



Issue Date: 05 March 2010

OALJ Case No.: 2010-TLN-00040

ETA Case No.: C-09363-48275

In the Matter of

MID DAKOTA VEGETATION MGMT.,
Employer

Certifying Officer: William L. Carlson
Chicago Processing Center

DECISION AND ORDER

On December 23, 2009, the Department of Labor's Employment and Training Administration ("ETA") received an application for temporary labor certification from Mid Dakota Vegetation Mgmt., ("the Employer") requesting certification for four "Hunters and Trappers" from December 26, 2009, until June 1, 2010. AF 48-98.¹ On January 4, 2010, the Certifying Officer ("CO") issued a Request for Further Information ("RFI"). AF 42-47. Along with the Employer's response to the RFI on January 11, 2010, the Employer indicated to the CO that it wished to withdraw its application because "USCIS had already reported that sufficient applications for the first half of fiscal year 2010 allotted H-2B visas ha[d] been received." AF 40. On January 2, 2010, the CO denied the Employer's application for temporary labor certification. AF 28-34. The Employer's appeal followed.

In its request for review and its brief, the Employer argued that the denial should not have been issued since it had already indicated its desire for a withdrawal. The Employer also expressed concern that the denial would have negative implications for future temporary labor certification matters, despite its attempt to withdraw the application prior to the denial. In

¹ Citations to the 98-page Administrative File will be abbreviated "AF" followed by the page number.

response, the CO argued that the current appeal should be dismissed as being moot since the Employer has “withdrawn” its application and “there are currently no positions for which a certification determination must be made.”

While I agree that the issue is now moot, the Employer also expresses a valid concern. Based on the record before me, the CO should not have processed a denial given the Employer’s express wishes to withdraw the application, especially since the CO clearly received the withdrawal request several weeks before issuing the denial. Therefore, the CO improperly issued a denial when a withdrawal was appropriate.

For the foregoing reasons, it is hereby **ORDERED** that the Certifying Officer’s denial is **VACATED**. It is further **ORDERED** that the Employer’s application for temporary labor certification be **DISMISSED** pursuant to the Employer’s prior withdrawal.

For the Board:

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WILLIAM S. COLWELL

Associate Chief Administrative Law Judge