

U.S. Department of Labor

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Issue Date: 12 August 2010

OALJ Case No.: 2010-TLC-00101

ETA Case No.: C-10176-24536

In the Matter of

PERI & SONS FARMS, 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 July 29, 2010, Peri & Sons Farms, 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 August 4, 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 April 28, 2010, the United States Department of Labor's Employment and Training Administration ("ETA") received an application from Peri & Sons Farms, Inc., ("the Employer") for temporary labor certification. AF 116-126.¹ Along with its application, the Employer submitted a "Certificate of Liability Insurance" and a copy of the Nevada civil code detailing the Nevada state law regarding workers' compensation insurance.² AF 146-148. The Employer's application was accepted for processing on July 7, 2010.³ AF 93-97. The Notice of Acceptance ("NOA") instructed the Employer, *inter alia*, that "actual proof of workers' compensation coverage for [the Employer's] employees is required prior to the issuance of temporary labor certification." AF 97.

On July 26, 2010, the CO sent the Employer an email regarding the Employer's submission of workers' compensation insurance. AF 80. Specifically, the CO stated that "the documentation provided by the employer only covers medical payments and employer liability, not injury and disease." *Id.* The Employer responded on July 26, 2010, and stated that "the certificate from our insurance company . . . verifies the medical payments for our workers. We have always paid any medical claim for job related injury or illness and will continue to do so." AF 75.

On July 26, 2010, the CO denied the Employer's application for temporary labor certification. AF 68-70. Citing to 20 C.F.R. § 655.122(e)(1), the CO stated that the Employer failed to submit "sufficient proof workers' compensation insurance." AF 70.

¹ Citations to the 182-page Administrative File will be abbreviated "AF" followed by the page number.

² Certain states exempt agricultural workers from maintaining workers' compensation coverage. The Employer submitted the Nevada code in an effort to prove that it was exempt from maintaining state law coverage. Neither the CO nor the Employer dispute that the Employer was exempt from maintaining workers' compensation insurance under Nevada law.

³ Before the application was accepted for processing, the Employer made modifications pursuant to a Notice of Deficiency issued on July 1, 2010. However, the Employer corrected the deficiency, and it is 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). If, as in the present case, the Employer is exempt from the State workers' compensation law, the Employer "must provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment that will provide benefits at least equal to those provided under the State workers' compensation law for other comparable employment." 20 C.F.R. § 655.122(e)(1).

The Employer provided a certificate of insurance ("policy"). The policy provides "Automobile Liability" in the amount of \$1,000,000 and "General Liability" up to \$2,000,000. AF 64. In the "Other" section, the policy provides \$5,000 per occurrence for "Medical Payments" and \$1,000,000 for "Employers Liability." *Id.* The section for "Workers Compensation and Employment Liability" is left blank and does not provide coverage. It is undisputed that the Employer is not required under Nevada law to have workers' compensation insurance. However, the H-2A regulations require the Employer to have coverage that is equal to the State mandated coverage for comparable employment. The Employer failed to submit any documentation that would indicate that Nevada law requires comparable employers to only obtain a workers' compensation policy in the amount of \$5,000 per occurrence for medical bills. While the policy submitted by the Employer covers the Employer's liability needs, it is unclear if the same policy adequately protects the workers. Moreover, it is the Employer's burden to prove that the policy was at least equal to comparable policies required under the Nevada state law. The Employer failed to meet this burden, and thus, 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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WILLIAM S. COLWELL
Associate Chief Administrative Law Judge

Washington, D.C.
WSC:ARH