



Issue Date: 23 March 2010

BALCA Case No.: 2010-TLN-00054

ETA Case No.: C-10019-48818

In the Matter of:

GARCIA FOREST SERVICE, LLC,
Employer

Certifying Officer: William L. Carlson
Chicago National Processing Center

Before: **WILLIAM S. COLWELL**
Associate Chief Administrative Law Judge

**DECISION AND ORDER AFFIRMING DENIAL OF
CERTIFICATION**

This case arises from a request for review of a United States Department of Labor Certifying Officer's ("the CO") denial of an application for temporary alien labor certification under the H-2B non-immigrant program. The H-2B program permits employers to hire foreign workers to perform temporary nonagricultural work within the United States on a one-time occurrence, seasonal, peakload, or intermittent basis. *See* 8 U.S.C. § 1101(a)(15)(H)(ii)(b); 8 C.F.R. § 214.2(h)(6); 20 C.F.R. Part 655, Subpart A (2009).

Statement of the Case

On January 8, 2010, the Department of Labor's Employment and Training Administration ("ETA") received an application for temporary labor certification from Garcia Forest Services, LLC, ("the

Employer”) requesting certification for 120 “Forest and Conservation Workers” from April 1, 2010, until November 15, 2010. AF 37.¹ On January 22, 2010, the CO issued a *Request for Further Information* (“RFI”), in which he found the Employer failed to submit proof of its current Farm Labor Contract Employee (“FLCE”) registration. AF 34.

On January 28, 2010, the Employer submitted a response to the RFI. AF 9-30. The Employer attached three FLCE certificates, along with an attestation that the certificates would be renewed upon expiration. AF 9-16. On February 17, 2010, the CO issued a *Final Determination* denying the Employer’s application. AF 5-8. The CO noted that the special procedures relating to tree-planting and related reforestation occupations outlined in Training and Employment Guidance Letter 27-06, Attachment A, Section II (June 12, 2007) (“TEGL 27-06”) applied to the Employer’s application pursuant to 20 C.F.R. § 655.3. AF 7. The CO then stated that although the Employer had turned in three valid FLCE certificates, “the same three valid FLCE certificates were submitted for the employer’s previous application that was previously certified for fifty-three Forest Conservation Workers from February 1, 2010[,] to November 30, 2010[,] to transport workers in South Carolina and Georgia.” AF 8. The CO found that that the Employer failed to submit certificates for “available” drivers that can transport workers in Minnesota, and thus, denied certification. AF 8. The Employer’s appeal followed.

In its request for review, the Employer stated that it had three additional “supervisors” who would be authorized to drive workers. AF 1. However, the Employer also noted that it did not have the FLCE certificates for the three additional drivers because the Employer was still waiting on the Department of Labor to send the certificates. *Id.*

Discussion

On January 18, 2009, new regulations governing ETA’s processing of H-2B visa applications took effect. *See* 73 Fed. Reg. 78,020 (Dec. 19, 2008). 20 C.F.R. § 655.3 (2009) indicates that ETA’s special procedures for processing applications requesting reforestation workers remained in effect after January 18, 2009. As the CO observed, TEGL 27-06 contains ETA’s procedures for processing such applications. ETA has published the guidance letter to its website at <http://wdr.doleta.gov/directives/attach/TEGL/>

¹ References to the 49-page appeal file will be abbreviated “AF” followed by the page number.

TEGL27-06.pdf. Section 2.A of TEGL 27-06 requires that an employer qualifying as an FLC under the Act must “provide proof of current registration, including proof of the registration of any Farm Labor Contractor Employees . . . at the time of filing.” Section II.C.4 further explains that each driver of a vehicle transporting covered workers must have an FLC or FLCE certificate of registration that specifically authorizes driving.

The parties do not dispute that the Employer qualifies as an FLC or that the Employer must obtain certificates for all FLCEs or independent FLCs who will drive the 120 workers to the jobsites. The sole issue on appeal is whether the Employer submitted enough FLCE certificates to transport workers for its multiple locations. Moreover, the Employer also does not dispute that it used the same three FLCE certificates for multiple applications occurring at the same time in different states. A review of the record before the CO reveals that the Employer did not provide any FLCE certificates other than the ones the Employer previously submitted for its application in South Carolina and Georgia. The FLCE certificates are used in order to ensure that Employers are capable of transporting workers to and from the worksite, and drivers being utilized in South Carolina and Georgia during overlapping time periods cannot transport workers in Minnesota.² It is also quite clear that regardless of how the Employer chooses to divide the three drivers between the different states, three individuals would not be capable of transporting 270 workers to and from work.

The Employer failed to comply with TEGL No. 27-06 by not submitting proof of FLCE certificates that would allow the Employer to transport 120 workers in Minnesota, while also transporting 150 workers in two different states. Accordingly, the CO’s decision to deny certification is affirmed.

Order

For the foregoing reasons, it is hereby **ORDERED** that the Certifying Officer’s decision is **AFFIRMED**.

² The Employer submitted copies of three additional FLCE certificates along with its brief. However, this review is limited to the evidence before the CO at the time he issued the *Final Determination*. Therefore, the Employer’s additional FLCE certificates will not be considered. See 20 C.F.R. § 655.33(e).

For the Board:

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WILLIAM S. COLWELL

Associate Chief Administrative Law Judge