



Issue Date: 25 January 2011

OALJ Case No.: 2011-TLC-00144

ETA Case No.: C-10348-25852

*In the Matter of*

**TOM MEEKS,**  
*Employer*

Certifying Officer: William L. Carlson  
Chicago Processing Center

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

**DECISION AND ORDER**  
**REVERSING DENIAL OF CERTIFICATION**

On January 13, 2011, Tom Meeks (“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 18, 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. § 655.171(a).

**STATEMENT OF THE CASE**

On December 14, 2010, the United States Department of Labor’s Employment and Training Administration (“ETA”) received an application from the Employer for temporary labor certification for twelve (12) farmworkers. AF 39-47.<sup>1</sup> The Employer stated that it had a

---

<sup>1</sup> Citations to the 68 page Administrative File will be abbreviated “AF” followed by the page number.

seasonal temporary need for the workers from February 11, 2011 to November 18, 2011. AF 39.

The Employer described the job duties as follows:

Field preparation and maintenance of the plants by fertilizing and preparing the crops to ensure a good harvest. Workers will harvest blueberries by placing them in one gallon buckets, which is attached to their waist, when the buckets are full they will pour them into a larger container at the end of the row. This is continued up and down each row of the plants being careful not to damage the plant. Workers will also be required to work in the shed packing, grading, sorting, loading and unloading the fruit. These workers will be required to cultivate and plant bushes and to establish a new orchard.

AF 41. On December 20, 2010, the CO issued a Notice of Deficiency (“NOD”), finding that the Employer did not establish temporary need under 20 C.F.R. § 655.103(d) because the Employer’s previously established dates of need were for January 24, 2010 through August 1, 2010. AF 14-19. Therefore, the CO required the Employer to provide a detailed explanation of why the Employer’s dates of need have significantly changed from its established season of January through August to its current request of February through November. AF 17.

On December 27, 2010, the Employer responded to the NOD and made the requested modifications. AF 7-13. Regarding its temporary need, the Employer stated that:

The previous contract period included raking and baling of pine straw as well as the blueberry order. [The Employer] has had to drop the pine straw from his orders and is now only doing work in the blueberries. The growing and harvesting of blueberries is a seasonal job, occurring from early spring. The dates can vary dependent on weather conditions.

AF 10. On January 6, 2011, the CO denied temporary labor certification because the Employer failed to establish why its dates of need have significantly changed over its established season of January through August. AF 4-6. The CO noted that last year, the job duties in the Employer’s application included raking and piling pine straw and harvesting blueberries, while this year the duties in the Employer’s application only includes blueberry harvesting. AF 6. The CO found that the Employer failed to explain why its season is longer than last year, when the position involves fewer duties, and therefore found that the Employer had not established a temporary need. AF 6. On January 13, 2011, the Employer requested review, arguing that the Employer had also indicated in its application that the position involved assisting the Employer to establish a new orchard. AF 1.

## DISCUSSION

The applicable H-2A 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. § 655.103(d). In determining whether an employer’s need is temporary, “it is the nature of the need, not the nature of the duties, that is controlling.” *William Staley*, 2009-TLC-00009, slip op. at 4 (Aug. 28, 2009) (citing *Matter of Artee Corp.*, 18 I. & N. Dec. 366 (1982), 1982 WL 1190706 (BIA Nov. 24, 1982)). BALCA has held that a seasonal need is tied to the weather or a certain event, and a change in the dates for a seasonal need must be justified. *Southside Nursery*, 2010-TLC-157, slip op. at 4 (Oct. 15, 2010).

The CO argues that the Employer has not justified the change in dates of its seasonal need. I find that the Employer sufficiently explained the reason that its dates have changed, and therefore, has met its burden of establishing that it is entitled to labor certification. The Employer explained that while in the past, it used workers for raking and baling pine straw and harvesting blueberries, this year the workers will prepare the fields, fertilize the crops, and pack, grade, sort, load, and unload the fruit. AF 41. Additionally, the workers will assist the Employer in establishing a new orchard. AF 41. Cultivation of blueberries is tied to the weather, and therefore the Employer has established a temporary, seasonal need under 20 C.F.R. § 655.103(d). Further, I find that the Employer has adequately explained that its dates are longer than last year because employees will also be working to establish a new orchard, and therefore has justified extending the dates of its seasonal need.

Based on the foregoing, I find that the CO improperly denied certification, and the Employer has established that it is entitled to certification.

**ORDER**

Accordingly, it is hereby **ORDERED** that the Certifying Officer's decision is **REVERSED** and certification is **GRANTED**.

For the Board:

A

**WILLIAM S. COLWELL**

Associate Chief Administrative Law Judge