

# U.S. Department of Labor

Office of Administrative Law Judges  
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**Issue Date: 19 May 2015**

Case No.: 2015-TLC-00036  
ETA Case No.: H-300-15080-019601

In the Matter of

**AIDA LEAL**

Employer

## **DECISION AND ORDER**

This proceeding arises under the temporary agricultural labor or services provision of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(a), and the associated regulations promulgated by the United States Department of Labor (“the Department” or “DOL”) at 20 C.F.R. Part 655. Unless otherwise noted, citations in this Order are to the regulations set forth in Part 655.

The H-2A nonimmigrant visa program enables United States agricultural employers to employ foreign workers on a temporary basis to perform agricultural labor or services. 8 U.S.C. § 1101(a)(15)(H)(ii)(a); *see also* 8 U.S.C. §§ 1184(c)(1) and 1188. Employers who seek to hire foreign workers through this program must first apply for and receive a “labor certification” from the DOL. 8 U.S.C. § 1188(a)(1); 8 C.F.R. § 214.2 (h)(5)(i)(A).

### **Procedural History**

On March 21, 2015, the Employer filed an application to receive an H-2A temporary labor certification.

On March 27, 2015, the Certifying Officer (“CO”) issued a Notice of Deficiency (“NOD”) pursuant to 20 C.F.R. § 655.141(a).

On April 2, 2015, Employer’s agent, Ms. Monica Saavedra, responded to the CO on behalf of the Employer and her email was forwarded to the CO for review.

On April 9, 2015, the CO denied Employer’s H-2A application, because the Employer has neither “submitted a modified application within twelve (12) calendar days after the [NOD] was issued nor requested an expedited administrative appeal or a de novo hearing.”

On April 14, 2015, Ms. Saavedra faxed to the Office of Administrative Law Judges (“OALJ”) a Notice of Appeal of the CO’s decision, which requested a de novo hearing.

On April 20, 2015, the United States Department of Labor Office of the Solicitor (“Solicitor’s Office”) wrote to the Acting Chief Administrative Law Judge, requesting the dismissal of Ms. Saavedra’s appeal, because it was untimely.

On April 22, 2015, the Solicitor’s Office wrote again to the Acting Chief Administrative Law Judge, indicating that the CO wished to withdraw the April 20, 2015 request that this appeal be dismissed. Rather, the Solicitor’s Office requested that OALJ remand this case to the CO for further processing of the Employer’s application.<sup>1</sup>

On April 23, 2015 a member of my staff contacted Ms. Saavedra and inquired into whether she objected to the Solicitor’s Office’s request for remand. Ms. Saavedra stated that she had no objection.

Order

Based on the foregoing, I find that the Solicitor’s Office’s request for remand is both reasonable and not in opposition. Therefore, I hereby **Order** this matter remanded to the CO for continued processing of the Employer’s application to receive an H-2A temporary labor certification.

SO ORDERED.

**SCOTT R. MORRIS**  
Administrative Law Judge

Cherry Hill, New Jersey

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<sup>1</sup> The Solicitor’s Office noted that Employer’s agent had “put the incorrect case number on the response and therefore it was not immediately associated with this particular application.”