

U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)



Issue Date: 11 August 2010

OALJ Case No.: 2010-TLC-00092

ETA Case No.: C-10172-24501

In the Matter of

CANAM HARVESTING, LLC,
Employer

Certifying Officer: William L. Carlson
Chicago Processing Center

Before: **ROBERT B. RAE**
U. S. Administrative Law Judge

DECISION AND ORDER

On July 23, 2010, Canam Harvesting, LLC, (“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. § 655.164(B) (2010). On July 30, 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. § 655.171.

Statement of the Case

On June 21, 2010, the United States Department of Labor’s Employment and Training Administration (“ETA”) received an application from Canam Harvesting, LLC, (“the

Employer”), for temporary labor certification. AF 311-319.¹ On June 28, 2010, the CO issued a Notice of Deficiency (“NOD”). AF 281-286. The CO, citing to 20 C.F.R. § 655.132(b)(5), noted that where the Employer will be providing transportation to workers, the Employer must show proof that “all transportation between the worksite and the workers living quarters . . . compl[ied] with all applicable Federal, State, or local laws and regulations.” AF 284. The CO further noted that the Employer had submitted a Farm Labor Contractor (“FLC”) certificate that was valid until February 2011, but the Employer’s vehicle inspection authorization ended on January 1, 2010. *Id.* As a result, the CO required the Employer to “provide updated vehicle inspection authorization[s] or provide documentation that show[ed] the employer ha[d] made alternative arrangements to transport workers to the worksite.” *Id.*

On July 7, 2010, the Employer responded to the NOD. AF 154-280. In its response, the Employer stated that it had requested an amended FLC certificate showing an extension of the vehicle inspection authorization, although the Employer had not received the new documentation. AF 163.

On July 16, 2010, the CO denied the Employer’s application. AF 150-153. In particular, the CO noted that 20 C.F.R. § 655.132(b)(5) required the Employer to obtain vehicle inspection authorizations. AF 152-153. The CO found that the Employer failed to provide an updated FLC certificate with authorized vehicles or alternative transportation arrangements. AF 153. Accordingly, the CO denied the application, and the Employer’s appeal followed.

Discussion

Under the H-2A regulations, the Employer must provide proof that “all transportation between the worksite and the workers' living quarters that is provided by the fixed-site agricultural business complies with all applicable Federal, State, or local laws and regulations and must provide, at a minimum, the same vehicle safety standards, driver licensure, and vehicle

¹ Citations to the 526-page Administrative File will be abbreviated “AF” followed by the page number.

insurance as required under 29 U.S.C. 1841 and 29 CFR 500.105 and 500.120 to 500.128.” 20 C.F.R. § 655.132(b)(5)(ii).²

The only issue in the present case is whether the Employer provided sufficient evidence that it could transport workers to and from the worksite. Accordingly, the regulations require that the Employer obtain an FLC certificate with an authorization to transport workers. The certificate must also contain vehicle inspection authorizations. In its response to the NOD, the Employer stated that it was in the process of obtaining the updated registration; however, the CO cannot accept assurances regarding compliance with the FLC registration requirements. Rather, the Employer must satisfy these requirements at the time of application or, at the very least, in response to a subsequent request from the CO. *See Jaime Campos, 2010-TLC-00005 (BALCA November 5, 2009)*. Based on the record before the CO,³ it is clear the Employer did neither. The Employer has not proven that it can provide transportation for its workers, and accordingly, 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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ROBERT B. RAE

U. S. Administrative Law Judge

² Regulations promulgated under the Migrant and Seasonal Agricultural Worker Protection Act require that any person engaged as a Farm Labor Contractor must obtain an FLC Certificate authorizing such activity from the Administrator of the Wage and Hour Division of the Department of Labor’s Employment Standards Administration (the WHD). *See 29 C.F.R. § 500 et seq.* The MSPA regulations also require independent contractors who perform farm labor contracting activities for FLCs to register as FLCs in their own right. *See 29 C.F.R. § 500.40.*

³ The Employer included an updated FLC certificate with its request for review, but even the new FLC certificate does not completely cover the Employer’s dates of need. Moreover, the Board is precluded from reviewing evidence that was not submitted before the CO. *See 20 C.F.R. § 655.171(a).*