



Issue Date: 17 March 2011

OALJ Case No.: 2011-TLC-00319

ETA Case No.: C-11010-26458

In the Matter of

BAYLOR CO. FARM & RANCH,
Employer

Certifying Officer: William L. Carlson
Chicago Processing Center

Before: **ALAN L. BERGSRTOM**
Administrative Law Judge

DECISION AND ORDER AFFIRMING DENIAL

On January 23, 2011, Baylor Co. Farm & Ranch (“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 March 10, 2011, 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. 20 C.F.R. § 655.115(a).

Statement of the Case

On January 10, 2011, the United States Department of Labor’s Employment and Training Administration (“ETA”) received an application from the Employer for temporary labor certification. AF 39-44.¹ On January 14, 2011, the CO issued a Notice of Deficiency (“NOD”),

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

citing three separate deficiencies with the Employer's application. AF 23-26. The CO notified the Employer that pursuant to the regulations, the Employer had five business days to submit a modified application to resolve the deficiencies listed in the NOD. AF 21. Similarly, the CO notified the Employer that the regulations allow the Employer to request an expedited administrative review or de novo hearing before an Administrative Law Judge, and that such request must be filed within five business days from the date of receipt of the NOD. AF 22. Additionally, the CO notified the Employer that the application would be deemed abandoned if the employer does not submit a modified application within twelve calendar days after the Notice of Deficiency was issued. AF 21.

On January 25, 2011 the CO received a letter from the Employer explaining that the needs of their ranch differ each year, and also that they did not comply with the new regulations as they were unaware the DOL regulations had changed. AF 8-9.

On January 28, 2011, the CO denied the Employer's application based on three grounds. AF 5. First, the CO explained the Employer had not sufficiently established that the job opportunity is temporary or seasonal in nature. Second, the Employer failed to provide a copy of Page A.2 of Appendix A.2 to the ETA Form 9142 that pertains to the 2010 regulations. Finally, Item 16 of the Employer's application indicated that no deductions would be made from the workers' wages, while ETA Form 790 indicated that the Employer will deduct for reasonable repair cost of damage to the housing facility as well as for advances. AF 6-7. The CO also informed the Employer that they may request a review by the Administrative Law Judge within seven calendar days, or the denial becomes final. AF 3.

On February 23, 2011, the Employer sent a letter to the CO requesting an administrative appeal of the denial with an ALJ. AF 1-2. The CO forwarded the appeal file to the ALJ on March 9, 2011.

Discussion

The applicable regulations provide that "employment is of a seasonal nature where it is tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations." 20 C.F.R. § 103(d).

In this application the Employer requested four temporary workers for the period of March 11, 2011 through January 1, 2012. AF 39. These dates of need are significantly different from the Employer's previously requested dates of need of January through November in 2011 and October of 2009 through August of 2010. AF 23. In response to the NOD indicating the Employer needed to establish how this opportunity is temporary or seasonal in nature, the Employer only explained that "The changes of dates in the last (2) years is due to the different needs each year in the farm and ranch functions." AF 8. By merely stating that the needs of the farm differ from year to year the Employer has failed to justify that the job opportunity is tied to a certain time of year by an event or pattern. The Employer's letter failed to address how the needs of the farm change so drastically each year or how these periods of need spanning the majority of a year are temporary in nature.

Additionally, the Employer's January 25, 2011 letter contained a copy of the two page form "Appendix A.2" to ETA Form 9142, indicating on the first page that Employer's agent signed "Appendix A.2" on January 5, 2011. Appendix A.2 to ETA Form 9142, available on the Department of Labor internet site at www.foreignlaborcert.doleta.gov/pdf/ETA_Form_9142_Appendix_A2.pdf, reflects the requirements of current regulations. The copy filed by the Employer lacked the expanded detail of certifications made by signature of the Employer and failed to include page three of the Appendix with the Employer's certification of conditions of employment.

In light of all the foregoing, the CO properly denied certification.

ORDER

It is hereby **ORDERED** that the Certifying Officer's decision is **AFFIRMED**.

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ALAN L. BERGSTROM
Administrative Law Judge

ALB/AMJ/jcb
Newport News, Virginia