



**Issue Date: 05 March 2010**

**BALCA Case No.: 2010-TLN-00036**

ETA Case No.: C-10006-45444

*In the Matter of:*

**SELECT EVENT RENTALS,**  
*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 5, 2009, the Department of Labor's Employment and Training Administration ("ETA") received an application for temporary labor certification from Select Event Rentals ("the

Employer”). AF 190-264.<sup>1</sup> The Employer requested certification for 44 “Production Workers” from April 1, 2010, until October 31, 2010. AF 190. The application included two newspaper advertisements, which failed to include the start and end dates of employment. AF 226-227. On January 11, 2010, the CO issued a *Request for Further Information* (“RFI”), identifying the lack of dates on the newspaper advertisements. AF 187-189.

On January 19, 2010, the Employer submitted a response to the RFI. AF 153-186. In the response, the Employer submitted copies of additional advertisements placed in the *Washington Examiner* on January 15, 2010, and January 17, 2010. AF 153. The new advertisements include the start and end dates for the position. *Id.* A recruitment report was also included in the submission, and it was signed and dated January 18, 2010. AF 183. The Employer further indicated that it had adjusted the job order listed with the local state workforce agency to correspond with the timeline of the new advertisements. AF 153.

On February 4, 2010, the CO issued a *Final Determination* denying the Employer’s application on a single ground. AF 149-152. Citing to 20 C.F.R. § 655.17, the CO found that the Employer failed to satisfy all pre-filing recruitment activities before filing its application. AF 152. Specifically, the CO asserted that the two original newspaper advertisements did not meet the regulatory requirements. *Id.* Further, the CO stated that the new advertisements still failed to satisfy the regulations because the recruitment report was dated only one calendar day after the advertisement was published, which fails to satisfy the required timeline of 20 C.F.R. § 655.15(j). *Id.* The Employer’s appeal followed.

In its request for review, the Employer notes that the original advertisements did not include the start and end date due to an error at the newspaper office. AF 5. The Employer further offers that it made a “good faith effort” to comply with the regulations. *Id.* As to the date of when the recruitment report must be signed, the Employer argues that the recruitment report was signed in compliance with the regulations if the new recruitment report is considered in conjunction with the original newspaper advertisements rather than the subsequent ones. AF 6-7.

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<sup>1</sup> Citations to the 264-page appeal file will be abbreviated “AF” followed by the page number.

## Discussion

When conducting domestic recruitment under the H-2B program, 20 C.F.R. §§ 655.15(d)(3) and 655.17(f) require an Employer to publish two print advertisements that must include, *inter alia*, the “start and end dates of employment.” The newspaper advertisement requirements listed in § 655.15(d) must be completed before an Employer files an application for temporary labor certification. 20 C.F.R. § 655.15(a).

There is no doubt that the Employer’s original newspaper advertisements did not include the start and end dates of employment. Likewise, the Employer does not contest that the subsequent advertisements were placed after the Employer filed its application for temporary labor certification. The regulations require that job postings contain the start and end dates in order to adequately test the domestic labor market and therefore protect U.S. workers.<sup>2</sup> The regulations also require that this recruitment take place before an application for temporary labor certification is filed. *See Cross Roads Masonry*, 2010-TLN-00030, slip op. at 3 (January 25, 2010).

While the Employer may have acted in good faith, the original advertisements had the potential to skew the recruitment results. As the CO pointed out in his brief, the failure to include start and end dates did not adequately convey that the job was temporary. Moreover, the Employer had the ability to ensure the advertisements were correct *prior* to filing its application. Had the Employer noticed the newspaper’s error pre-filing, it could have ran additional advertisements, and then filed its application for temporary labor certification. Ultimately, the Employer failed to provide evidence of a newspaper advertisement with the start and end dates which ran prior to the filing of its application. As a result, the CO could not determine if the Employer adequately tested the domestic labor market, and therefore properly denied certification.

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<sup>2</sup> The Employer and the CO discuss whether the subsequent recruitment report and subsequent advertisements meet the regulatory requirements. However, because I find that the recruitment should have taken place *before* the application was filed, I will not consider the subsequent newspaper advertisements placed by the Employer after the application had already been filed. Therefore, I will not reach the issue of whether the subsequent recruitment report and advertisements comply with 20 C.F.R. § 655.15(j).

**Order**

In light of the foregoing, it is hereby **ORDERED** that the Certifying Officer's decision is **AFFIRMED**.

For the Board:

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