



Issue Date: 11 February 2011

OALJ Case No.: 2011-TLC-00209

ETA Case No.: C-11005-26317

In the Matter of

TODD CLARK FARMS, INC.

Employer

Certifying Officer: William L. Carlson
Chicago Processing Center

DECISION AND ORDER
AFFIRMING DENIAL OF CERTIFICATION

On January 31, 2011, Todd Clark Farms, Inc. (“the Employer”) filed a request for review in the above-captioned temporary alien 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 February 7, 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 Administrative File to issue a decision on the basis of the written record. 20 C.F.R. § 655.171(a).

STATEMENT OF THE CASE

The facts of this case are undisputed. On January 5, 2011, the United States Department of Labor’s Employment and Training Administration (“ETA”) received an application from Agriculture Workforce Management Association (AWMA) on behalf of Todd Clark Farms, Inc. (Employer) for temporary labor certification for five (5) “Farm Workers and Laborers, Crops” AF 23-33.¹ By letter dated January 12, 2011, the CO 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 Thursday, January 27, 2011. AF 13-16.

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

On January 28, 2011, the CO issued a Final Determination denying the Employer's certification. AF 7-9. Citing 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. I issued an "Order Setting Briefing Schedule" on February 8, 2011, requiring briefs be filed by close of business February 10, 2011. Neither party filed a brief in this matter.

DISCUSSION

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). In its appeal, the agent agrees that the recruitment report and proof of workers' compensation insurance coverage was not provided to the CO by January 27, 2011.

The agent notes that the required documentation was forwarded to the CO on January 31, 2011. Part of the agent's "explanation" in their letter of January 31, 2011, is stated as "Yet, due to no fault of the employer, the workers will not be on the farm on the March 1, 2011 as needed by the employer." I am uncertain as to the meaning of this statement but find no relevance to the issue of the timely filing of the recruitment report.

Employer failed to submit the recruitment report on time. The CO properly denied certification.

ORDER

Accordingly, it is hereby **ORDERED** that the Certifying Officer's determination denying the certification is hereby **AFFIRMED**.

For the Board:

A

ROBERT B. RAE

Administrative Law Judge