

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 27 July 2010

OALJ Case No.: 2010-TLC-00070

ETA Case No.: C-10172-24511

In the Matter of

SUNRISE ORCHARDS, INC.,

Employer

Certifying Officer: William L. Carlson
Chicago Processing Center

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

DECISION AND ORDER

On July 14, 2010, Sunrise Orchards, 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 20, 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 21, 2010, the United States Department of Labor's Employment and Training Administration ("ETA") received an application from Sunrise Orchards, Inc., ("the Employer") for temporary labor certification. AF 26-34.¹ In particular, the Employer requested certification for four "Farmworkers and Laborers, Crop" between August 7, 2010, and April 5, 2011. AF 26.

The Employer's application was accepted for processing on June 28, 2010. In the Notice of Acceptance ("NOA"), the CO instructed the Employer, *inter alia*, that the Employer should submit a written recruitment report "containing [the Employer's] signature and date to the [CO's] office on July 7, 2010." AF 20.

On July 8, 2010, the CO denied the Employer's application for temporary labor certification. AF 8-10. Citing to 20 C.F.R. §§ 655.156, the CO stated that the Employer failed to submit a recruitment report. 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 until July 9, 2010. The Employer wrote, "The Acceptance Letter states that the recruitment report must be received on July 7th. Nowhere does it state that if it isn't received won the exact date of July 7th that the Job Order will be denied." AF 1.

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. Accordingly, the recruitment report must be signed and dated by the Employer. *Id.*

¹ Citations to the 43-page Administrative File will be abbreviated "AF" followed by the page number.

The Employer admits in its request for review that it did not send in the recruitment report until after the deadline passed. Although the Employer may have submitted the recruitment report on July 9, 2010, the CO required that the documentation be received by July 7, 2010. Further, even though the Employer submitted the recruitment report again in its appeal, 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. Ultimately, the Employer failed to file the report by the due date established by the CO. 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

Washington, D.C.
WSC:ARH