



Issue Date: 22 February 2016

BALCA Case No.: 2016-TLC-00017

ETA Case No.: H-300-15349-382290

In the Matter of

JOSE MAGALLON D/B/A J.M. FARMING
Employer

Certifying Officer: William L. Carlson
Chicago National Processing Center

RULING ON CERTIFYING OFFICER'S MOTION FOR REMAND

1. **Nature of Motion.** This case arises out of a request for administrative review of the Certifying Officer's denial of Employer's H-2A temporary labor certification 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 at 20 C.F.R. Part 655.

2. **Findings of Fact.**

(a) On December 15, 2015, the Certifying Officer ("CO") received Employer's Form ETA 9142 for twenty-four farmworkers, laborers, crop workers, nursery workers, and greenhouse workers.

(b) On February 10, 2016, the CO rejected the application and issued a Notice of Deficiency ("NOD"). The NOD declared the Chicago National Processing Center ("CNPC") did not receive confirmation or proof from the California SWA or Employer that the Employer provided housing met the full set of DOL Occupational Safety and Health Administration ("OSHA") standards or the full set of standards set forth at 20 C.F.R. § 654.404 through 654.417. Because Employer's start date of need of January 29, 2016 had passed, the CNPC would no longer further process the application.

(c) Employer responded to the NOD on February 12, 2016, stating Employer had complied with the housing regulations. Employer also stated its intention to amend its ETA Form 9142 and reduce the request from twenty-four to sixteen workers.

(d) On February 19, 2016, the CO filed a motion for remand with OALJ stating it reviewed this case and determined Employer's H-2A application should be remanded to the agency for continued processing. The CO declared it contacted Employer's representative, who had no objection to granting the CO's motion.

3. **Ruling.** Based on the foregoing, the CO's motion for remand is granted.

SO ORDERED this day at Covington, Louisiana.

TRACY A. DALY
Administrative Law Judge