

**U.S. Department of Labor**

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**Issue Date: 28 July 2010**

**OALJ Case No.: 2010-TLC-00089**

**ETA Case No.: C-10165-24441**

*In the Matter of*

**CAHOOL 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 22, 2010, Cahoon 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 July 23, 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 June 14, 2010, the United States Department of Labor's Employment and Training Administration ("ETA") received an application from Cahoon Farms, Inc., ("the Employer") for temporary labor certification. AF 66.<sup>1</sup> In particular, the Employer requested certification for forty "Farmworkers and Laborers, Crop, Nursery and Greenhouse" between August 1, 2010, and November 15, 2011. *Id.* The Employer's application was accepted for processing on June 28, 2010.<sup>2</sup> AF 19-23. 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 22. The NOA also noted that the recruitment report was due on July 8, 2010. *Id.*

On July 8, 2010, the CO received a letter from the New York State Insurance Fund. AF 9-11. The letter advised that the Employer's worker's compensation insurance policy would be cancelled on July 18, 2010. AF 10.

On July 12, 2010, the CO denied the Employer's application for temporary labor certification. AF 6-8. The CO stated in its denial letter that it "received a Cancellation of Certificate of Workers Compensation Insurance from New York State Insurance Fund, effective 7/18/2010. Since then, the employer has not submitted any documentation providing proof of workers compensation insurance coverage." AF 8. Because the Employer failed to provide proof of worker's compensation insurance by the July 8, 2010 deadline, the CO denied the Employer's application. The Employer's appeal followed.

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<sup>1</sup> Citations to the 81-page Administrative File will be abbreviated "AF" followed by the page number.

<sup>2</sup> Before the application was accepted for processing, the Employer made modifications pursuant to a Notice of Deficiency issued on June 21, 2010. AF 41-58. 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.

The Employer was required to submit proof of worker's compensation insurance to the CO by July 8, 2010. The Employer not only failed to submit this proof, but the CO received a cancellation letter for the Employer's worker's compensation insurance from the New York State Insurance Fund. Because the Employer failed to submit proof of worker's compensation insurance to the CO by the deadline<sup>3</sup>, 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

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<sup>3</sup> In its request for review, the Employer submitted a new Certificate of Worker's Compensation Insurance, along with a receipt showing that the insurance had been reinstated. AF 2-3. However, this review is limited to the "written record" before the CO, and therefore, the new certificate will not be considered. *See* 20 C.F.R. 655.171(a).