

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 30 December 2010

OALJ Case No.: 2011-TLC-00101

ETA Case No.: C-10321-25516

In the Matter of

KINGBEE APIARYS
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 December 22, 2010, KingBee Apiarys (“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 December 21, 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 November 17, 2010, the United States Department of Labor’s Employment and Training Administration (“ETA”) received an application from the Employer for temporary labor

certification. AF 90-109.¹ On November 23, 2010, the CO issued a Notice of Deficiency (“NOD”), finding eight deficiencies with the Employer’s application, including that the Employer’s application was incomplete. AF 56-61. On December 8, 2010,² the Employer responded to the NOD and submitted the requested documentation. AF 23-55. On December 6, 2010, the CO issued a second NOD, again finding that the Employer’s application was incomplete. AF 20-22. On December 9, 2010, the Employer responded to the NOD and submitted the requested documentation. AF 14-19.

On December 8, 2010, the CO accepted the Employer’s application for processing, informing the Employer of the steps it must follow before a final determination would be made. AF 9-13.

On December 13, 2010, the CO denied the Employer’s application for temporary labor certification. AF 2-4. The deficiencies which remain at issue on appeal are: the Employer failed to submit a recruitment report, as required by 20 C.F.R. § 655.156(a); and the Employer failed to provide proof of worker’s compensation insurance, as required by 20 C.F.R. § 655.122(e)(1). AF 4. The Employer’s appeal followed the CO’s denial.

Discussion

The applicable regulations provide that an H-2A employer must prepare, sign, and date a written recruitment report and submit it on the date specified by the CO in the Notice of Acceptance. 20 C.F.R. § 655.156(a). In addition, the employer must submit proof of workers’ compensation insurance coverage in compliance with State law covering injury or disease arising out of and in the course of the workers’ employment prior to the issuance of the temporary labor certification. 20 C.F.R. § 655.122(e).

In the instant case, the Employer failed to submit both a recruitment report and proof of workers’ compensation insurance coverage. The Employer has provided no explanation for its

¹ Citations to the 109-page Administrative File will be abbreviated “AF” followed by the page number.

² It appears from the file that the requested documentation was e-mailed on December 1, 2010; however, the date stamp showing when the paper copy was received is December 8, 2010. AF 23, 46, 55.

failure to submit this documentation. Accordingly, I find that 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: ECB