



**Issue Date: 07 June 2010**

**BALCA Case No.: 2010-TLN-00061**

ETA Case No.: C-10092-49806

*In the Matter of:*

**BODDEN CADDELL, INC.,**  
*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 April 2, 2010, the Department of Labor's Employment and Training Administration ("ETA") received an application for temporary labor certification from Bodden Caddell, Inc., ("the Employer"). AF 76.<sup>1</sup> The Employer requested certification for 18 "Fishers and related fishing workers" from May 1,

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<sup>1</sup> Citations to the 99-page appeal file will be abbreviated "AF" followed by the page number.

2010, until March 1, 2011. *Id.* The Employer included with its application, *inter alia*, copies of the newspaper advertisements it had published when recruiting domestic workers for these positions. AF 97-98. The Employer advertised the positions in the Saturday, March 6, 2010, and Sunday, March 7, 2010, editions of *The Brownsville Herald*. *Id.* The advertisements directed interested parties to apply at the “Texas Workforce Solution in Brownsville, Texas.” *Id.*

On April 7, 2010, the CO issued a *Request for Further Information* (“the RFI”). AF 68-75. In the RFI, the CO identified several deficiencies requiring corrective action. In this decision, I will focus on only one of the deficiencies. Citing 20 C.F.R. § 655.17(a), the CO found that the Employer’s newspaper advertisements instructed those interested in the job opportunity to apply with the State Workforce Agency (“the SWA”) rather than submit application materials directly to the Employer. 70. The CO requested that the Employer “provide evidence that it complied with pre-filing advertising.” *Id.* The CO further wrote that “pursuant to 20 C.F.R. § 15(a), all recruitment including the placement of the job order and newspaper advertisements must have occurred prior to the application submission date of April 2, 2010.” AF 71.

On April 8, 2010, the Employer sent a fax to the CO, which stated: “I would like to know if I need to run the advertisements again as the advertisement did not contain the contact person but I did include this information on the Texas Workforce Solutions website.” AF 66. On April 9, 2010, the CO sent a response via fax, which stated that “all recruitment including the placement of the job order and newspaper advertisements must have occurred prior to the application submission date of April 2, 2010. Subsequent advertisements that occurred after the employer filed its H-2B application with the Chicago NPC will not cure pre-filing advertisement errors.” AF 63. On April 16, 2010, the Employer filed a response to the RFI, although it did not address the deficiency contained in the newspaper advertisements. 32-61.

On May 7, 2010, the CO issued a *Final Determination* denying the Employer’s application on multiple grounds. AF 24-31. The CO noted that “the burden of conducting the required advertising requirements at 20 C.F.R. § 655.17 lies solely with the employer.” AF 28. The CO asserted that “the employer failed to provide evidence that it complied with pre-filing advertising requirements. Specifically, the employer failed to provide evidence that its newspaper advertisements . . . [directed

applicants] to send resumes directly to the Employer.” *Id.* Since the CO found the Employer failed to satisfy pre-filing recruitment requirements, the CO denied certification. The Employer’s appeal followed.

### Discussion

When conducting domestic recruitment under the H-2B program, all advertising must contain, *inter alia*, “[t]he employer’s name and appropriate contact information for applicants to send resumes *directly* to the Employer.” 20 C.F.R. § 655.17(a) (emphasis added). The Employer’s advertisements instructed applicants to “apply” with the SWA’s local office. AF 97-98. Since the Employer did not comply with the program’s recruitment requirements, the CO properly denied certification.

In its request for review, the Employer does not explain its failure to provide contact information in the newspaper advertisements so that potential workers could send resumes directly to the Employer. Moreover, a review of the record reveals that the Employer did not correct this deficiency at any point in the application process, much less prior to filing its April 2, 2010 application. Pre-filing recruitment ensures that domestic workers are adequately protected, and as a result, the regulations must be followed exactly. Since the Employer did not comply with the Department’s advertising requirements, I affirm the CO’s denial.

### 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