



**Issue Date: 01 December 2020**

**OALJ Case No.: 2021-TLC-00019**

**ETA Case No.: H-300-20248-805747**

In the Matter of:

**SMITH PACKING, INCORPORATED,**  
Employer.

**ORDER REGARDING PROCESSING OF REMAND**

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. 8 C.F.R. § 214(h)(5) The H-2A program permits employers to hire foreign workers to perform agricultural work within the United States on a temporary or seasonal basis.

On October 29, 2020, Employer requested administrative review of the Certifying Officer’s final determination denying its application for temporary labor certification. On October 30, 2020, the Board of Alien Labor Certification Appeals (“Board”) issued its Notice of Assignment and Order Setting Expedited Briefing Schedule. This briefing schedule was subsequently amended on November 4, 2020. On November 9, 2020, the court received the administrative file. On November 17, 2020, the Board issued its Decision and Order remanding this matter to the Certifying Officer for further fact-finding and consideration. On November 25, 2020, the Board was copied on correspondence from Employer to the Honorable Congressman Jimmy Panetta stating that it had not heard from the Certifying Officer or the Chicago National Processing Center regarding the status of the Board’s remand order.

The Board notes that H-2A appeals involve time-sensitive agricultural visas for temporary and seasonal work. The Regulations require timely processing by both the Certifying Officer and, in cases involving appeals to the Board, the administrative law judge. *See* 20 C.F.R. §§ 655.160, 655.171 (“Where the employer has requested administrative review, within 5 business days after receipt of the ETA administrative file the ALJ will, on the basis of the written record and after due consideration of any written submissions (which may not include new evidence) from the parties involved or amici curiae, either affirm, reverse, or modify the CO’s decision, or remand to the CO for further action.”). These requirements tacitly acknowledge that delays in processing can lead to harmful effects on the economy and agricultural operations.

To ensure that the Parties have received the Board’s Decision and Order remanding this matter to the Certifying Officer and to encourage timely processing of the Board’s remand, the Board ORDERS the Certifying Officer to review the Board’s Decision and Order and engage in further

consideration of Employer's application pursuant to the Board's Decision and Order of November 17, 2020.

**ORDER**

It is hereby ORDERED that the Certifying Officer shall conduct further fact-finding and determination in accordance with the Board's Decision and Order of November 17, 2020.

**SO ORDERED.**

For the Board:

DANA ROSEN  
Administrative Law Judge