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Issue Date: 28 January 2011

OALJ Case No.: **2011-TLC-00142**

ETA Case No.: **C-10354-25968**

In the Matter of

GAIA HERBS, 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 January 13, 2011, Gaia Herbs ("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. § 655.171(a). On January 21, 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 business days after receiving the file to issue a decision on the basis of the written record. 20 C.F.R. § 655.171(a).

STATEMENT OF THE CASE

On December 20, 2010, the United States Department of Labor's Employment and Training Administration ("ETA") received an application from the Employer for temporary labor certification for sixteen (16) farmworkers. AF 62-72.[1] On January 4, 2011, the Employer's

[1] Citations to the 79 page Administrative File will be abbreviated "AF" followed by the page number.

application was accepted for processing. AF 22-26. The Notice of Acceptance ("NOA") instructed the Employer that:

> Pursuant to 20 CFR 655.122(e)(2), **actual proof of workers' compensation coverage for your employees is required prior to the issuance of temporary labor certification**. In order to receive a labor certification, you must submit evidence that you have obtained workers' compensation coverage for the entire period of need for your employees. **Such evidence should include the name of the insurance carrier, the policy number, proof of insurance for the dates of need or proof of State law coverage and must be submitted to this office at the same time that your recruitment report is due**. Failure to provide this documentation prior to the requested due date will result in a denial of your application.

AF 25. The CO also notified the Employer that the recruitment report was due on January 6, 2011. AF 25. On January 6, 2011, the Employer submitted its recruitment report, but did not submit proof of its workers' compensation coverage. AF 17-18.

On January 7, 2011, the CO denied the Employer's application for temporary labor certification for failure to provide proof of the Employer's workers' compensation coverage in violation of 20 C.F.R. § 655.122(e)(1),(2). AF 14-16. On January 13, 2011, the Employer requested administrative review. With its request, the Employer attached a copy its workers' compensation policy and stated that the Employer's attorney's office believed that this documentation was included in the Employer's application, and that if it was not, that it was an honest oversight. The Employer requested that this evidence be considered on appeal.

DISCUSSION

When an employer requests expedited administrative review, the ALJ's scope of review is limited to the record upon which the CO based his denial. 20 C.F.R. § 655.171(a). Therefore, I am not permitted to consider the evidence that the Employer submitted on review.[2]

The H-2A regulations require an employer seeking temporary labor certification to submit proof of workers' compensation insurance to the CO prior to the "issuance of the temporary labor certification." 20 C.F.R. § 655.122(e)(2). The NOA required the Employer to submit proof of insurance coverage at the time that the recruitment report was due. Because the

[2] The Employer has cited 20 C.F.R. § 656.24(g)(2) as justification why I should consider this documentation on review. However, the Employer cites regulations that govern the permanent labor certification program and are not applicable to H-2A appeals. *See* 20 C.F.R. Part 655 Subpart B.

Employer failed to submit proof of insurance coverage with its recruitment report on January 6, 2011, the CO properly denied certification.

ORDER

Accordingly, 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