

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 29 July 2010

OALJ Case No.: 2010-TLC-00071

ETA Case No.: C-10166-24448

In the Matter of

MOON RANCH, LLC,
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 14, 2010, Moon Ranch, 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. § 655.115(a) (2009). On July 23, 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 June 15, 2010, the United States Department of Labor's Employment and Training Administration ("ETA") received an application from Moon Ranch, LLC, ("the Employer") for temporary labor certification. AF 54-62.¹ In particular, the Employer requested certification for one "Shepherd" between August 1, 2010, and July 31, 2011. AF 54. The Employer's application was accepted for processing on June 25, 2010.² AF 27-31. 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." AF 30. The NOA also noted that the recruitment report was due on July 1, 2010. *Id.*

On July 2, 2010, the CO denied the Employer's application for temporary labor certification. AF 7-9. Citing to 20 C.F.R. § 655.122(e), the CO stated that the Employer was required to provide proof of workers' compensation insurance, and it failed to do so by the deadline given in the NOA. Because the Employer failed to provide proof of workers' compensation insurance by the July 1, 2010 deadline, the CO denied the Employer's application. The Employer's appeal followed.

In the Employer's request for review, the Employer argued that the CO normally waited multiple days past the deadline before issuing a denial, and in the past, the CO would attempt to informally resolve the problem prior to a final determination. AF 1. Further, the Employer stated that at the time that the present application was being processed, the Employer also had a second application in progress. *Id.* As a result, the Employer asserted that it sent in proof of insurance for the second claim, but inadvertently forgot to send in proof of insurance for the

¹ Citations to the 70-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 a Notice of Deficiency issued on June 22, 2010. AF 38-45. However, the Employer corrected the deficiencies, and they are unrelated to the present appeal.

present application. *Id.* The Employer also complained that the certification process does not “allow” the CO to cross reference the two cases, and ultimately, the CO’s decision was capricious. *Id.*

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.

It is undisputed that the Employer failed to submit proof of workers’ compensation insurance for its application. While it may have submitted proof for another pending case, it is not the CO’s responsibility to cross reference cases in order to correct the Employer’s oversight. Likewise, while the CO has the discretion to informally resolve a matter with the Employer, nothing in the H-2A regulations require him to engage in this process. Moreover, simply because the CO made additional efforts to help the Employer in the past does not bind him to continue those efforts, and the Employer should not rely on the CO’s informal reminders to comply with the regulations. Finally, the CO did not act capriciously by denying the Employer’s application when it failed to follow the H-2A regulations. Because the Employer failed to submit proof of workers’ compensation insurance to the CO by the deadline³, the CO properly denied certification.

³ In its request for review, the Employer submitted proof of workers’ compensation insurance. AF 4-6. However, this review is limited to the “written record” before the CO, and therefore, the new evidence will not be considered. *See* 20 C.F.R. 655.171(a).

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

Washington, D.C.
WSC:ARH