

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: 05 October 2010

OALJ Case No.: 2010-TLC-00146

ETA Case No.: C-10239-24963

In the Matter of

GLOBAL AG LABOR, INC.,
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 September 17, 2010, Global AG Labor, Inc., (“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 September 28, 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 August 26, 2010, the United States Department of Labor's Employment and Training Administration ("ETA") received an application from Global AG Labor, Inc., ("the Employer") for temporary labor certification for 40 "Farm Worker and Laborers" from October 15, 2010 until May 1, 2011. AF 46-54.¹ On September 1, 2010, the CO issued a Notice of Deficiency ("NOD") citing twelve deficiencies, only one of which will be addressed on appeal. AF 29-37. Citing to 20 C.F.R. § 655.132(b), the CO stated that the Employer must provide a copy of its Farm Labor Contractor ("FLC") certification. AF 32. Accordingly, the Employer's certificate showed that the Employer was authorized to transport workers, and it had two authorized vehicles with a total seating capacity of 30. *Id.* The CO noted, however, that the Employer was not authorized for driving, and as a result, the CO required that the Employer "clarify how all 40 workers will be transported to the job site and back throughout the employer's work contract and submit any required FLCE licenses." *Id.*

On September 10, 2010, the Employer responded to the NOD. AF 16-28. The Employer wrote: "Each year, Wallace Johnson has been approved for driving. However, because the process for submitting an updated FLC certification can only occur after [the] employer is required to submit [its application], it is impossible to provide now." AF 17-18. Accordingly, the Employer stated that "the principal and at least one other employee will apply for FLC approval for driving and upon receipt of certification will forward proof to this office." *Id.*

On September 15, 2010, the CO issued a Final Determination denying the Employer's application. AF 7-10. Again citing to 20 C.F.R. § 655.132(b), the CO noted that the Employer was required to have a sufficient number of FLC/FLCE certificates that authorized the driving of workers to and from the jobsite. AF 9. The CO also noted that the Employer's explanation that it needed to file an application for labor certification in order to receive FLC/FLCE certificates was incorrect because "the update of an FLC Certificate of Registration is not tied to the submittal of an [application]." *Id.* The CO found that the Employer failed to submit the required

¹ Citations to the 54-page Administrative File will be abbreviated "AF" followed by the page number.

certificates with driving authorizations, and as a result, the CO denied certification. The Employer's appeal followed.

Discussion

20 C.F.R. § 655.132(b) provides that an H-2ALC must provide “a copy of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) Farm Labor Contractor (FLC) Certificate of Registration . . . identifying the specific farm labor contracting activities the H-2ALC is authorized to perform as an FLC.”

The Employer does not dispute that it was required to have a sufficient number of FLC/FLCE certificates authorized for driving in order to transport all forty workers to and from the jobsite. In its response to the RFI, the Employer argued that it could not get driver authorization until it filed its current application for labor certification, but as the CO pointed out in his denial letter, obtaining an FLC/FLCE certificate is in no way tied to the Employer's labor certification process. Further, upon review, the Employer provided supplemental documentation dated October 28, 2009 and November 1, 2009 that showed the Employer had two drivers authorized for driving, including Mr. Wallace. However, not only is this information not properly before the Board,² the Employer failed to offer an explanation as to why this documentation was not presented to the CO upon request. Given that this review is limited to only the information before the CO, and the Employer failed to properly present evidence that it had sufficient drivers to transport its workers, the CO properly denied certification.

Order

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

² See 20 C.F.R. § 655.171

For the Board:

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WILLIAM S. COLWELL

Associate Chief Administrative Law Judge

Washington, D.C.
WSC:ARH