

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 07 June 2010

OALJ Case No.: 2010-TLC-00031

ETA Case No.: C-10105-24055

In the Matter of

ZELLER AND SONS FARMS,
Employer

Certifying Officer: William L. Carlson
Chicago Processing Center

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

DECISION AND ORDER

On May 19, 2010, Zeller and Sons 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 May 28, 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 25, 2010, the United States Department of Labor’s Employment and Training Administration (“ETA”) received an application from Zeller and Sons Farms (“the Employer”)

for temporary labor certification. AF 51-71.¹ In particular, the Employer requested certification for 18 “Agricultural Equipment Operators” between May 31, 2010, and December 31, 2010. AF 51. The Employer’s application was accepted for processing on April 28, 2010.²

On April 29, 2010, the CO sent an email to the Employer, noting that the Final Determination for the Employer’s application was due on May 5, 2010. AF 11. Accordingly, the CO stated that the Employer needed to submit a recruitment report and proof of workers’ compensation insurance prior to the final determination date. *Id.*

On May 12, 2010, the CO denied the Employer’s application for temporary labor certification. AF 5-7. Citing to 20 C.F.R. §§ 655.456(a) and 655.122(e)(1), the CO stated that the Employer failed to submit a recruitment report or 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 admitted that the required documents were not submitted to the CO due to failed communication between the Employer and its agent. AF 2-3. Additionally, the Employer submitted proof of its workers’ compensation insurance coverage along with its recruitment report.³

Discussion

20 C.F.R. § 655.156(a) requires employers seeking temporary labor certification to submit a recruitment report by the date determined by the CO in the letter of acceptance. Further, an employer seeking labor certification must also submit proof of workers’

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 21, 2010. However, the Employer corrected the deficiencies, and they are unrelated to the present appeal.

³ Although the Employer submitted proof of its workers’ compensation coverage and its recruitment report with the request for review, these items were not contained in the appeal file submitted by the CO, although the Employer’s request for review was properly included.

compensation insurance coverage prior to the “issuance of the temporary labor certification.” 20 C.F.R. § 655.122(e).

The Employer admits in its request for review that it did not send in the recruitment report or proof of insurance as required by the regulations. Although it is clear from the Employer’s request for review that it did in fact have the proper documentation, the Board is limited to reviewing only the “written record” as it appeared before the CO. 20 C.F.R. 655.171(a). 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