

**U.S. Department of Labor**

Board of Alien Labor Certification Appeals  
800 K Street, NW  
Washington, DC 20001-8002

(202) 693-7300  
(202) 693-7365 (FAX)



**Issue Date: 14 June 2019**

**OALJ Case No.: 2019-TLC-00052**

**ETA Case No.: H-300-19030-029219**

*In the Matter of*

**RESENDIZ PINE STRAW, LLC,**  
*Employer*

Appearance: Francisco Javier Resendiz  
Sugar Hill, Georgia  
*For the Employer*

Office of the Solicitor  
U.S. Department of Labor  
Washington, D.C.  
*For the Certifying Officer*

**DECISION AND ORDER**

This matter arises under the temporary agricultural employment provisions of the Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a), 1184(c)(1) and 1188, and the implementing regulations set forth at 20 C.F.R. Part 655, Subpart B. The H-2A program permits employers to hire foreign workers to perform agricultural work within the United States on a temporary basis. This particular Employer is an H-2A Labor Contractor (“H-2ALC”), and the regulations at 20 C.F.R. § 655.132 apply to its application.

**BACKGROUND**

This case was originally docketed on April 26, 2019 after the Office of Administrative Law Judges (“OALJ”) received a filing from Resendiz Pine Straw (“Employer”). The only thing that was sent to our office was what appeared to be a copy of the appeal file—no request for appeal was included. Therefore, on May 13, 2019, I issued an *Order to Show Cause* asking why I should not dismiss the appeal for lack of a written request for review, and because I could not discern whether the Certifying Officer was served with an appeal request as required by the

regulations. On May 16, 2019, in response to the *Order to Show Cause*, I received a letter from Employer formally requesting review of the denial issued by the Certifying Officer (“CO”) in this matter. See 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a), 1188; 20 C.F.R. § 655.171(a). I thereafter issued a *Notice of Docketing and Order Setting Briefing Schedule*.

In response, I received a filing via email from Employer. Employer submitted a Spanish language document, and what appears to be a translation. The CO filed a brief on June 12, 2019.

Employer filed an application for 100 H-2A workers for the job title, “Farm & Laborers” on a seasonal basis. (AF 459-471). The requested period of need was April 25, 2019 to September 25, 2019. (AF 459). The application was signed January 31, 2019. (AF 471). On February 8, 2019, the Certifying Officer (“CO”) sent Employer a Notice of Deficiency citing numerous deficiencies with the application, including, but not limited to, the nature of the temporary need. (AF 423-440).

Employer submitted a response on February 19, 2019. (AF 383). I note that Employer appears to have a limited ability to write in English which unfortunately makes aspects of the file difficult to understand. Many of the documents it submitted are in Spanish. Some have translations while others do not. I will nevertheless attempt to address whatever arguments Employer makes. Employer stated in its response to the Notice of Deficiency that the dates have changed from the previous year “based on the need for the work of the Earth.” (AF 384). It also seemed to be saying that it had to change the timing of the temporary need this year so that it would not lose business as it had last year. (AF 384). It also attached a number of other documents.

In the CO’s final denial letter, issued April 16, 2019, he cites deficiencies with the Employer’s stated temporary need, stated area of intended employment, stated type of agricultural labor or services, non-submission of a Farm Labor Contractor (“FLC”) Certificate of Registration, locations of the fixed sites, stated rental or public accommodations, deficiencies in the State Workforce Agency (“SWA”) job order, and finally non-submission of a complete copy of “Appendix A.2.” (AF 173-187).

On appeal Employer submits a letter and more documentation regarding this case. (AF 96). The CO’s brief sheds more light on the case. Arguments will be dealt with in the discussion section.

## **DISCUSSION**

I review the CO’s decision with an arbitrary and capricious standard. *J and V Farms, LLC*, 2016-TLC-00022 (March 4, 2016; amended March 7, 2016). An H-2A Labor Contractor must “comply with all the assurances, guarantees, and other requirements contained in this part [655], including Assurances and Obligations of H-2A Employers.” 20 C.F.R. § 655.132. Employer was granted a certification in 2018 spanning a period of May 28, 2018 until December 31, 2018. (AF 619-628). In that case, Employer requested 120 workers for a seasonal temporary need based on the need to grow and harvest tobacco crop. In the current application Employer’s requested period of need is April 25, 2019 to September 25, 2019. (AF 459). Citing 20 C.F.R.

§ 655.103(d), the CO questioned whether the job opportunity was truly seasonal. “[E]mployment is of a seasonal nature where it is tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations.” 20 C.F.R. § 655.103(d).

Employer does not provide a sufficient explanation as to why the dates of need for this new position have shifted. Its argument is unclear, but it appears to be saying that something about the soil is different,<sup>1</sup> and that it tried to bring in workers earlier because in the prior year a delay cost it time on a project.<sup>2</sup> (AF 384). Employer explains that because it can start sooner, it can “finish sooner,” which may be why the time period only goes until September rather than December. This still does not explain, however, why the entire period of need is approximately two months less than the prior year. (AF 383). “It is the nature of the need for the duties to be performed which determines the temporariness of the position.” *Curl Farm*, 2013-TLC-00004 (Nov. 7, 2012) (quoting *Matter of Artee Corp.*, 18 I. & N. Dec. 366, 367 (1982)). A seasonal need is tied to a time of year or pattern, and “a change in the dates for a seasonal need must be justified.” *Southside Nursery*, 2010-TLC-00157 (Oct. 15, 2010). Employer’s need for the duties is still related to seasonal growing of crops—the fact that it was rejected for a project the year prior does not justify a change in the period of need for this year. Employer has not articulated an explanation as to why the period of need is so much shorter this year as opposed to last year, and why the dates have shifted.

I also note that the explanation of temporary need for this application is nearly identical to the explanation of temporary need on its prior application. In both, Employer states that it “recently leased 300 acres.” (AF 238, 619). If Employer is leasing the same land again, and performing the same duties again, it adds further confusion as to why the time periods are different year to year. I find that Employer did not sufficiently justify its temporary need, and accordingly the CO did not err in denying certification in this matter.<sup>3</sup> The CO’s decision is affirmed.

**SO ORDERED.**

**PAUL R. ALMANZA**  
Administrative Law Judge

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<sup>1</sup> Employer wrote: “The reason for the change of the dates of the last year and this on . . . is based on the need for the work of the earth.” (AF 384).

<sup>2</sup> Employer wrote: “The last year I had a situation where I was rejected and I saw in the penous [sic] need to apply again not to leave to lose my project and I had to do it on those dates or otherwise I would lose my project.” (AF 384).

<sup>3</sup> Because I affirm the decision on this denial ground, I need not discuss the remaining seven denial grounds.