

U.S. Department of Labor

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Issue Date: 13 August 2010

OALJ Case No.: 2010-TLC-00109

ETA Case No.: C-09174-20015

In the Matter of

PITCOCK FARMS,
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 August 6, 2010, Pitcock Farms, (“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 6, 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 July 2, 2009, the United States Department of Labor's Employment and Training Administration ("ETA") received an application from Pitcock Farms, ("the Employer") for temporary labor certification. AF 31-34.¹ The Employer's application was accepted for processing on July 7, 2009 and the Certifying Officer ("the CO") granted certification for seven workers on July 8, 2009.² AF 12-24. The period of employment for that certification ran from August 7, 2009 to June 7, 2010. AF 14.

On June 28, 2010, the Employer requested an extension of the labor certification for its foreign workers. AF 9. The Employer's written request noted that the visas for which an extension was being requested authorized a stay that "expires [sic] on June 7, 2010." *Id.* The Employer explained that the rains had interfered with its harvesting and that because of the labor shortage in its area, it needed to keep the seven workers to continue to harvest alfalfa to feed the cows for its dairies, noting that alfalfa harvest occurred every 28 days and must be kept on schedule. *Id.*

The CO denied the extension on July 20, 2010, finding that the Employer had not shown sufficient reasons for the extension and that the authorized stay of the workers had already expired under the applicable Department of Labor and Department of Homeland Security regulations, citing 20 C.F.R. §§ 656.110(d)(2) and 656.111 (2009). AF 4-5. The CO filed an appellate brief on August 11, 2010, arguing the same issues.

Discussion

In relevant part, Section 655.111(a) states that "[a] foreign worker may not remain beyond his or her authorized period of stay, as established by DHS, which is based upon the

¹ Citations to the 87-page Administrative File will be referred to as "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.

validity period of the labor certification under which the H-2A worker is employed, nor beyond separation from employment prior to completion of the H-2A contract, absent an extension or change of such worker's status under DHS regulations." 20 C.F.R. § 655.111(a) (2009). In reference to the validity period of labor certification under this Section, the regulations provide that "the certification expires on the last day of authorized employment." *Id.* at § 655.110(a). The regulations also provide for extensions of labor certification, provided that they are documented in writing and approved by the CO. *Id.* at 655.110(d)(2).

Here, the Employer applied for an extension on June 28, 2010, three weeks after the validity period for its labor certification had expired. At that time, the workers were already out of status and thus, there was no valid period of certification that could be extended. Accordingly, the CO properly denied the extension of 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:EAS