer. *Id.* According to a May 24, 2010 email between the SWA and the CO, the SWA sent an email to the Employer to correct the noted deficiencies on April 6, 2010, but had not received a response. *Id.*

On June 18, 2010, the CO sent an email to the Employer requesting additional documentation. AF 87. Specifically, the CO required the Employer to submit an FLC certificate, an FLCE certificate, and a surety bond. *Id.* On June 18, 2010, the Employer requested a 30 day extension of time in order to comply with the FLC/FLCE requirements. AF 86.

On June 21, 2010, the CO denied the Employer’s application for labor certification. AF 82-85. Citing to 20 C.F.R. §§ 655.105(d) and 655.102(e)(2), the CO stated that the Employer failed to continue to cooperate with the SWA and failed to submit a job order to the SWA, given that the SWA never opened a job order due to the Employer’s failure to meet regulatory requirements. AF 85. Further, the CO indicated that it had spoken with the Employer’s point-of-contact on June 17, 2010. *Id.* According to the CO, the contact indicated that the Employer did not have FLC or FLCE certificates, and the appropriate paperwork for the certificates had not been submitted to the agency. The CO found that the Employer was unable to provide the required FLC and FLCE certificates as well as a surety bond, so he denied certification. The Employer’s appeal followed.

In its request for review and its subsequent brief, the Employer argued that it was not put on sufficient notice that it needed to obtain an FLC/FLCE certificate or a surety bond. The Employer complained that the DOL waited until June 18, 2010 to officially put the Employer on notice about these deficiencies.

## Discussion

The H-2A regulations require that Employers “continue to cooperate with the SWA by accepting referrals of all eligible U.S. workers who apply for the job opportunity.” 20 C.F.R. § 655.105(d). Further, the regulations require the Employer to “submit a job order to the SWA serving the area of intended employment” which “must comply with the requirements for agricultural clearance orders in 20 C.F.R. § 653.” 20 C.F.R. § 655.102.

In the Employer’s recruitment report, it indicated that it recruited, *inter alia*, by advertising with the “State Employment Agency.” AF 104. However, the record indicates that the SWA refused to open a job order for the Employer because it failed to correct deficiencies within its application, including the submission of FLC/FLCE certificates.

The Employer does not dispute in its appeal that it should have obtained the FLC/FLCE certificates as well as a surety bond. Instead, the Employer argued that it was in the process of obtaining the certificates and bond, and instead, wanted additional time to comply with the request by the SWA and the CO. The crux of the Employer’s argument is that the CO did not properly notify them of the deficiencies in order for the Employer to have time to correct them. Contrary to the Employer’s argument, however, the record reveals that the SWA attempted to contact the Employer numerous times via email and phone. The Employer, however, did not properly provide the correct contact information to the SWA or respond to its emails. As early as April 6, 2010, the Employer was placed on notice that the SWA would not open a job order until it submitted a surety bond and FLC/FLCE certificates.<sup>3</sup> The Employer cannot now claim that the DOL did not give it sufficient information regarding the H-2A requirements, when the Employer knew that it needed a job order with the SWA and the SWA properly put the Employer on notice that it would not open a job order until the Employer corrected certain deficiencies. The Employer’s application was not denied until June 21, 2010, more than two

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<sup>3</sup> The Employer asserts that it complied with the job order regulations by applying with the nearest SWA even though the acceptance letter from the CO did not give them a job order number. However, this argument does not ameliorate the Employer’s failure to correct the deficiencies found by the SWA, so that a job order could be opened. Nor does it relieve the Employer from cooperating with the SWA once problems with the Employer’s application arose.

months after the SWA's April 6, 2010 email to the Employer. However, as of June 17, 2010, the Employer had still made no effort to obtain the certifications or the bond.

The regulations require that the Employer not only place a job order with the SWA but continue to cooperate with the state agency as well. The Employer failed to respond to the SWA or to correct its deficiencies, and therefore, the SWA refused to open up a job order. Without a job order, the Employer cannot properly comply with the recruitment regulations. Because the Employer did not properly submit a job order to the SWA, the CO correctly 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