



Issue Date: 23 December 2010

OALJ Case No.: 2011-TLC-00085

ETA Case No.: C-10322-25523

In the Matter of

TRULSON FARM,
Employer

Certifying Officer: William L. Carlson
Chicago Processing Center

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

DECISION AND ORDER

On December 10, 2010, Trulson Farm (“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). On December 17, 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

On November 18, 2010, the United States Department of Labor’s Employment and Training Administration (“ETA”) received an application from the Employer for temporary labor certification for three (3) “Farmworkers, Farm Ranch Animal.” AF 29-39.¹ The Employer

¹ Citations to the 49 page Administrative File will be abbreviated “AF” followed by the page number.

stated that it had a seasonal temporary need for the workers from December 29, 2010 to April 30, 2011.

On November 24, 2010, the CO issued a Notice of Deficiency (“NOD”), listing six separate deficiencies with the Employer’s application. AF 10-15. The CO required the Employer to submit the requested modifications within five business days of receipt of the NOD. AF 10. One of the six deficiencies was that the Employer failed to comply with the application filing requirements provided at 20 C.F.R. § 655.130(b), which requires that a completed application for temporary employment may be filed no less than 45 calendar days before the employer’s date of need. AF 13. The CO found that the Employer filed its application within 45 days of the requested start date. AF 13.

On December 8, 2010, the CO denied temporary labor certification because the Employer failed to respond to the NOD. AF 8-11. The CO denied the application under 20 C.F.R. § 655.142(b) because the Employer had not submitted a modified application within twelve calendar days after the NOD was issued. AF 8. On December 10, 2010, the Employer appealed the decision, stating that although it sent its NOD response on December 2, 2010, but that NOD was missent by the United States Postal Service (“USPS”). The Employer also attached its delivery confirmation receipt from USPS and a track and confirm printout from the USPS website showing that its package was missent. AF 6-7.

Discussion

The H-2A application filing requirements at 20 C.F.R. § 655.130 provide, in pertinent part:

(b) *Timeliness.* A completed *Application for Temporary Employment Certification* must be filed no less than 45 calendar days before the employer’s date of need.

The Employer submitted its application on November 18, 2010, 42 days before its December 29, 2010 date of need. Although it appears that USPS missent the Employer’s NOD response, even if I excused the delay in the CO’s receipt of the NOD response, the Employer would not be able to overcome its failure to file at least 45 days before its date of need. Therefore, I find that the CO properly denied certification.

Based on the foregoing, I find that the CO properly denied certification.

Order

In light of the foregoing, 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