



Issue Date: 27 June 2018

BALCA Case No.: 2018-TLC-00024
ETA Case No.: H-300-16193-016054

In the Matter of:

HONEY POT HILL ORCHARDS,
Employer

Chicago National Processing Center

ORDER OF REMAND

This matter arises on Employer's request for an appeal of a Notice of Special Procedures in an H-2A temporary labor certification matter. The regulations addressing H-2A temporary labor certifications are set forth at 20 C.F.R. Part 655, Subpart B.

On May 31, 2018, the Department of Labor's (DOL) Employment and Training Administration, Office of Foreign Labor Certification, issued a Notice of Special Procedures to Honey Pot Hill Orchards ("Employer"). The Notice stated that, pursuant to 20 C.F.R. § 655.183(a), DOL imposed special procedures on the employer from May 31, 2018 to May 30, 2019, for all H-2A applications filed during this period. The special procedures were imposed based on audit violations found by the Certifying Officer ("the CO"); specifically, the CO found that the Employer's responses to requests for information in an audit failed to establish that the Employer placed two advertisements on two separate days (one of which must be a Sunday) in a newspaper of general circulation. The special procedures required by DOL are: the Employer must supply copies of the published advertisements to the CO after an application has been accepted for processing and before a favorable determination can be issued.

On June 20, 2018, DOL's Office of Administrative Law Judges ("OALJ") received Employer's request for an appeal of the Notice of Special Procedures. The request for appeal included tear sheets from *The Sun*, a local newspaper in Lowell, Massachusetts, showing that Employer's advertisement ran on Sunday, August 28, 2016, and Monday, August 29, 2016. Upon inquiry from this office, Employer (through Chelcie Martin, who submitted the original request for an appeal) clarified that it is seeking Expedited Administrative Review in this matter.

In cases involving expedited administrative review, the administrative law judge must issue a decision to "either affirm, reverse, or modify the CO's decision, or remand to the CO for further action," specifying the reasons for the action taken.

On June 27, 2018, the CO filed a Motion for Remand. The motion states that the CO and the Employer have reached an agreement that the Notice of Special Procedures should be

remanded to the agency for dismissal. The CO therefore requests that this matter be remanded for “for further processing of the employer’s H-2A application.” Employer does not object to the request for remand.

Upon review of the file and consideration of the foregoing, and in light of the parties’ agreement that remand to the CO is appropriate, the Motion will be granted.

THEREFORE, the Certifying Officer’s Motion for Remand is **GRANTED**, and this matter is **REMANDED** to the CO for further action.

SO ORDERED.

MONICA MARKLEY
Administrative Law Judge

MM/jcb
Newport News, VA