



Issue Date: 27 July 2010

OALJ Case No.: 2010-TLC-00072; 2010-TLC-00073

ETA Case No.: C-10169-24496; C-10169-24498

In the Matter of

CHAMPLAIN ORCHARDS, INC.,
Employer

Certifying Officer: William L. Carlson
Chicago Processing Center

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

DECISION AND ORDER
REVERSING DENIAL OF CERTIFICATION

On July 19, 2010, Champlain Orchards, Inc., (“the Employer”) filed a request for review of the Certifying Officer’s determination in the above-captioned temporary agricultural labor certification matters.¹ See 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a), 1184(c)(1); 20 C.F.R. § 655.115(a) (2009). On July 20, 2010, the Office of Administrative Law Judges received the Administrative Files 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).

¹ The Employer’s appeal involves two cases, which both contain similar facts and issues. Therefore, I will consolidate the cases and refer only to 2010-TLC-00072

Statement of the Case

On June 18, 2010, the United States Department of Labor's Employment and Training Administration ("ETA") received an application from Champlain Orchards, Inc., ("the Employer") for temporary labor certification. AF 66.² In particular, the Employer requested certification for 20 "Farmworkers and Laborers, Crop" between August 6, 2010, and December 26, 2010. *Id.* The Employer's application was accepted for processing on June 30, 2010.³⁴ AF 15-19. 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 21.

On July 7, 2010, the Employer submitted a statement from "Chartis—Specialty Workers Compensation Group." AF 14. The statement was entitled "Workers Compensation and/or Longshore Liability Payment Schedule." *Id.* The document contained the Employer's name and address and the Employer's policy number. *Id.* According to the statement, the policy was effective from April 1, 2010 to April 1, 2011. *Id.* The statement also included the Employer's "payment schedule," which showed the amount of payments that the Employer had to make each month in order to maintain insurance. *Id.*⁵

On July 9, 2010, the CO denied the Employer's application. AF 9-11. Citing to 20 C.F.R. § 655.122(e)(2), the CO noted that the Employer was required to submit proof of worker's compensation insurance coverage prior to the grant of certification. AF 11. Accordingly, the CO found that the Employer's submission "is unacceptable because it fails to

² Citations to the 81-page Administrative File will be abbreviated "AF" followed by the page number.

³ Before the application was accepted for processing, the Employer made modifications pursuant to a Notice of Deficiency issued on June 23, 2010. However, the Employer corrected the deficiencies, and they are unrelated to the present appeal.

⁴ In 2010-TLC-00073, the Employer's application was not accepted for processing until July 2, 2010. Prior to the acceptance, the Employer made modifications to its application pursuant to a Notice of Deficiency issued on June 23, 2010. However, the Employer corrected the deficiencies, and they are unrelated to the present appeal.

⁵ The same document was submitted as proof of worker's compensation coverage in 2010-TLC-00073. AF 14.

provide proof of coverage and is only a payment schedule.” *Id.* Having found that the Employer had not submitted adequate proof of workers’ compensation insurance, the CO denied the Employer’s application. The Employer’s appeal followed.

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). The proof of insurance must provide “the name of the insurance carrier, the insurance policy number, and proof of insurance for the dates of need.” 20 C.F.R. § 655.122(e)(2).

The statement submitted by the Employer listed the name of the insurance carrier, the policy number, and the policy period, which covered the Employer’s entire date of need. Simply because the document contains a payment schedule does not invalidate it as proof of insurance. Moreover, nothing in the CO’s Letter of Acceptance suggested that a payment schedule, which also complied with the regulatory requirements, would not be sufficient to satisfy the Employer’s burden of proof. Because the Employer submitted sufficient proof that it possessed a worker’s compensation insurance policy, the CO improperly denied certification.

Order

In light of the foregoing, it is hereby **ORDERED** that the Certifying Officer’s decision is **REVERSED**.

For the Board:

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WILLIAM S. COLWELL
Associate Chief Administrative Law Judge

Washington, D.C.
WSC:ARH