

**U.S. Department of Labor**

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**Issue Date: 16 June 2010**

**OALJ Case No.: 2010-TLC-00037**

**ETA Case No.: C-10130-24198**

*In the Matter of*

**TERRA AD COELUM,**  
*Employer*

Certifying Officer: William L. Carlson  
Chicago Processing Center

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

**DECISION AND ORDER**

On June 2, 2010, Terra Ad Coelum (“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 9, 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 10, 2010, the United States Department of Labor's Employment and Training Administration ("ETA") received an application from Terra Ad Coelum ("the Employer") for temporary labor certification. AF 48-59.<sup>1</sup> In particular, the Employer requested certification for two "Farmworkers, Farm and Ranch Animals" between June 6, 2010, and April 6, 2011. AF 48. On May 17, 2010, the Employer received a Notice of Deficiency ("NOD"), notifying the Employer that its application had not been accepted for processing. AF 39. The NOD gave the Employer the option of modifying its application within five business days. *Id.* Pertinent to this appeal, the CO stated that the Employer filed its application less than 45 calendar days prior to the start date, in violation of 20 C.F.R. § 655.134. According to the CO, in order to modify its application, the Employer "must provide a statement justifying good and substantial cause for a waiver to the time filing period." AF 41.

On May 24, 2010, the Employer submitted its modified application. AF 9-23. Included with the modified application was a "Request for Waiver of Time Period for Filing." AF 13. In its waiver, the Employer wrote:

[The Employer] hereby request a waiver of the time period for filing. My children and I normally care for the horses on a daily basis. My mother, who lives in a separate house next door, is incapacitated and requires round the clock care. I am responsible for managing the nurses as well as running her home and my home, which includes the farm. I also hold power of attorney for my mother[,] and am responsible for her business affairs. These responsibilities take a significant amount of time and take away the time available to care for the horses.

As we prepare for breeding, the amount of work on the farm has increased substantially. Coupled with the additional responsibilities for my mother, described above, I require additional farm help as soon as possible.

AF 13.

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<sup>1</sup> Citations to the 91-page Administrative File will be abbreviated "AF" followed by the page number.

On May 26, 2010, the CO denied the Employer's application. AF 6-8. Pursuant to 20 C.F.R. § 655.134(b), the CO asserted that the Employer, since it filed its application less than 45 days from the start date, needed to file a waiver of the required time period. AF 8. According to the CO, the waiver needed to include a statement indicating whether the request was "due to the fact that the employer did not use H-2A workers during the prior agricultural season or whether the request is for good and substantial cause." AF 8. The CO found that the Employer used H-2A workers during the last agricultural season, and the Employer also failed to "establish good and substantial cause." AF 8. Having found that the Employer was not entitled to a time waiver, the CO denied certification. The Employer's appeal followed.

### Discussion

An employer seeking labor certification must file an application not less than 45 days prior to the Employer's date of need. 20 C.F.R. § 130(b). If the Employer fails to file at least 45 days prior to the start date,

the CO may waive the time period for filing for employers who did not make use of temporary alien agricultural workers during the prior year's agricultural season or for any employer that has other good and substantial cause (which may include unforeseen changes in market conditions), provided that the CO has sufficient time to test the domestic labor market on an expedited basis to make the determinations required by §655.100.

20 C.F.R. § 655.134(a). Further, the regulations explain that good and substantial cause may include "the substantial loss of U.S. workers due to weather-related activities or other reasons, unforeseen events affecting the work activities to be performed, pandemic health issues, or similar conditions." 20 C.F.R. § 655.134(b).

It is undisputed that the Employer filed its application less than 45 days prior to the start date. It is equally undisputed that the Employer used H-2A workers during the last agricultural season. Therefore, in order to obtain a waiver from the CO, the Employer had to show good and substantial cause for filing its application late. Moreover, it is important to note that the regulations give the discretion for approving waivers to the CO because he is in the unique position of being able to determine whether the shortened application period will allow him to test the domestic labor market in accordance with 20 C.F.R. § 655.100(b). Further, the

Employer bears the burden of proving that it is entitled to labor certification. *Cal Farms LLC and Washington Farm Labor Source LLC*, 2009-TLC-00049 (BALCA May 29, 2009).

While the Employer's situation, if suddenly occurring, might be grounds for a waiver, nothing in the record suggests that the mother's current medical situation was sudden or surprising. Further, nothing in the record suggests that the Employer was unaware of the increasing demands associated with horse breeding. Rather, the Employer's response indicated that both the farm demands and the demands caused by the care of the Employer's mother had been ongoing. While the Employer's situation is both sympathetic and unfortunate, the Employer has failed to show good and substantial cause for a waiver request. Since the Employer failed to establish good and substantial cause for waiving the application filing requirement, 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