

U.S. Department of Labor

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Issue Date: 29 May 2020

BALCA Case No.: 2020-TLC-00070
ETA Case No.: H-300-20071-398650

In the Matter of:

MEJIA PRODUCE LLC,
Employer.

Before: Jerry R. DeMaio
Administrative Law Judge

DECISION AND ORDER AFFIRMING
DENIAL OF EMPLOYER'S H2A APPLICATION

This case arises from a request by Mejia Produce LLC ("Employer") for review under provisions of the Immigration and Nationality Act ("INA") concerning temporary employment of non-immigrant agricultural workers (H-2A workers). Employer is appealing the denial of its application for an H-2A temporary labor certification by a Certifying Officer ("CO") with the Employment and Training Administration ("ETA"). *See* 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a), 1184, & 1188; 20 C.F.R. Part 655, Subpart B. For the reasons set forth below, the CO's denial of temporary labor certification in this matter is affirmed.

STATEMENT OF THE CASE

On March 18, 2020, Mejia Produce filed an application for H-2A labor certification with the ETA. (AF 2453-2475).¹ The application sought authorization to hire 68 farm laborers from May 16, 2020, to November 30, 2020. (AF 2461). On March 24, 2020, the CO issued a Notice of Deficiency based on Employer's failure to prove seasonal need under 20 C.F.R. § 655.103(d), in addition to other reasons which were not retained upon final determination. (AF 2433-2434). Between March 26, 2020, and May 1, 2020, Employer responded and submitted a temporary need statement and pay roll records to the CO. (AF 13 to 2429). On May 12, 2020, the CO issued a Final Determination denying the application based upon Employer's continued failure to support its seasonal need. (AF 6-9).

On May 13, 2020, Employer requested an expedited administrative review. (AF 1-2). The case was assigned to me and on May 21, 2020, the Court issued a Notice of Docketing and

¹ Citations to the Appeal File are referred to herein as "AF" followed by the page number.

Expedited Briefing Schedule, after the Appeal File was uploaded on that same date. Neither party filed a separate appellate brief.

DISCUSSION

Under 20 C.F.R. § 655.103(d), temporary or seasonal nature is defined as follows:

[E]mployment is of a seasonal nature where it is tied to a certain time of the 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. Employment is of a temporary nature where the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than 1 year.

20 C.F.R. § 655.103(d).

Although Employer states that it has a seasonal and temporary need for additional labor, it fails to provide adequate evidence to demonstrate this seasonal need as defined under 20 C.F.R. § 655.103(d). Employer claims a seasonal need from May 16, 2020, to November 30, 2020 (AF 2461), yet fails to demonstrate a seasonal need for these months.

Employer has filed four other requests for certification. (AF 6). The table below summarizes the four previously filed cases:

Case Number	Status	Start Date of Need	End Date of Need
H-300-18193-665550	Certified	9/15/2018	4/14/2019
H-300-19200-690504	Certified	9/20/2019	11/10/2019
H-300-19283-081039	Withdrawn	12/09/2019	6/1/2020
H-300-19317-142957	Denied	1/25/2020	7/30/2020

The combined need requested across all of its filings show that Employer does not have a seasonal need. Given the previous filings, the CO requested that Employer explain how its business operations have changed to support a seasonal need from its previously denied application. (AF 2433-2434).

In response, Employer argued that the reason they deviated from their normal timeframe of September to November is because they currently have a contract with MGI Farms for May 16, 2020, to November 30, 2020. (AF 2423). This "normal timeframe" is not, however, evident from their past applications and, as the contract with MGI Farms is not in the Appeal File, the terms cannot be evaluated. Additionally, the previous applications all contain work associated with the same crops, including beans, tomatoes, peppers, squash, cucumbers and eggplants, yet the dates vary significantly. This is also unresponsive of a seasonal need.

Employer submitted pay stubs from individual employees for various months in 2017, 2018 and 2019, but the stubs were not clear as to what work the individual employees performed at the farm, and Employer did not explain how they supported their purported seasonal need. (AF 13-2422). Accordingly, they also did not establish a seasonal need. Taken as a whole, the record shows that Employer has failed to establish a seasonal need and the CO correctly denied the application.

ORDER

Because Employer failed to establish that the farm laborer positions are on a seasonal or other temporary basis in accordance with 20 C.F.R. § 655.103(d), it is hereby **ORDERED** that the Certifying Officer's decision denying Employer's H-2A Application for Temporary Employment Certification is **AFFIRMED**.

SO ORDERED.

JERRY R. DeMAIO
Administrative Law Judge

Boston, Massachusetts