

U.S. Department of Labor

Board of Alien Labor Certification Appeals
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Issue Date: 25 February 2019

BALCA Case No.: 2019-TLC-00036
ETA Case No.: H-300-18298-333107

In the Matter of:

PHILLIPS FARMS, LLC,
Employer.

ORDER OF REMAND

On November 26, 2018, the United States Department of Labor, Employment and Training Administration (“ETA”) received an ETA Form 9142 *Application for Temporary Labor Certification* (“Application”) from Phillips Farms, LLC (“Employer”), requesting H-2A labor certification for twenty four (24) Farmworkers and Laborers, Crop, Nursery, and Greenhouse for the period February 5, 2019 through December 3, 2019.

On December 3, 2018, the Certifying Officer (“CO”) issued a Notice of Deficiency. The basic deficiency was that Employer had not established temporary need, finding that Employer previously requested workers at the same work location for similar job duties that exceeded the 10 months normally considered as seasonal or temporary.

On December 10, 2018, the CO received Employer’s response but determined it still failed to establish a temporary or seasonal need as required by 20 C.F.R. § 655.103(d) and denied the application by letter dated January 24, 2019. By letter dated January 30, 2019, Employer filed a request for a *de novo* administrative hearing to review the CO’s denial of the H-2A application. On February 19, 2019, the Office of Administrative Law Judges received the Administrative File from the CO and the matter was scheduled for hearing on February 25, 2019.

Prior to the hearing, the parties filed *Joint Motion for Remand*, indicating the CO and Employer “have reached an agreement . . . and request the matter be remanded to the Agency for further processing of the employer’s H-2A application.” Good cause having been shown,

IT IS HEREBY ORDERED that this matter be, and hereby is, REMANDED to the Certifying Officer for further processing consistent with the above discussion. The February 25, 2019 hearing is CANCELLED.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge