

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 20 December 2010

OALJ Case No.: 2011-TLC-00076

ETA Case No.: C-10288-25263

In the Matter of

BLUE HILL RANCH FEEDLOT INC.,
Employer

Certifying Officer: William L. Carlson
Chicago Processing Center

Before: WILLIAM S. COLWELL
Associate Chief Administrative Law Judge

ORDER OF DISMISSAL

On December 7, 2010, Blue Hill Ranch Feedlot 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). On December 13, 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. 20 C.F.R. § 655.115(a).

Statement of the Case

On October 15, 2010, the United States Department of Labor’s Employment and Training Administration (“ETA”) received an application from the Employer for temporary labor certification. AF 91-102.¹ On October 22, 2010, the CO issued a Notice of Deficiency (“NOD”), citing three deficiencies with the Employer’s application. AF 74-80. On October 28, 2010, the Employer responded to the NOD, and on October 29, 2010, the CO issued a second NOD, finding one deficiency. AF 61-63. The Employer responded, and on November 5, 2010,

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

the CO issued a Notice of Acceptance (“NOA”). AF 48-52. The CO notified the Employer that pursuant to the regulations, the Employer had until November 21, 2010 to submit a written recruitment report. AF 51.

On November 22, 2010, the CO denied the Employer’s application because the Employer’s written recruitment report conflicted with the information the CO received from the North Dakota State Workforce Agency (“SWA”). AF 7-9. Specifically, the CO found that while the SWA stated that it interviewed and referred two applicants to the Employer for the farm worker positions, the Employer stated that it did not receive any referrals from the SWA. AF 9. The CO notified the Employer that if it did not request expedited administrative judicial review or a de novo hearing before an Administrative Law Judge within seven calendar days, the denial is final and the Department of Labor will not further consider the application. AF 7.

On December 8, 2010, the Employer sent a letter to the CO requesting expedited administrative review. AF 1-6.² The CO forwarded the appeal file to BALCA on December 13, 2010.

Discussion

The H-2A regulations provide that an employer may appeal a denial of certification by timely requesting an expedited administrative review or de novo hearing before an ALJ within seven calendar days of the date of the notice of denial. 20 C.F.R. § 655.164(b). Additionally, the regulations provide that if the employer does not request an expedited administrative judicial review or a de novo hearing before an ALJ within seven calendar days, the denial is final and the Department of Labor will not further consider the employer’s application for temporary employment certification. 20 C.F.R. § 655.164(c).

In this case, the Employer did not file its request for expedited administrative review within seven calendar days of the date of the notice of denial. The denial is dated November 22, 2010, but the Employer’s request for review was not received until December 7, 2010. AF 1. The CO provided sufficient notice to the Employer of the consequences of a failure to timely appeal the denial. The Employer filed its request for administrative review fifteen days after the

² A copy of this request for review was filed with the Office of Administrative Law Judges on December 7, 2010.

denial was issued. Therefore, the Employer's request for review is untimely, and the CO's denial of certification is final.

ORDER

Based on the foregoing, it is hereby ordered that this matter is DISMISSED.

For the Board:

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WILLIAM S. COLWELL

Associate Chief Administrative Law Judge