

U.S. Department of Labor

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Issue Date: 10 November 2010

OALJ Case No.: 2011-TLC-00038

ETA Case No.: C-10271-25124

In the Matter of

LORENZO GABRIEL MARQUEZ,
Employer

Certifying Officer: William L. Carlson
Chicago Processing Center

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

DECISION AND ORDER

On November 3, 2010, Lorenzo Gabriel Marquez (“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 November 3, 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

The facts of this case are undisputed. On September 27, 2010, the United States Department of Labor’s Employment and Training Administration (“ETA”) received an application from Lorenzo Gabriel Marquez (“the Employer”) for temporary labor certification for six “Farm workers and laborers” AF 42-50.¹ By letter dated October 13, 2010, the CO

¹ Citations to the 60-page Administrative File will be abbreviated “AF” followed by the page number.

notified the Employer that its application had been accepted for processing, and required the Employer to submit a written recruitment report to the CO by Friday, October 15, 2010. AF 15-19.

On October 18, 2010, the CO issued a Final Determination denying the Employer's certification. AF 12-14. Citing to 20 C.F.R. § 655.156(a), the CO stated that the Employer failed to provide a written recruitment report by the date indicated in the Notice of Acceptance. Additionally, the CO cited § 655.122(d)(1) and 655.122(d)(1)(i) and determined that the Employer failed to notify the CO that its housing met safety standards and the New Mexico SWA failed to provide the housing inspection report by the determination date. The CO received the Employer's recruitment report and proof of workers' compensation coverage on Tuesday, October 19, 2010. AF 8-11. This Office received the Employer's appeal on November 3, 2010. The CO did not file a brief, but a representative from the New Mexico Department of Workforce Solutions (New Mexico SWA) submitted a letter indicating that a housing inspection had been completed and that the Employer passed inspection.

Discussion

The applicable regulations provide that an H-2A employer must provide housing at no cost to the H-2A workers and the housing must meet the full set of DOL Occupational Safety and Health Administration ("OSHA") standard. 20 C.F.R. § 655.122(d)(1); 655.122(d)(1)(i). Additionally, the 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).

It its appeal, the Employer argues that it did not receive the Notice of Acceptance, which was dated October 13, 2010, until Friday, October 15, 2010, and that the CO's request to provide the recruitment report by Friday was unreasonably burdensome.

Although § 655.156(a) requires the employer to submit a recruitment report by the date determined by the CO in the letter of acceptance, it is unreasonable to require the Employer to respond to a Notice of Acceptance on the same day that it receives the Notice of Acceptance. *See Steve Martin*, 2011-TLC-00012 (November 1, 2010). Here, the CO's Notice of Acceptance

was dated October 13, 2010. There is nothing in the record that would cause one to doubt the Employer's assertion that it did not receive the Notice of Acceptance until October 15, 2010. Further bolstering the Employer's contention is email correspondence between the CO and the New Mexico SWA, which indicates that the New Mexico SWA also did not receive the CO's Notice of Acceptance until October 15, 2010. AF 31. In light of the foregoing, denial is inappropriate, and this matter is remanded to the CO. Upon remand, the CO is instructed to consider the documentation that the Employer submitted, as well as the response received from the New Mexico SWA, in making its Final Determination.

Order

Accordingly, it is hereby **ORDERED** that the Certifying Officer's determination is **VACATED** and **REMANDED** for further processing consistent with this decision.

For the Board:

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WILLIAM S. COLWELL
Associate Chief Administrative Law Judge