

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 13 September 2010**

**OALJ Case No.: 2010-TLC-00135**

**ETA Case No.: C-10228-24905**

*In the Matter of*

**C.N.A. TRUCKING, 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 September 3, 2010, C.N.A. Trucking, 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 September 3, 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

The facts of this case are undisputed. On August 16, 2010, the United States Department of Labor's Employment and Training Administration ("ETA") received an application from C.N.A. Trucking, Inc., ("the Employer") for temporary labor certification for two "Log Loader Operators." AF 48-59.<sup>1</sup> The Employer included with its application a copy of its surety bond. AF 77. In its cover letter, the Employer remarked that it was "enclosing the original surety bond with this letter and photocopies with each [application]." AF 76.

On August 23, 2010, the CO issued a Notice of Deficiency ("NOD").<sup>2</sup> AF 31-40. Citing to 20 C.F.R. § 655.132(b)(3), the CO stated that the Employer was required to attach an "original surety bond as required by 29 C.F.R. § 501.9." AF 33. The CO noted that the Employer had provided a copy of its bond and required the Employer to submit an original, notarized surety bond. AF 33.

On August 27, 2010, the Employer responded to the NOD. AF 11-26. In its response, the Employer wrote:

The employer attests that [it] submitted two H-2A applications. . . .Both application for temporary employment certification included a photocopy of the notarized surety bond. Both applications were mailed together in one Federal Express envelope. Also included in said envelope was the original, notarized surety bond. . . .I am enclosing a photocopy of the original documents submitted to your office. The bonding company is not able to duplicate the original Bond.

AF 15.

On August 27, 2010, the CO issued a Final Determination denying the Employer's certification. AF 8-10. Citing to 20 C.F.R. § 655.132(b)(3), the CO noted that the Employer failed to submit an original surety bond. The CO stated that although the Employer provided an original surety bond for a separate H-2A application, the Employer must submit an original bond

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<sup>1</sup> Citations to the 59-page Administrative File will be abbreviated "AF" followed by the page number.

<sup>2</sup> The NOD cited to three deficiencies, but only will is relevant to this appeal.

with each application. Because the Employer failed to submit an original bond with its current application, the CO denied certification. The Employer appealed.

### Discussion

An H-2A employer must provide “proof of its ability to discharge financial obligations under the H-2A program by including with the *Application for Temporary Employment Certification* the original surety bond as required by 29 CFR 501.9. The bond document must clearly identify the issuer, the name, address, phone number, and contact person for the surety, and provide the amount of the bond (as calculated pursuant to 29 CFR 501.9) and any identifying designation used by the surety for the bond.” 20 C.F.R. § 655.132(b)(3).

The Employer argued in its appeal that it has submitted an original surety bond for multiple applications. However, the CO’s past leniency does not alleviate the Employer from its present burden to comply with the regulations. Moreover, the regulation is specific that an original bond must be submitted for the application for temporary employment certification. Applications are not processed as a batch, but rather individually, so the Employer cannot comply with the regulations by submitting a single document to cover multiple applications. Invariably, one of the applications would have to be processed without the original documents.

It is also worthy to note that even if the CO had accepted a photocopy of the surety bond, the bond itself failed to meet regulatory requirements. According to 20 C.F.R. § 501.9, a bond must “remain in force for a period of no less than 2 years from the date on which the labor certification expires.” The present labor certification was set to expire on April 15, 2011. AF 48. The Employer’s surety bond remains in force through June 14, 2011. AF 25. Therefore, even if the CO had accepted a photocopy of the surety bond, the bond itself fails to comply with the surety bond requirements by remaining in effect until April 15, 2013. Because the Employer failed to comply with the surety bond regulations, 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