



**Issue Date: 01 September 2010**

**BALCA Case No.: 2010-TLN-00073**

ETA Case No.: C-10195-50512

*In the Matter of:*

**FIVE STAR FORESTRY, 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 July 14, 2010, the Department of Labor's Employment and Training Administration ("ETA") received an application for temporary labor certification from Five Star Forestry, LLC, ("the Employer")

requesting certification for 120 “Forest and Conservation Workers” from October 1, 2010, until May 31, 2011. AF 128.<sup>1</sup> On July 16, 2010, the CO issued a *Request for Further Information* (“RFI”),<sup>2</sup> in which he found the Employer failed to submit a “current and valid FLC certificate or any current and valid FLCE certificates.” AF 124. Accordingly, the CO required the Employer to submit valid FLC and FLCE certificates. *Id.* In the event that the certificates expired during the date of need, the CO required the Employer to submit a signed assurance that it would renew the certificates in a timely manner. *Id.* On July 23, 2010, the Employer submitted a response to the RFI. AF 14-45. In its response, the Employer submitted illegible copies of its FLC certificate along with three FLCE certificates. AF 71-75.

On August 4, 2010, the CO issued a *Final Determination* denying the Employer’s application. AF 57-62. 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 59. Accordingly, the CO asserted that although the Employer had submitted an FLC certificate, it was illegible, so the CO was unable to ascertain the “the number of seats available for each authorized vehicle and the authorization [end] date for each vehicle listed on the FLC.” AF 60. Further, the CO noted that although the Employer had submitted three FLC certificates, one of the certificates was “marked both authorized and not authorized.” *Id.* Having surmised that the mark noting the driver was authorized was “handwritten,” the CO found that the Employer only had two valid FLCE certificates. *Id.* Since the Employer did not submit a legible FLC certificate and sufficient FLCE certificates in order to transport the Employer’s requested 120 workers, the CO denied the application.<sup>3</sup> The Employer’s appeal followed.

In its appeal, the Employer attached legible copies of its FLC certificate. AF 26-27. The certificate showed an authorization for nine vehicles, with a total seat capacity of 105. *Id.* The authorization for all nine vehicles expired on March 13, 2010. *Id.*

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<sup>1</sup> Citations to the 151-page Administrative File will be abbreviated “AF” followed by the page number.

<sup>2</sup> The Employer also found three additional deficiencies, which are not relevant to this appeal.

<sup>3</sup> The CO denied the Employer’s application on multiple grounds, however, only one ground will be addressed on appeal.

## 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/TEGL27-06.pdf>. Section 2.A of TEGL 27-06 requires that an employer qualifying as an FLC must "provide proof of *current* registration, including proof of the registration of any Farm Labor Contractor Employees . . . at the time of filing." (emphasis added).

The parties do not dispute that the Employer qualifies as an FLC or that the Employer needed an FLC certificate that included authorized vehicles in order for the Employer to transport workers. The record reveals that the Employer failed to submit legible documentation to the CO showing that it had sufficient authorization to transport 120 workers to its jobsites. Therefore, the CO properly denied certification.

However, in its request for review, the Employer attached legible copies of its FLC certificate, although the Board is precluded from reviewing evidence that was not before the CO. Even assuming, however, the evidence could be submitted, it would not change the outcome. The vehicle authorizations on the FLC certificate expired on March 13, 2010, prior to the Employer's filing of its application for temporary certification, and the vehicle authorizations must be current at the time the Employer files its application. *See Barreto Forestry Contracting, Inc.*, 2010-TLN-00071 (Aug. 5, 2010). Thus, the Employer failed to provide a current FLC certificate that was sufficient to transport 120 workers, and as a result, the CO properly denied certification.

## Order

For the foregoing reasons, 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

Washington, D.C.  
WSC:ARH