

U.S. Department of Labor

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Issue Date: 01 July 2010

OALJ Case No.: 2010-TLC-00043

ETA Case No.: C-10127-24190

In the Matter of

PATRICK STEWART FARM & RANCH,
Employer

Certifying Officer: William L. Carlson
Chicago Processing Center

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

DECISION AND ORDER

On June 18, 2010, Patrick Stewart Farm & Ranch (“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 June 25, 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 7, 2010, the United States Department of Labor's Employment and Training Administration ("ETA") received an application from Patrick Stewart Farm & Ranch ("the Employer") for temporary labor certification. AF 57.¹ In particular, the Employer requested certification for 10 "Farmworkers and Laborers, Crop" between July 1, 2010, and January 15, 2011. *Id.* The Employer's application was accepted for processing on May 20, 2010.² AF 15-19. 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 18.

On June 11, 2010, the CO denied the Employer's application for temporary labor certification. AF 3-5. Citing to 20 C.F.R. § 655.122(e)(1), the CO stated that the Employer failed to submit proof of workers' compensation insurance coverage. Because the CO did not receive the required documentation, the application was denied. The Employer's appeal followed.

In its request for review, the Employer asserted that it had a worker's compensation insurance policy that ran from April 1, 2010 until April 1, 2011. AF 1. However, during the labor certification process, the Employer stated that "this year due to an error the insurance information was not sent and or the lack of it was not noticed prior to the decision." *Id.*

¹ Citations to the 71-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 April 23, 2010. However, the Employer corrected the deficiencies, and they are unrelated to the present appeal.

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. AF 18.

It is undisputed that the Employer was required to submit proof of workers' compensation coverage prior to the grant of certification. The Employer admitted in its request for review that it failed to submit the required documentation. Further, although the Employer attached additional documentation to its request for review as proof of its worker's compensation insurance, the Board is limited to reviewing only the "written record" as it appeared before the CO. 20 C.F.R. 655.171(a).³ Likewise, the Board cannot force the CO to accept documentation submitted after the Final Determination was issued. Since the Employer failed to submit the required documentation to the CO, certification was properly denied.

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

³ The Employer had the opportunity to request a de novo hearing pursuant to 20 C.F.R. § 655.171, during which it could have presented new evidence, including additional documentation regarding proof of insurance. However, the Employer requested an administrative review, which limits the review to the written record and does not afford the Employer the chance to submit new evidence.