



Issue Date: 28 January 2011

OALJ Case No.: 2011-TLC-00148

ETA Case No.: C-10348-25858

In the Matter of

TRACK DAIRY LLC,
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 14, 2011, Track Dairy (“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 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 two (2) farmworkers. AF 57-65.¹ On December 20, 2010, the Employer’s

¹ Citations to the 75 page Administrative File will be abbreviated “AF” followed by the page number.

application was accepted for processing. AF 43-47. 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. **In the event that the current coverage will expire, the employer must submit a signed and dated written statement showing the employer’s intent to renew and maintain coverage for the entire dates of need.** You must maintain this renewed proof of workers’ compensation coverage in your file and be prepared to submit such documentation if requested.

AF 46-47. The CO also notified the Employer that the recruitment report was due on January 10, 2011. AF 46. On January 5, 2011, the Employer submitted its recruitment report, a signed and dated written assurance that workers’ compensation will continue to be provided throughout the contract period, and a workers’ compensation quote summary from Texas Mutual dated April 13, 2010. AF 39-42.

On January 11, 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 35-37. The CO determined that the Employer only submitted a Premium Quote Summary, not an actual workers’ compensation policy, and therefore, the Employer failed to provide proof of workers’ compensation insurance coverage. AF 37. On January 14, 2011, the Employer requested administrative review and submitted a copy of its workers’ compensation policy. AF 1-34.

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, and I do not have the power to require the CO to accept this documentation that was submitted after the

Employer's application was already denied. *See D &G Frey Crawfish*, 2010-TLC-54, slip op. at 3 (July 14, 2010).

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 Employer failed to submit proof of insurance coverage with its recruitment report, 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